

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

FAO No.1932 of 2005 (O&M)

Date of decision: 04.05.2018

Kanta Sharma and others

.... Appellants

Versus

Harjinder Singh Bajwa and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Sushil Bhardwaj, Advocate
for the appellants.

None for respondent No.1.

Mr. Rajneesh Malhotra, Advocate
for respondent No.2-Insurance Company.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 04.01.2005 passed by Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal').

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsels, subject to all just exceptions.

The claimants are the parents and sister of Rajesh Sharma, aged 26 years, who lost his life in a motor vehicular accident that took place on 11.12.1997. Respondent No.1 is the owner and respondent No.2 is the insurer of the motorcycle bearing registration No.WB-38-7395.

On 11.12.1997 at about 7.15 p.m., Rajesh Sharma after attending his duty in Haryana Secretariat, Chandigarh was returning back home on a

Kinetic Honda bearing registration No.HR-29-A-0069. On the road near the Chief Minister's residence, a motorcycle bearing registration No.WB-38-7395 driven by Balwinder Singh came from opposite side and he tried to overtake a gypsy. On losing control, he struck against the Kinetic Honda driven by Rajesh Sharma. He was driving the motorcycle in a rash and negligent manner. Rajesh Sharma suffered injuries and was shifted to PGI, Chandigarh. He succumbed to injuries on 23.12.1997. FIR No.175 dated 11.12.1997 was registered at Police Station, North, Chandigarh.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed. The Tribunal awarded a sum of Rs.1,90,000/- along with interest @ 9% per annum.

The Tribunal held that there was a contributory negligence of the motorcyclist and Rajesh Sharma. The contributory negligence was assessed in the ratio of 67:33. Accordingly, the claimants were held entitled to Rs.1,66,400/-. The deceased was a contractual employee and was working as a Junior Programmer in Civil Secretariat with Haryana State Electronics Development Corporation at Chandigarh. His earning was assessed as Rs.3500/- per month.

The issues raised in appeal are that no future prospects have been added; the Tribunal erred in applying a split multiplier instead of applying the multiplier considering the age of the deceased; and the amount awarded under conventional heads is on the lower side.

The contention raised in the appeal deserves acceptance. The deceased was 26 years of age and falls within the category of employee having fixed salary. In consonance with the decision of the Supreme Court in

National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC)

5157, 40 % future prospects should be added. There was no occasion for the Tribunal to apply a split multiplier as the law is well settled that the multiplier considering the age of the deceased is to be applied.

Reliance in this regard is placed on decision of Supreme Court in cases of **Shri Nagar Mal Vs. Oriental Insurance Company Ltd., Civil Appeal No. 448 of 2018, decided on 19.01.2018** and **Sube Singh and another Vs. Shyam Singh (Dead) and others, Civil Appeal No. 7176 of 2015 decided on 09.02.2018**, considering the decisions of **Smt. Sarla Verma and Pranay Sethi's cases (supra)** wherein it has been held that multiplier is to be applied, keeping in view the age of the deceased and multiplier of 17 should be applied. The appellants would be entitled to Rs.15,000/-each for funeral expenses and loss of estate.

The appellants have challenged the finding of the Tribunal stating that there was a contributory negligence on part of Rajesh Sharma.

Learned counsel for the insurer defended the finding of contributory negligence and stated that the deposition of PW3 Sanjeev Bansal is not worth reliance as it was not established that he was present at the time of the accident. The statement cannot be relied upon for deciding issue of contributory negligence.

From the perusal of the paper book, it is evident that FIR was recorded on the statement of one constable Azad Singh who was posted on duty at Chief Minsiter's residence. Though, the claimants were not able to examine him yet in the FIR it was clearly stated that Balwinder Singh was overtaking a Gypsy in the process, his motorcycle dashed into the Kinetic

Honda Scooter of Rajesh Sharma. Unfortunately, in the accident, both Balwinder Singh and Rajesh Sharma lost their lives. There is no dispute that Balwinder Singh was driving rashly and negligently. The only issue survives whether some contributory negligence can be attributed to Rajesh Sharma.

The Tribunal while deciding the issue had taken a judicial notice of the fact that on 11.12.1997 the sun sets very early and the vehicles must be running with their headlights on. So they were able to see each other. It is further held that if Rajesh Sharma had been vigilant, he could have avoided the accident. This is mere assumption. If the Tribunal agreed with the fact that it was only during the course of overtaking that the motorcycle dashed into the Kinetic Honda, in that case it cannot be expected from a person who is driving on his own side to be vigilant enough to avoid some other driver dashing into him. The contributory negligence attributed to Rajesh Sharma without any basis.

The appellants are held entitled to that compensation as calculated under :-

Monthly income	Rs.3,500/-
40% future prospects	Rs.1,400/-
Total income	Rs.4,900/-
½ deduction for self expenses	Rs.2,450/-
Dependency	Rs.2,450 /-
Applying multiplier of 17	Rs.4,99,800/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Medical expenses	Rs.21,124/-
Total	Rs.5,50,924/-

The award dated 04.01.2005 is modified to the extent that the amount awarded by the Tribunal of Rs.1,90,000/-is enhanced to Rs.5,50,924/-.

The claimants would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

04.05.2018
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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No