

332

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.5162 of 2003 (O&M)

Date of Decision : 21.08.2018

Smt. Raj Kumari and others

..... Appellants

Versus

Rajender Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present :- Mr. C.B. Goel, Advocate
for the appellants.

None for respondent No.1.

Mr. Manoj Kumar Sangwan, DAG Haryana
for respondent Nos.2 & 3.

Mr. Neeraj Khanna, Advocate
for respondent No.4.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed by claimants-appellants under Section 173 of the Motor Vehicle Act, 1988 (for short the 'Act') for enhancement of compensation on account of death of Shiv Ram Yadav (hereinafter to be referred as deceased). The claimants/appellants are wife, minor son and mother, respectively of the deceased.

2. Brief facts of the case are that on 09.07.2001, deceased along with his friend Shiv Kumar was waiting in front of Ahinsha Sathal on Mehrauli Road near Lado Sarai, Delhi to board a bus for Gurgaon and they reached there on scooter No.DL-9SA/9914. A Haryana Roadways bus

bearing registration no.HR-38-2008 (hereinafter to be referred as '*offending bus*') came from Ballabgarh side and stopped at the bus stand Lado Sarai. When the deceased was in the process of boarding the offending bus, respondent no.1-Driver suddenly accelerated the speed and drove the bus in a very rash and negligent manner and as a result thereof, the deceased fell down from the bus and was crushed under the rear tyre of the offending bus. Immediately, he was shifted to Sabdarjang Hospital, New Delhi, but was declared brought dead by the doctor on the same day. An FIR No.402 dated 09.07.2001 under Sections 279, 304-A IPC was registered at Police Station, Mehrauli (Delhi) against respondent no.1 for causing the accident. It is specifically alleged in the claim petition that deceased died on account of rash and negligent driving of the offending bus by respondent no.1.

3. In response to the claim petition, respondent no.1 filed reply and denied the averments made therein including the age, occupation and qualification of the deceased. Further submitted that there was no negligence on his part and deceased suffered injuries on account of his own negligence.

Respondent nos.2 and 3 filed joint reply and adopted the similar stand to that of respondent no.1 while denying the contents of claim petition and further submitted that offending bus was insured with respondent no.4 and as such they are not liable for any compensation.

Perusal of paragraph No.6 of the impugned award reveals that neither any reply was filed on behalf of respondent no.4-Insurance Company; nor any one appeared on their behalf, therefore, learned tribunal proceeded *ex parte* vide order 30.05.2003.

4. On the basis of pleadings of both the parties, learned tribunal

framed the following issues:-

1. *Whether the accident in question took place due to the rash and negligent driving of bus No.HR-38/2008 by respondent no.1 as alleged in the petition?OPP*
2. *If issue no.1 is proved, whether Shiv Ram Yadav sustained injuries in the accident in question and died because of those injuries as alleged in the petition ? OPP*
3. *Relief.*

5. In order to prove the claim petition, claimant/appellant no.1- Raj Kumari appeared as PW1 and examined S.C. Dua-PW2, Lokesh Singh Chauhan-PW3, S.K.Mahendru-PW4, Rajinder Kumar Arora, Ahlmad-PW5, Sukhdev Singh, TGT in Government School, Saket, New Delhi-PW6, Shiv Kumar (eye witness)-PW7, Bhopal Singh, Constable-PW8 and also brought on record the documentary evidence as Ex.PA to Ex.PJ.

On the other hand, respondent no.1 appeared as RW1 and produced the copy of his driving licence Ex.R1 and Insurance Policy of the offending bus Ex.R2.

6. Concededly, learned tribunal framed issue no.1 to the effect as to “whether the accident in question took place due to the rash and negligent driving of bus bearing No.HR-38/2008 by respondent no.1”, but while deciding the same, it came to the following conclusion in para 18 of the impugned award.

“In view of the foregoing circumstances, I arrive at the conclusion that the accident resulting into death of Shiv Ram Yadav was on account of rash and negligent driving of bus No.HR-38/2008 by its driver Rajender Kumar. Hence, the issue is decided accordingly in favour of the petitioners”.

Perusal of the extracted paragraph makes it apparently clear while deciding issue no.1, learned tribunal has recorded the

finding regarding the death of the deceased beyond the scope of issue no.1 and that seems to be an inadvertent lapse on the part of the learned tribunal and even otherwise no grievance has been raised by respondents to that effect.

Still further, issue no.2 was framed by learned tribunal to the effect as to “Whether Shiv Ram Yadav sustained injuries in the accident in question and died because of those injuries as alleged in the petition”, but unfortunately, again, learned tribunal while deciding this issue not only concluded that deceased sustained injuries in the accident in question and as a result thereof, died, but also decided the quantum of compensation in the claim petition. Learned Tribunal assessed monthly income of the deceased as ₹ 14,442/- after making the deduction 1/3rd and taking into consideration the multiplier of '13' assessed of ₹ 13,86,736 plus ₹ 15000 for loss of consortium and funeral expenses. Thus, learned tribunal while deciding issue no.2 has gone beyond the scope of this issue and that seems to be non application of mind.

