

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2254-2002

Date of decision: - 08.08.2018

Reshma Devi and others

.....AppellantsVersus

Sunil Kumar and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Bhag Singh, Advocate, for the appellants.

None for respondents No.1 and 2.

Mr. Neeraj Khanna, Advocate
for Mr. Ravinder Arora, 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 Jasbir Singh son of Chanda Singh (hereinafter referred as 'deceased'). The appellants-claimants are widow and two minor sons of the deceased.

2. A claim petition was filed under Section 166 of the Act with the averments that on 13.09.2000, deceased was going from Pipli to his native village Charuni Jattan while driving tractor No.HR-08A-2029. His brother, namely, Nasib Singh was also going to their village on motorcycle No.HR-07D-8584. At about 10.00 PM, when deceased reached ahead of Ishargarh Turn, near parking, on GT Road; another

tractor bearing registration No.HR-07C-6154 (hereinafter referred as 'offending vehicle'), driven by respondent No.1-Sunil Kumar in a very rash and negligent manner, came from Pipli side and on the crossing point hit the tractor of the deceased. As a result thereof, the tractor driven by deceased fell in the drain (*Nala*) and turned over, consequently, the deceased came underneath the tractor. After committing the accident, respondent No.1 ran away from the spot along with the offending vehicle. Nasib Singh tried his level best to save the life of the deceased, but could not succeed. He also tried to stop the vehicles going on the road, but no one paid any heed and Jasbir Singh died. Nasib Singh remained on the spot and in the morning he informed the police regarding the accident, which had taken place due to rash and negligent driving of respondent No.1. An FIR No.223 dated 14.09.2000 under Sections 279/304-A IPC, P.S. Sadar Thanesar, was registered in the matter and after investigation report under Section 173 Cr.P.C. was submitted by the police against respondent No.1.

3. In response to the claim petition, respondents No.1 and 2 filed their joint reply and denied the averments made therein. Further submitted that the deceased died on account of his own negligence and thus, the claimants-appellants are not entitled for any compensation.

Respondent No.3-Insurance Company filed separate reply and denied the allegations levelled in the claim petition while raising the preliminary objections of *locus standi*, cause of action and jurisdiction etc. On merits, respondent No.3 denied the factum of accident as well as raised the plea of collusion between the claimants-appellants and

respondents No.1 and 2.

4. Claimants-appellants filed replication and reiterated the averments made in the claim petition.

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

- “i) Whether the accident in question took place on account of rash and negligent driving of Sunil Kumar, respondent No.1, driver of tractor No.HR-07C/6154? OPP
- ii) Whether Jasbir Singh, son of Chanda Singh, died in this accident and the petitioners are entitled to claim compensation on account of the same. If so, to which extent and from whom?OPP
- iii) Whether the insured violated the terms and conditions of the insurance policy. If so, to what effect?OPR-3.
- iv) Whether this petition is the result of collusion between the petitioners and respondents nos.1 and 2. If so, to what effect?OPR-3.
- v) Relief.”

6. In order to prove the claim petition, the appellants-claimants examined Reshma Devi as PW-1, Nasib Singh PW-2, Jagir Singh PW-3 and Dharam Pal PW-4. They also produced the following documentary evidence: -

Ex.P1	Driver Licence of deceased Jasbir Singh
Ex.P2	Certificate of Registration of tractor of deceased
Ex.P3	Post Mortem Report
Ex.P4	Identity Proof of deceased Jasbir Singh
Ex.P5	Ration Card of deceased Jasbir Singh
Ex.P6	Copy of FIR
Ex.P7	Copy of report under Section 173 Cr.P.C.
Ex.P8	Statement of complainant Nasib Singh
Ex.P9	Site Plan
Ex.P10	Receipt of amount
Ex.P11	Copy of jamabandi
Ex.P12	Copy of khasra girdawari
Ex.P13	Receipt executed between Jasbir Singh and Dharam Pal
Ex.P14	Copy of mutation
Ex.P15	Copy of jamabandi

Ex.P16	Copy of khasra girdawari
Ex.P17	Copy of jamabandi for the year 1996-97
Ex.P18	Copy of khasra-girdawari kharif 1998 to kharif 2000
Ex.P19	Copy of birth certificate of the deceased

On the other hand, respondents examined Sunil Kumar (respondent No.1) as RW1 and produced the following documents on record:-

Ex.R1	Drive Licence of Sunil Kumar (respondent No.1)
Ex.R2	RC of tractor No.HR-07C-6154 (offending vehicle)
Ex.R3	Insurance Cover note
Ex.R4	Mechanic test report of tractor of deceased
Ex.R5	Mechanic test report of offending tractor
Ex.P6	Insurance Policy

7. Learned Tribunal while deciding issue No.1 came to the conclusion that accident in question had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1 and thus, decided the same in favour of appellants-claimants.

Learned Tribunal while deciding issues No.3 and 4 observed that neither these issues were pressed at the time of arguments; nor any evidence was led by respondents. Further observed that respondent No.3 has failed to point out violation of terms and conditions of the insurance policy or any collusion between the appellants-claimants with respondents No.1 and 2. Consequently, both these issues were decided against respondent No.3 and in favour of the appellants-claimants.

