

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4671-2003 (O&M)
Date of decision: - 06.09.2018

Munni Devi and others

....Appellants

Versus

Roshan and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Naren Partap Singh, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. Neeraj Khanna, Advocate
for respondent No.3-Insurance Company.

MAHABIR SINGH SINDHU, J. (ORAL)

Present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') for enhancement of compensation on account of death of Rajinder Singh (hereinafter to be referred "deceased"). The appellants-claimants are widow and two minor sons respectively.

2. A claim petition was filed under Section 166 read with Section 140 of the Act before the learned Motor Accidents Claims Tribunal, Gurgaon (for short 'the Tribunal') with the averments that on 16.08.2001

at about 8.00 PM deceased, aged about 50 years, going to his village Bilaspur, District Gurugram on left side of the road. When he reached in front of Chandan Hotel, a Mahindra Jeep bearing registration No.HR-47/6120 (hereinafter referred as “offending jeep”), driven by respondent No.1-Roshan in a very rash and negligent manner, came from the side of Bilaspur Chowk and hit the deceased from behind. Due to impact, he received severe injuries all over his body and brought to Raman Munjal Memorial Hospital, Sidhrawali, Gurugram. Thereafter, from where he was referred to Kalyani Hospital, Gurugram and ultimately to Batra Hospital & Medical Research Centre, New Delhi, where he died on 28.08.2001 as a result of injuries suffered by him in the said accident. Further averred that an amount of Rs.4,00,000/- (Four Lakhs) was spent on his treatment and Rs.5,000/- (Five Thousand) on funeral expenses. As per claim petition, the deceased was owner of 8.5 acres of agricultural land, doing farming work and earning annual income of Rs.1,20,000/-. An FIR No.184 dated 17.08.2001, under Section 279 and 304-A IPC was registered against respondent No.1 at Police Station Bilaspur, District Gurugram. Respondents No.1, 2 and 3 are driver, owner and insurer, respectively.

3. In response to the claim petition, respondents No.1 and 2 filed separate replies and opposed the claim petition on various grounds including locus-standi and involvement of the offending jeep. Also submitted that neither any accident had taken place; nor the offending jeep was being driven by respondent No.1 in a rash and negligent manner. Further submitted that even the offending jeep was duly insured with

respondent No.3 and as such, respondents No.1 and 2 are not entitled for any compensation from them.

Respondent No.3 filed separate reply similar to respondents No.1 and 2. and also submitted that driver of the offending jeep (respondent No.1) was not having a valid driving licence at the time of alleged accident.

4. On the basis of pleadings of both sides, learned Tribunal framed the following issues:-

- “1. Whether the accident in question took place due to the rash and negligent driving of jeep bearing registration No.HR-47/6120 by respondent No.1 as alleged in the petition? OPP
2. If issue No.1 is proved, whether deceased Rajinder Singh sustained injuries and succumbed to these injuries as alleged in the petition? OPP
3. If issues No.1 and 2 are proved, whether the petitioners are entitled for compensation. If so to what amount and from whom? OPP
4. Whether respondent No.1 had no valid and effective driving licence on the date of accident in question? OPR-3
5. Whether respondents No.1 and 2 had contravened the terms and conditions of insurance policy? OPR-3
6. Relief.”

5. In order to prove the claim petition, Munni Devi-appellant No.1 appeared as PW3 and also examined Vishal, Criminal Ahlmad, as PW1; Constable Khushi Ram PW2; Doctor Javan, M.G. All India Institute of Medical Sciences, New Delhi PW4, Sube Singh son of Molu Ram PW5, Bhoginder Jha, Executive Assistant in Batra Hospital and Medical Research Centre, Delhi PW6, Hemant Kumar Pharmacist Batra Hospital and Medical Research Centre, Delhi PW-7 and Doctor Azad,

CMO, PW8 and produced the documentary evidence as Ex.P1 to Ex.P56.

