

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2545-2004 (O&M)
Date of decision: - 14.08.2018

Mukesh Devi and others

....Appellants

Versus

Vijender Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Rajesh Gupta, Advocate,
for the appellants.

None for respondents No.1 to 3.

Mr. Rohit Goswami, Advocate
for Mr. Ravinder Arora, Advocate
for respondent No.4-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 Satbir Singh alias Satey (hereinafter referred as 'deceased'). The appellants are widow and two minor children i.e. daughter and son, respectively.

2. A claim petition was filed under Section 166 of the Act

before learned Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal') with the averments that Ashok Kumar-PW5 lodged an FIR by alleging that he used to carry passengers in his Tata Sumo NoHR-26-F-1034 in Gurgaon. On 19.12.1999, at about 8 PM, he along with his nephew Mukhtiar Singh and Satbir Singh (deceased) were going to village Khori Kala to collect house rent and when they reached at Anaj Mandi Road (Grain Market Road) near house No.8, then all of a sudden one car bearing registration No.HR-51-C-1517 (hereinafter referred as 'offending vehicle') which was driven by respondent No.1 in a rash and negligent manner on very high speed, came from Khandsa side and hit against his Tata Sumo. Resultantly, Tata Sumo turned turtle and Satbir Singh, who was sitting on his left side received injuries; whereas Mukhtiar Singh who was sitting on back side, came out of the Tata Sumo after opening the window when the vehicle turned down. Mukhtiar Singh also suffered injuries on his chest, hand and foot. Thereafter, Satbir was taken to General Hospital, Gurgaon for treatment and from there he was shifted to Lall Nursing Home, Gurgaon. Driver of the offending car along with one person were also admitted in the Civil Hospital, Gurgaon and thereafter they were referred to Safdarjang Hospital, New Delhi. Satbir Singh succumbed to the injuries in Lall Nursing Home, Gurgaon on account of the injuries suffered by him in the above accident caused by rash and negligent driving of offending car driven by respondent No.1. The deceased was 30 years old and he was engaged in the occupation of milk supply in the morning as well as in the evening of his four buffaloes and in day time he used to ply three wheeler. The deceased was earning

Rs.9,000/- i.e. Rs.5,000/- from the three wheeler and Rs.4,000/- from milk supply, but now there is neither any male member in the family to look after the buffaloes; nor for supply of the milk. Income from the three wheeler has also been discontinued and the appellants have suffered a great pain and agony besides financial loss. It was also averred that if respondent No.3 is proved to be responsible for the accident, the liabilities may be fastened upon him also.

3. In response to the claim petition, respondents No.1 and 2 i.e. driver and owner of the offending car, filed their joint written statement and denied the averments made therein while raising a preliminary objection that the accident had occurred due to rash and negligent driving of respondent No.3, driver of Tata Sumo. On merits, the factum of accident was admitted, but negligence on the part of respondent No.1 is denied and it is reiterated that accident occurred due to fault of respondent No.3, who was driving Tata Sumo in a very rash and negligent manner and respondent No.1 was driving the Maruti Zen at a slow speed and on the left side of the road. Also submitted that income is exaggerated and the deceased was unemployed. Again submitted that respondent No.1 was holding a valid driving licence and the vehicle was insured with National Insurance Company (respondent No.4) on the date of the accident.

Respondent No.3 (owner and driver of Tata Sumo) filed separate written statement and raised a preliminary objection that the accident had occurred due to rash and negligent driving of the Maruti Zen Car driven by respondent No.1. It was admitted that respondent No.3 is

owner and driver of the Tata Sumo. Further the income and occupation of the deceased Satbir Singh were denied for want of knowledge.

Respondent No.4 also filed separate written statement and denied the contents of the claim petition but admitted that the offending car is insured with respondent No.4 and that is subject to confirmation. Further submitted that no accident has taken place due to rash and negligent driving of respondent No.1 and if any accident had taken place, the same is due to sole negligence of respondent No.3 i.e. driver and owner of Tata Sumo No.HR-26-F-1034. Further submitted that FIR lodged against the driver of the offending car is totally false and on the basis of collusion between the police and respondent No.3. Further submitted that respondent No.1 was not holding a valid driving licence at the time of accident. On merit also the similar stand was taken and age as well as income of the deceased was denied. Again submitted that respondent No.3-Ashok Kumar was driving the Tata Sumo at a very high speed, rashly and negligently and caused the accident while coming from wrong side. Respondent No.1 was driving the offending car on the left side of the road and at a moderate speed. Specifically denied that respondent No.1 was driving the offending car in a very rash and negligent manner. It is also denied that income from three wheeler has altogether been stopped and the appellants have suffered any pain and agony as alleged by appellants-claimants.

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

“1. Whether the motor vehicle accident that took place on

19.12.1999 is an outcome of rash and negligent driving of Car No.HR-51-C-1517 by respondent No.1? OPP

2. Whether the accident is an outcome of contributory negligence of respondents No.1 and 3 in driving their car No.HR-51-C-1517 and Tata Sumo No.HR-26-C-1034, respectively, if so the ratio of their negligence? OP Parties.
3. Whether the petitioners are entitled to compensation for death of Satbir alias Satey in aforesaid accident. If so in what amount? OPP
4. Whether respondent No.4 is entitled to repudiate the contract of insurance on the grounds alleged? OPP
5. Relief.”