Learned Tribunal while deciding issue No.2 assessed the monthly income of the deceased as Rs.3,800/- (approximately) in view of the facts and circumstances of the case. After deducting 1/3rd amount towards his personal expenses and taking into consideration the monthly contribution of Rs.2500/- towards family, worked out the annual

dependency of Rs.2500 x 12 = Rs.30,000/-. While taking into consideration the age of the deceased as 35 years, applied the multiplier of '14' and thus, worked out the total compensation as Rs.30,000 x 14 = Rs.4,20,000/-. In addition Rs.10,000/- (Rs.5000 + Rs.5000) were awarded towards loss of consortium and funeral expenses, respectively. Learned Tribunal also awarded an interest @ 9% per annum from the date of filing of the claim petition till its realization and all the respondents were held liable jointly and severally to pay the compensation.

Learned Tribunal while deciding issue No.5 ordered that out of the total compensation of Rs.4,30,000/- (Rs.4,20,000 + Rs.10,000), Reshma Devi (appellant No.1-claimant) will get Rs.2,30,000/- and rest of the compensation was to be shared by appellants-claimants No.1 and 2 in equal shares i.e. Rs.1,00,000/- each.

8. It is argued by learned counsel for the appellants-claimants that learned Tribunal has committed a grave error while assessing the monthly income of the deceased @ Rs.3,800/- as there is sufficient material on record to prove that it ought to have been taken at least Rs.6000/- 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 '14' instead of '16'. Also argued that in view of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited Vs. Praney 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.

9. 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.

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

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

12. 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?

13. PW1-Reshma Devi (appellant-claimant No.1) in her examination-in-chief duly supported the averments made in the claim petition and during her cross-examination by respondent No.3, *inter alia*, stated as under: -

“I have brought revenue record regarding ownership of the land of our family. As per revenue record there are three persons holding the joint land shown in the copy of jamabandi. Our family is having

16-17 acres of land. I have brought the documents/receipts regarding taking the land on lease by my husband. As per lease document my husband had paid a sum of Rs.83,000/- for two years to one Jagir Singh for the period 1999 to 2001. My husband had purchased a tractor one month before his death. Agricultural implements are Harrow, trolley, trailer, suhaga etc. My husband used to engage two servants casually. My husband used to give me about Rs.15,000/- per month for household expenses including cattle feeds etc. We were having 5-7 buffaloes. It is wrong to suggest that my husband used to give me Rs.4,000/- per month for house-hold expenses. It is wrong to suggest that I have narrated this exaggerated amount in order to claim compensation on higher side”

PW2-Nasib Singh also supported the claim petition and *inter alia* deposed as under: -

“My brother was about 34-35 years at the time of accident/death. He was doing agricultural work. He was having 6 acres of his own land and also having 10 acres of land by taking on lease. He used to earn Rs.1,75,000/- per year from his agricultural purposes per year. My deceased brother was having two sons, both are minors.”

During his cross-examination, PW2 denied the suggestion that deceased Jasbir Singh used to save about Rs.4,000/- per month after deducting other expenses.

PW-3 supported the case of the appellants-claimants while deposing that he leased out his six acres of land to the deceased for three years. PW-4 also deposed that he leased out 5¼ acres of land to the deceased for two years.

On the other hand, except RW1, the respondents have not brought any material on record to contradict or rebut the evidence of the appellants-claimants regarding the lease of agriculture land by PW-3 and

PW-4 in favour of the deceased and his earning while doing farming and maintaining buffaloes.

Perusal of cross-examination of PW-1 and PW-2 clearly establish that even the respondents themselves have put a suggestion to both these witnesses in similar terms that deceased used to contribute Rs.4,000/- per month for household expenses. Meaning thereby, the respondents at their own have accepted the monthly income of deceased as Rs.6,000/- and that is the reason that they have put the suggestions to PW-1 and PW-2 that deceased used to contribute Rs.4,000/- for household expenses after deducting other expenses. Even otherwise, the deceased was a member of the Gram Panchayat and having a good reputation in the village and recently purchased a tractor for his farming operation and all these facts go unrebutted by the respondents.

14. Keeping in view the totality of the facts and circumstances discussed hereinabove, this Court is of the considered opinion that the monthly income of the deceased should be taken at least Rs.6,000/- instead of Rs.3,800/- as the established income at the relevant point of time. Resultantly, the findings of learned Tribunal on issue No.2 while assessing the monthly income of the deceased as Rs.3800/- is held to be erroneous and the same is modified accordingly. As a result thereof, after deducting the 1/3rd component towards the personal expenses of the deceased, the net annual dependency would be $\text{Rs.4000} \times 12 = \text{Rs.48,000/-}$.

15. Learned Tribunal has recorded that at the time of death, the deceased was 35 years of age, therefore, in view of the **Sarla Verma's**

case (supra), the multiplier of '16' is attracted instead of '14'. 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 be entitled for addition of 40% on established income on account of future prospects and Rs.70,000/- under other conventional heads.

16. *Ergo*, 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	₹6,000
Less 1/3 rd for self expenses	₹6,000 - 2,000/- = ₹4,000
Annual dependency	₹4,000 x 12 = ₹48,000/-
40% for future prospects	₹19,200/-
Add future prospects	₹48,000 + ₹19,200 = ₹67,200/-
Apply multiplier of '16'	₹67,200 x 16 = ₹10,75,200/-
Conventional heads, namely, loss of estate, loss of consortium and funeral expenses	₹15,000 + ₹40,000 + ₹15,000 = ₹70,000
Total compensation	₹10,75,200 + ₹70,000 = ₹11,45,200/-
Compensation payable	₹11,45,200/- (Less compensation already paid)

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

18. The remaining conditions of disbursal of amount shall remain unaltered and the same be paid within a period of six weeks from the date of receipt of certified copy of this order.

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

August 08, 2018
naresh.k

(**MAHABIR SINGH SINDHU**)
JUDGE

Whether reportable?

Whether reasoned/speaking?

Yes

Yes