On the other hand, respondents examined Jaan Mohd., Licencing Clerk, SDM Office, Nuh as RW-1 and produced insurance policy (Ex.R1) and registration certificate of offending jeep (Ex.R2).

6. Learned Tribunal while deciding issues No.1 and 2 separately came to the conclusion that accident in question had taken place due to rash and negligent driving of the offending jeep by respondent No.1 and the deceased died on account of the injuries suffered by him in the said accident and thus, decided both these issues in favour the appellants-claimants.

Learned Tribunal while deciding issues No.3 to 5 came to the conclusion that respondent No.1 was having valid and effective driving licence at the time of accident and the offending jeep was duly insured with respondent No.3. Learned Tribunal further observed that there was no evidence to prove that the offending jeep was being driven in violations of any terms and conditions of the policy.

Learned Tribunal while observing that there is no evidence to the effect that deceased was the owner of 8.5 acres agriculture land, but taking into consideration at par with a labourer, assessed the monthly income of the deceased as Rs.2,100/-. After making a deduction for his personal expenses, worked out the monthly contribution towards family as Rs.1,500/- and thus, calculated his annual dependency as Rs.18,000 (Rs.1,500 x 12). While considering the fact that the deceased was between 50 to 55 years of age at the time of his death, applied the multiplier of '10' and thus, assessed total compensation as Rs.1,80,000/-

(Rs.18,000 x 10). In addition, Rs.10,000/- (Rs.5000 + Rs.5000) were awarded towards loss of consortium and funeral expenses, respectively. An amount of Rs.2,91,120/- was also awarded towards actual medical expenses. The claimants-appellants were also awarded the interest @ 9% per annum from the date of filing of the claim petition till its realization. All the respondents were held liable jointly and severally to pay the compensation. Out of the total compensation of Rs.4,81,120/- (Rs.1,80,000 + Rs.10,000 + Rs.2,91,120), Munni Devi (appellant No.1-claimant) was granted Rs.2,01,120/-, appellants No.2 and 3 as Rs.80,000/- each, whereas appellant No.4 was awarded Rs.1,20,000/-.

7. It is argued by learned counsel the appellants-claimants that the amount of compensation awarded by learned Tribunal is on the lower side and insufficient. Also argued that learned Tribunal has committed a grave error while assessing the monthly income of the deceased @ Rs.2,100/- as there is sufficient material on record to prove that it ought to have been taken at least Rs.10,000/- per month. Further argued that in view of the judgment of Hon'ble Supreme Court in **Sarla Verma (Smt.) and others** Vs. **Delhi Transport Corporation**, (2009) 6 SCC 121, the learned Tribunal has wrongly applied the multiplier of '10' instead of '11'. Also argued that in view of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited** Vs. **Pranay Sethi and others**, (2017) 16 Supreme Court Cases 680 the appellants-claimants are entitled for the future prospects as well as compensation under the other heads.

On the other hand, learned counsel for respondent No.3-

Insurance Company has argued that impugned award is just and proper and does not require any interference by this Court. Thus, he prayed for dismissal of the appeal.

9. Heard both sides and perused the paper-book.

10. The death of the deceased on account of rash and negligent driving of offending jeep by respondent No.1, validity of his driving licence, existence of insurance policy pertaining to the offending vehicle at the relevant time and age of deceased are neither disputed; nor challenged by the respondents either by way of any substantive appeal or cross-objections. Even before this Court also, learned counsel for respondent No.3 has not raised any arguments to that effect, therefore, the findings on issues No.1, 2, 4 and 5 are duly affirmed.

11. Only question to be determined in the present appeal is:-

As to what should be the “just compensation” to be awarded in favour of the appellants-claimants in view of the facts and circumstances of the present case?

12. Dr. Asad, CMO, Batra Hospital and Medical Research Centre, Delhi, appeared as PW8 and *inter alia* deposed that Rajinder Singh (deceased) was admitted in the hospital on 16.8.2001 on account of road side accident and remained admitted till he expired on 28.08.2001.

