IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4059-2001
Date of decision: - 09.08.2018

Hukmi Devi

.....Appellant

Versus

G.M. Haryana Roadways Kaithal and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present:- Ms. Rahish Pahwa, Advocate,
for the appellant.

Mr. Manoj K. Sangwan, DAG, Haryana.

Mr. Rajesh Duhan, Advocate
for respondent No.2.

Ms. Vandana Malhotra, Advocate
for respondent No.4-Insurance Company.

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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 Ravi Kant son of appellant (hereinafter to be referred as “deceased”).

2. Appellant-claimant filed a claim petition under Section 166

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of the Motor Vehicles Act, 1988 (for short 'the Act') before Motor Accident Claims Tribunal, Kaithal (for short 'Tribunal') with the averments that she is resident of Pundri and posted as Headmistress, Government Primary School, Mohna, District Kaithal. On 30.06.1999, after applying for leave from the school, when she was coming back to Pundri on her motorcycle and deceased was the pillion rider, then on the way she stopped on the road to answer the call of the nature and moved in the nearby fields. Deceased was standing near the motorcycle, then in the meanwhile a Haryana Roadways Bus No.HR-45-646 (for short “offending bus”) came from Kaithal side driven by respondent No.2-Balbir Singh in a very rash and negligent manner and hit the motorcycle as well as the deceased and he sustained multiple injuries on the body including head, legs and hands etc. and even the motorcycle was also damaged. Immediately the deceased was taken to Government Hospital, Pundri and thereafter he was referred to Civil Hopsital, Kaithal, but he succumbed to the injuries on 30.06.1999 and died. An FIR No.106 dated 30.06.1999, under Sections 279, 304-A IPC, was registered at Police Station Pundri regarding the accident. The deceased was 17 years of age and after passing 10+2 examination had qualified entrance test for Punjab Engineering College, Chandigarh, National Defence Academy (NDA), Regional Engineering College, Kurukshetra and for Government Poly-Technical Institute, Ambala. Rs.20,000/- were spent on funeral and transportation charges.

3. In response to claim petition, respondents No.1 and 3 filed joint written statement and denied the accident on account of rash and

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negligent of offending bus by respondent No.2 and submitted that as a matter of fact the driver of the offending bus tried to save the deceased, who was driving the motorcycle on a very high speed.

Respondent No.2-Balbir Singh (driver) filed separate reply and denied the contents of the claim petition and he also submitted that in fact the deceased was driving the motorcycle in a very rash and negligent manner and he came all of a sudden from Dulyani side and hit the offending bus, which was insured with respondent No.4 at the time of accident.

Respondent No.4-Insurance Company filed separate reply while denying the contents of the claim petition, submitted that neither appellant was driving the motorcycle; nor she was having any valid driving licence at the time of accident; rather it is the deceased, who himself was driving the motorcycle.

Separate replications were filed by appellant-claimant in response to the replies of respondents and reiterated the contents of the claim petition.

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

> "1. Whether the accident was cause due to rash and negligent driving of bus bearing Registration No.HR-45-646, on the part of Balbir Singh, respondent No.2 as alleged? OPP
>
> 2. If issue No.1 is proved, whether Ravi Kant died on account of the injuries sustained in the accident. If so, whether claimant Hukmi Devi is entitled to recover any amount by way of compensation and if so to what amount and from whom?OPP

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3. Whether the insured violated any term and condition of the insurance policy, as alleged and if so what effect? OPP (Insurance Co.)
4. Relief."

5. In order to prove the contents of the claim petition, appellant-Hukmi Devi herself appeared as PW-1 and reiterated the averments made in the claim petition. She also deposed that after registration of FIR (Ex.P5), report under Section 173 Cr.P.C. (Ex.P8) was submitted by the police against respondent No.2. Further deposed that deceased was 17 years of age and a brilliant student as he had already passed entrance test for Punjab Engineering College, Chandigarh, for National Defence Academy (NDA); Regional Engineering College, Kurukshetra and for Government Poly-Technical Institute, Ambala and produced copies of certificates as Ex.P1 to Ex.P4 along with matriculation certificate Ex.P7 in which date of birth of the deceased recorded as 30.04.1982. Further deposed that Rs.5,000/- were spent on transportation for taking the deceased from Kaithal to Pundri and Rs.15,000/- on funeral and last rites. Specifically deposed that she has a valid licence at the time of accident, which was issued from Kaithal and denied the suggestion that she was not present at the time of accident or that she was not having a valid driving licence for driving the motorcycle. She categorically denied the suggestion that motorcycle was being driven by deceased in a rash and negligent manner.

6. Mool Chand, Teacher Government Primary School, Mohna, appeared as RW-1 and deposed that initially half day leave was applied by the appellant and later on, same was converted to full day, which was

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duly sanctioned by Block Education Officer (BEO). Copy of leave application is on record as Ex.P9 and relevant page of the attendance register is Ex.R2.

Respondent No.2-Balbir Singh (driver) appeared as RW-2 and deposed that at the relevant time he was driving the offending bus and when it reached near the area of village Mohna, a motorcycle came from the side of link road, which was driven in a rash and negligent manner. During cross-examination, this witness stated that he did not make any representation to the higher authorities regarding the criminal case registered against him. Although he has stated that an application was given to General Manager-respondent No.1, but he did not produce any copy thereof. The driving licence of RW-2 is produced as Ex.R1 and cover note of the offending bus is Ex.R3.

7. Learned Tribunal while deciding issued No.1 came to the conclusion that the appellant has duly proved that she used to go to her school on a motorcycle on the fateful day also and she had gone to school on her motorcycle. Learned Tribunal also noticed that factum of accident has been admitted by driver-respondent No.2 of the offending bus and deceased died on account of rash and negligent driving by respondent No.2 in this very accident and thus, decided issue No.1 in favour of the appellant-claimant and against the respondents.