5. In order to prove the claim petition, the appellants-claimants examined Dr. Ashwani Thakral, Thakral Nursing Home Shivaji Nagar, Gurgaon as PW-1; Constable Munni Lal, Police Station Sadar, Gurgaon as PW-2; Mukesh Devi wife of the deceased as PW-3; Devinder Kumar, Addl. Ahlmad of the Court of Addl. Chief Judicial Magistrate, Gurugram as PW-4 and Ashok Kumar as PW-5 and produced copy of indoor chart (Ex.P1), copy of handing over of dead body of the deceased (Ex.P2), FIR (Ex.P3), photocopy of certificate of middle examination (Ex.P4); ration card (Ex.P5); medical bills (Exs.P6 to P8).

6. Learned Tribunal while deciding issues No.1 and 2 came to the conclusion that the deceased had died in the accident in question which had taken place due to rash and negligent driving of the offending vehicle by respondent No.1-Vijender Kumar and thus, decided the same in favour of the appellants-claimants.

Learned Tribunal while deciding issue No.3 assessed the

monthly income of the deceased as Rs.2,100/- per month 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.1,400/- towards family, worked out the annual dependency of Rs.1,400 x 12 = Rs.16,800/-. Further, while taking into consideration the age of the deceased as 30½ years, applied the multiplier of '17' and thus, calculated the total compensation as Rs.2,85,600/-. In addition, Rs.5,000/- were awarded towards transportation, medical and funeral expenses.

While deciding issue No.4, learned Tribunal came to the conclusion that original driving licence of respondent No.1 is valid from 1983 to 14.12.2000 for driving motorcycle and motor car, consequently, decided the issue against respondent No.4.

Learned Tribunal also awarded an interest @ 9% per annum from the date of filing of the claim petition till its realization and respondents No.1, 2 and 4 were held jointly and severally liable to make the payment of compensation to the appellants-claimants while passing the impugned award dated 06.03.2004.

7. It is argued on behalf of the appellants 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 that the deceased was earning Rs.9,000/- per month i.e. Rs.4,000/- from selling of milk and Rs.5,000/- from plying three wheeler. Further 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 also entitled for the future prospects as well as compensation under other conventional heads.

8. On the other hand, learned counsel for respondent No.4- 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 vehicle by respondent No.1 is duly proved. The validity of driving licence of respondent No.1, 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.4 has not raised any arguments to that effect, therefore, the findings on issues No.1, 2 and 4 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. PW-3 Mukesh Devi, inter alia, deposed that date of birth of her husband is 15.04.1969 and she produced his middle examination certificate (Ex.P4). Further stated that they have spent about Rs.2,500/- for the purchase of medicines and produced the copy of medical bills (Exs.P6 to P8) and also spent Rs.12,000-13,000 on transportation and last

rites of her husband. She further deposed that her husband was earning Rs.4,000/- per month from selling of milk of four buffaloes and in addition, he used to ply three wheeler thereby earning about Rs.5,000/- per month at the time of his death. She also stated that her husband was planning to have one more three wheeler to increase his income and now there is no income from the buffaloes as well as three wheeler due to death of her husband and she is facing great hardship. During her cross-examination, she denied the suggestion that her husband was not earning Rs.4,000/- per month by selling milk or that he did not use to ply three wheeler and earning Rs.5,000/- per month. She also denied that Rs.12,000/- and Rs.13,000/- were not spent on the transportation and last rites of the deceased. She specifically stated that now, they have sold the buffaloes to some outsider and both the children are studying in the village school i.e. one in 7th and other 5th class. She also denied that the deceased was not planning to have one more three wheeler; or that Rs.2,500/- was not spent on the purchase of medicines.

On the other hand, no evidence or material has been produced on record by the respondents to rebut the case of the appellants-claimants regarding selling of milk and plying of three wheeler by the deceased and earning monthly income.

13. In view of the facts and circumstances discussed hereinabove and the fact that deceased was maintaining the family of four members, this Court is of the opinion that monthly income of Rs.2100/- as assessed by learned Tribunal is too meager and the same should have been taken at least Rs.4,500/- per month. Resultantly, the finding of learned

Tribunal on issue No.3 while assessing the monthly income of the deceased as Rs.2,100/- is held to be erroneous and the same is modified accordingly. Thus, annual income of the deceased would be $\text{Rs.}4500 \times 12 = \text{Rs.}54,000/-$ and after deducting the $\frac{1}{3}^{\text{rd}}$ income towards the personal expenses of the deceased, net annual dependency would be $\text{Rs.}54,000 - \text{Rs.}18,000 = \text{Rs.}36,000/-$.

14. Since the deceased was $30 \frac{1}{2}$ years of age at the time of his death, therefore, in view of the **Sarla Verma's case (supra)**, the learned Tribunal has rightly applied the multiplier of '17'. 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 40% on account of future prospects as well as Rs.70,000/- under other conventional heads i.e. loss of estate, loss of consortium and funeral expenses.

15. *Ergo*, the following amounts of compensation would be the “just compensation” for which the appellants-claimants are entitled in the present case: -

Annual income of deceased	₹54,000
Annual dependency	₹54,000 – ₹18,000 = ₹36,000/-
40% for future prospects	₹14,400/-
Add future prospects	₹36,000 + ₹14,400 = ₹50,400/-
Apply multiplier of '17'	₹50,400 x 17 = ₹8,56,800/-
Conventional heads, namely, loss of estate, loss of consortium and funeral expenses	₹15,000 + ₹40,000 + ₹15,000 = ₹70,000
Total compensation	₹8,56,800 + ₹70,000 = ₹9,26,800/-
Compensation payable	₹9,26,800/- (Less compensation already paid)

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

17. 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.

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

August 14, 2018
naresh.k

(MAHABIR SINGH SINDHU)
JUDGE

Whether reportable?	Yes
Whether reasoned/speaking?	Yes