The treatment of deceased in different hospitals as well as medical expenses for treatment of deceased to the tune of Rs.2,91,117/- is duly proved before learned Tribunal and on that count the actual amount of Rs.2,91,120/- was granted.

Appellant No.1-Munni Devi appeared as PW3 and proved

the contents of claim petition and *inter alia* deposed that her husband met with an accident on 16.08.2001 with the offending jeep and while undergoing treatment in Batra Hospital & Medical Research Centre, New Delhi ultimately died on 28.08.2001. During this period, an amount of Rs.4,00,000/- lakhs was spent on his treatment and Rs.5,000/- on funeral expenses. Further deposed that her husband was having 8½ acres of land and he was an agriculturist and his monthly income was Rs.10,000/- and out of that, he used to pay Rs.8,000/- per month for household expenses. She specifically deposed that claimants-appellants No.2 to 4 are their sons and dependents upon the income of the deceased.

During her cross-examination, she denied the suggestion that they did not spend Rs.4 lakhs on the treatment of the deceased as well as Rs.5000/- for funeral expenses. Also denied the suggestion of the respondents that deceased was not earning Rs.10,000/- per month and that he was not having 8.5 acres of land.

Although there is no evidence with regard to the ownership of the land in favour of the deceased, but keeping in view the facts and circumstances that he was maintaining the family consisting of five members including wife and three sons and his earnings are to be taken at par with a labourer even then the monthly income of the deceased should be taken as Rs.3,000/- instead of Rs.2,100/-. Resultantly, the findings of learned Tribunal on issue No.3 while assessing the monthly income of the deceased as Rs.2,100/- is held to be inappropriate and the same is modified accordingly.

It is duly proved from the testimony of PW-3 Munni Devi

(appellant-claimant No.1) that all the four claimants-appellants were dependent upon the income of the deceased, therefore, a deduction of 1/4th is to be made towards his personal expenses, consequently, the annual dependency would be Rs.3,000 – Rs.750 = Rs.2,250 x 12 = Rs.27,000/-.

13. Since the deceased was 52 years of age at the time of his death, therefore, in view of the **Sarla Verma's case (supra)**, the multiplier of '11' is attracted instead of '10'. Still further, in view of the law laid down by the Hon'ble Supreme Court in **Pranay Sethi's case (supra)**, the appellants-claimants would also be entitled for addition of 10% on account of future prospects as well as Rs.70,000/- under other conventional heads.

14. In view of the discussion above, the following amounts of compensation would be the “just compensation” for which the appellants-claimants are entitled in the present case-

Monthly income of deceased	₹3,000
Less 1/4 th for self expenses	₹3,000 - ₹750/- = ₹2,250
Annual dependency	₹2,250 x 12 = ₹27,000/-
10% for future prospects	₹2,700/-
Add future prospects	₹27,000 + ₹2,700 = ₹29,700/-
Apply multiplier of '11'	₹29,700 x 11 = ₹3,26,700/-
Medical Expenses as awarded by the learned Tribunal	₹2,91,120/-
Conventional heads, namely, loss of estate, loss of consortium and funeral expenses	₹15,000 + ₹40,000 + ₹15,000 = ₹70,000
Total compensation	₹3,26,700 + ₹2,91,120 + ₹70,000 = ₹6,87,820/-
Compensation payable	₹6,87,820/- (Less compensation already paid)

15. The enhanced amount of compensation shall carry the same rate of interest as awarded by learned Tribunal i.e. @ 9% per annum.

16. The remaining conditions of disbursal of amount shall remain unaltered and in the same proportion as made by learned Tribunal. The enhanced compensation be paid within a period of six weeks from the date of receipt of certified copy of this order.

17. With the afore-mentioned modifications of the impugned award, the present appeal is allowed.

September 06, 2018
naresh.k

(MAHABIR SINGH SINDHU)
JUDGE

Whether reportable?	Yes
Whether reasoned/speaking?	Yes