While deciding issues No.2 and 3, learned Tribunal found that deceased was 17 years of age and he had passed entrance test for admission to Engineering College, thus, taking into consideration the provisions of second schedule attached with Section 163-A of the Act,

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assessed the notional income of deceased as Rs.15,000/- per annum. After making a deduction of 1/3rd towards the expenses for the deceased himself, applied the multiplier of '15' and calculated the compensation of Rs.1,50,000/- (Rs.10000 x 15). In addition, an amount of Rs.2,000/- for transportation as well as treatment of deceased and Rs.8,000/- for funeral expenses and last rites were awarded. Learned Tribunal also awarded an interest @ 9% per annum from the date of filing of the claim petition till its realization.

Since the learned Tribunal did not find any fault with the driving licence of respondent No.2 or with the Cover Note of the offending bus, therefore, all the respondents were held liable jointly and severally to make the payment of compensation of Rs.1,60,000/- along with interest.

8. It is argued by learned counsel for the appellant-claimant that the compensation awarded by learned Tribunal is on a very lower side and the same deserves to be enhanced. Further argued that learned Tribunal committed an error while applying the multiplier of '15' instead of '18' in view of judgment of the Hon'ble Supreme Court in **Sarla Verma (Smt.) and others** Vs. **Delhi Transport Corporation**, **(2009) 6 SCC 121**'. Further argued that appellant-claimant is entitled for future prospects 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** as well as compensation under the other heads.

9. On the other hand, learned counsel for the respondents have

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argued that the impugned award is just and proper and does not require interference by this Court. Further argued by learned counsel for respondent No.4 that as there is no actual income of the deceased, therefore, the claimant-appellant is not entitled for any future prospects as well as compensation under other conventional heads as per **Praney Sethi's case (supra)** and prayed for dismissal of the appeal.

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

11. Concededly, the respondents have not challenged the impugned award either by way of substantive appeal or cross-objections. Even before this Court also no grievance has been raised against the findings on issue Nos.1 and 3. Consequently, findings on these issues are affirmed.

12. The only point for consideration in the present appeal is:-

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

13. Appellant-claimant has duly proved that the deceased was 17 years of age at the time of his death as his date of birth was 30.04.1982 and the accident in question had taken place on 30.06.1999. It is also proved that after completion of his 10+2 examination, he had cleared the entrance test for admission to Punjab Engineering College, Chandigarh, NDA, Regional Engineering College, Kurukshetra and for Government Poly-Technical Institute, Ambala. Therefore, it is clearly established that deceased had a brilliant career, but his life was cut short by the unfortunate accident on account of rash and negligent driving of

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offending bus by respondent No.2. The loss caused to the appellant-claimant on account of the accident is really shocking and irreparable. Such incident(s) in life are indefinite psychological trauma and which cannot be absolutely erased even with the passage of time, rather subsist up to the last. Certainly, the compensation in terms of money is not the complete substitute for the loss suffered by the legal representatives, but still the Courts try to make endeavour to provide some solace within the parameters of law.

14. Although learned counsel for respondent No.4-Insurance Company has argued that since there was no actual income of the deceased, therefore, the benefit of **Praney Sethi's case (supra)** cannot be extended to the claimant-appellant, but the argument is liable to be rejected in view of the decision of Hon'ble Supreme Court, **rendered in SLP (Civil) 22134 of 2016** titled **Hem Raj Vs**. **The Oriental Insurance Company Limited and others**, **decided on 22.11.2017** and the operative of the same reads as under: -

> "The matter was earlier deferred to await the judgment of the larger Bench which is now reported in 2017 (13) SCALE 12 – National Insurance Company Limited Vs. Pranay Sethi and Ors.
>
> The contention raised on behalf of the appellants is that in the light of the said judgment 40% increase on estimated income towards future prospects is required to be taken into account as the deceased was 40 years of age.
>
> Learned counsel for the Insurance Company submitted that in absence of actual evidence of income the principle of adding on account of future prospects cannot be applied where income is determined by guess work.
>
> We are of the view that there cannot be distinction where

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> there is positive evidence of income and where minimum income is determined on guess work in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made. The Tribunal made addition of 50% while the High Court has deleted the same."

Consequently, in view of **Hem Raj's case (supra)** the claimant-appellant is entitled for addition of 40% towards future prospects as well as compensation under the other conventional heads in terms of **Pranay Sethi's case (supra).**

15. Since deceased was 17 years of age at the time of his death, therefore, in view of the **Sarla Verma's case (supra)**, the multiplier of '18' is attracted instead of '15'.

16. *Ergo*, the following amounts of compensation would be the "just compensation" for which the appellant-claimant is entitled in the present case: -

Annual notional income of deceased	₹15,000/-
Less 1/3rd for self expenses	₹15,000 - ₹5,000/- = ₹10,000
40% for future prospects	₹4,000/-
Add future prospects	₹10,000 + ₹4,000 = ₹14,000
Apply multiplier of' '18'	₹14,000 x 18 = ₹2,52,000/-
Conventional heads, namely, loss of estate, loss of consortium and funeral expenses	₹15,000 + ₹40,000 + ₹15,000 = ₹70,000
Total compensation	₹2,52,000/- + ₹70,000 = ₹3,22,000/-
Compensation payable	₹3,22,000/- (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.

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

(MAHABIR SINGH SINDHU)
JUDGE

August 09, 2018
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Whether reportable? Yes
Whether reasoned/speaking? Yes

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