Be, that as it may, in the absence of any substantive appeal or cross-objections on the part of the respondents, the findings recorded by learned tribunal on issue nos.1 and 2 go unchallenged by the respondents and even during the course of hearing before this Court also, neither any argument; nor any objection has been raised by learned counsel for respondent no.3. Therefore, the findings recorded by learned tribunal on issue no.1 and 2, except the quantum of compensation are affirmed.

7. Now, the only point for determination in the present appeal is:-

As to what should be the “just compensation” for which the appellants/claimants are entitled in view of the facts and circumstances of

the present case?

8. It is argued by the learned counsel for the appellants/claimants that deceased was working as a Trained Graduate Teacher (TGT) in Govt. School i.e. Sarvodaya Bal Vidyalaya, J-Block, Saket, New Delhi and getting a monthly salary of ₹ 14,442/-and he was also earning ₹ 10,000/- by imparting tuition classes. Further argued that in view of the age of the deceased as 45 years, learned tribunal wrongly applied the multiplier of '13' and it should be of '14' in view of judgment of Hon'ble Supreme Court in ***Sarla Verma (Smt) And Other V/s Delhi Transport Corporation and Another (2009) 6 Supreme Court Cases 121***. He has also argued that learned tribunal has not awarded any compensation towards future prospects in view of the judgment of Hon'ble Supreme Court in ***National Insurance Company Ltd. V/s Pranay Sethi and others,(2017) 16 Supreme Court Cases 680*** under other conventional heads.

On the other hand, learned counsel for respondent no.4 opposed the submissions of the appellants/claimants and submitted that learned tribunal has already awarded sufficient compensation to them while passing the impugned award and the same does not require any interference by this Court and thus prayed for the dismissal of the appeal.

9. Heard arguments of both sides and perused the record.

10. Learned tribunal accepted the monthly income of the deceased as ₹ 14,442/- (Fourteen thousand four hundred forty two) on the basis of Salary Certificate (Ex.PD) and thus calculated annual income as ₹ 1,73,304/-(One lakh seventy three thousand three hundred four) and after deducting the component of income tax of ₹ 13,294/- found net annual income of the deceased as ₹ 1,60,010/-(One lakh sixty thousand ten). Still

further, after making a deduction of 1/3rd towards his self expenses, calculated the annual dependency to the tune of ₹ 1,06,672/-. Thereafter, taking into consideration the age of the deceased as 45 years, applied the multiplier of '13' and calculated the compensation as ₹ 13,86,736/- (₹1,06,672 x 13). In addition, ₹ 5000 was awarded for loss of consortium and ₹ 10,000 for transportation, funeral and last rites of the deceased. Learned Tribunal also awarded interest @ 9 % per annum from the date of the filing of the petition till its realization. There is no dispute regarding the age and income of the deceased by the respondents. Although, it has been argued on behalf of the appellants/claimants that the deceased was getting extra income by rendering tuition classes, but there is no material on record to prove the same. Evidently, the deceased was working as a Trained Graduate Teacher (TGT) in a Government School, therefore, it is not conceivable that he could impart the private tuition as well. Therefore, learned tribunal has rightly did not consider it appropriate to grant any compensation on that count and this Court is in fully agreement with the view taken by the learned tribunal.

11. Since the deceased was 45 years of age at the time of his death, therefore, in view of the judgment of **Sarla Verma (supra)**, the multiplier of '14' is attracted instead of '13'. Still further in view of the law laid down by Hon'ble Supreme Court in **Pranay Sethi's case (supra)**, the claimants/appellants are also entitled for addition of 30% towards future prospects along with compensation under other conventional heads i.e loss of estate, loss of consortium and funeral expenses to the tune of ₹ 70,000/-.

12. In view of the facts and circumstances, discussed hereinabove, the following amount of compensation would be the 'just compensation' for

which the claimants/appellants are entitled in the present appeal.

Monthly income	₹ 14,442/-
Annual Income (₹ 14,442 x 12)	₹ 1,73,304/-
Less Income Tax (₹ 1,73, 304 - ₹ 13,294)	₹ 1,60,010/-
Net annual income	₹ 1,60,010/-
Annual dependency (₹ 1,60,010 - 1/3rd)	₹ 1,06,674/-
Add 30% for future prospects	₹ 32002/-
Loss of annual dependency (₹ 1,06,674 + ₹ 32002)	₹ 13,86,76/-
Applied Multiplier of 14 (₹ 1,38,676 x 14)	₹ 19,41,464/-
Loss of estate	₹ 15000/-
Loss of consortium	₹ 40,000/-
Funeral expenses	₹ 15000/-
Total compensation	₹ 2011464/-
Compensation payable	₹20,11,464/- (less compensation already paid)

13. It is clarified that remaining terms and conditions mentioned in the impugned award shall remain unaltered except that compensation payable to the appellants/claimants be paid by respondent no.4-Insurance Company to the appellants/claimants within a period of six weeks from receipt of certified copy of this order.

August 21, 2018
dkp

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned

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Yes

Whether reportable

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Yes