

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

**FAO No.3081 of 2005 (O&M)
Date of Decision: 19.09.2018**

Radha Rani Katyal and another

..... Appellants

Versus

Sher Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. S.S. Rangi, Advocate and
Mr. Kuljinder Singh, Advocate for the appellants.

None for respondent Nos.1, 2, 4 and 5.

Mr. G.D.Gupta, Advocate for respondent No.3/Insurance Co.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed by the claimants under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) against the impugned Award dated 03.03.2005, passed by learned Motor Accident Claims Tribunal, Ludhiana (*for short 'Tribunal'*) for enhancement of compensation on account of death of Krishan Lal Katyal (*for short 'deceased'*).

(2) Brief facts of the case are that on 18.11.2002 at 9:00 PM, deceased was travelling in a bus bearing registration No.JK-02D-1569 (*for short 'offending bus'*), driven by respondent No.1 in a rash and negligent manner and due to that, driver lost his control over the offending bus and consequently, fell into the canal. As a result thereof, deceased received grievous injuries and he was shifted to Govt. Medical College Hospital, Jammu, where he succumbed to the injuries at about 11 P.M. Post Mortem Examination was conducted and report of the same is on record as Ex.P-2. Deceased was running his own business i.e. M/s Priya Cycle & Auto Industries, Ludhiana and earning ₹ 15,000/- per month and he was 50 years of age.

(3) In response to the claim petition, respondent Nos.1 and 2 filed joint reply and denied the assertions made in the claim petition as well as raised the plea that offending bus was insured with the Insurance Company-respondent No.3 at the time of alleged accident and in case the claim petition is proved, they are not liable for any compensation.

Insurance Company-respondent No.3 filed separate reply and denied the allegations made in the claim petition while raising preliminary objections regarding non-joinder/mis-joinder of necessary parties. Even the factum of accident was also denied and further submitted that deceased was travelling in the offending bus and does not fall within the purview of 3rd party and as such, claimants/appellants are not entitled for compensation.

Respondent No.4, who is the married daughter of deceased, filed her reply and supported the contents of the claim petition.

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

1. *Whether Krishan Lal Katyal has died in a road side accident on 18.11.2002 at about 9.00 P.M. in the area of village Parkhu, PS Kahna, District Jammu due to rash and negligent driving of Bus No.JK-02D-1569 by its driver Sher Singh Respondent No.1? OPP*
2. *Whether the claimants are entitled to compensation, if so how much and from whom? OPD*
3. *Whether the claim petition is bad for non-joinder of necessary parties? OPR3*
4. *Whether the claim petition is not maintainable? OPR3*
5. *Whether the respondent no.1 was not having valid and effective driving licence at the time of accident? OPR3*
6. *Whether the offending vehicle was not having valid RC, fitness certificate and route permit at the time of accident? OPR3*
7. *Relief.*

Learned Tribunal, while deciding Issue Nos.1, 2 and 5, came to the conclusion that deceased died on 18.11.2002 due to rash and negligent driving of the offending bus by respondent No.1 and found that driver was having a valid driving licence and offending bus was duly insured with respondent No.3 and decided the same in favour of the appellants. While deciding the quantum of compensation, learned Tribunal came to the conclusion that deceased was 50 years of age at the time of death and after taking into consideration Income Tax Returns for the Assessment Year 2000-2001; 2001-2002 and 2003-2004, worked out the annual income of deceased as ₹ 77,000/-. Consequently, after making the deduction of 1/3rd amount towards his personal expenses, concluded the annual dependency as ₹ 51,340/- and after applying the multiplier of 11, assessed the total compensation to the tune of ₹ 5,64,740/-. In addition, learned Tribunal awarded the compensation of ₹ 7000/- (₹ 5000/- for loss of consortium and ₹ 2000/- for funeral charges) along with interest @ 6 % per annum from the date of filing of the claim petition till its realization. Hence, the present appeal.

(5) It is argued by learned Counsel for the appellants that learned Tribunal has committed a grave error of law while not properly awarding the compensation to the appellants inasmuch as multiplier has not been properly applied. Further argued that in view of the judgment of Hon'ble Supreme Court in '**National Insurance Company Limited Versus Pranay Sethi and others**', (2017) 16 SCC 680, the appellants are entitled for the benefit of future prospects as well as compensation under other conventional heads.

(6) Heard arguments from both sides and perused the record.

(7) So far as findings on Issue Nos.1, 2 and 5 regarding the death of deceased on account of the negligence on the part of respondent No.1, while

driving the offending bus as well as having effective and valid driving licence and existence of Insurance Policy, are not assailed by the respondents either by way of substantive appeal or cross-objections. Therefore, findings qua that on Issue Nos.1, 2 and 5 are affirmed.

(8) The only point to be decided in the present appeal is:-

“ as to what should be the 'just compensation' for which the appellants are entitled in view of the facts and circumstances of the present case? ”

There is no dispute that annual income of the deceased has been proved to be ₹ 77,000/- and learned Tribunal, after making a deduction of 1/3rd towards his personal expenses, assessed the loss of annual dependency as ₹ 51,340/-. However, learned Tribunal applied the multiplier of 11 despite the fact that deceased was 50 years of age at the time of his death. In view of the judgment of Hon'ble Supreme Court in '**Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121**', learned Tribunal ought to have applied the multiplier of '13' instead of '11' and thus, the same is modified accordingly.

Still further in view of the judgment of **Pranay Sethi's case (supra)**, the appellants are entitled for compensation on account of future prospects also. Thus, in view of the age of 50 years, addition of 30% would be attracted on the annual dependency of deceased along with compensation under the other conventional heads i.e. loss of estate, loss of consortium and funeral expenses. Since the family has suffered on account of untimely death of deceased, who was 50 years of age at that time, therefore, this Court deems it appropriate to enhance the rate of interest from 6 % per annum to 8% per annum.

In view of the facts and circumstances, discussed hereinabove, the following amount of compensation would be the “just compensation” which should be awarded in favour of the claimants/appellants:-

Sr. No.	Heads	Calculation
(i)	<i>Annual Income of the deceased</i>	₹ 77,000
(ii)	<i>1/3rd of (i) deducted for personal expenses</i>	₹ 77,000 - ₹ 25,667 = ₹ 51,333
(iii)	<i>30% addition for future prospects</i>	₹ 51,333 + ₹ 15,340 = ₹ 66,673
(iv)	<i>Net annual income of the deceased</i>	₹ 66,673
(v)	<i>Multiplier</i>	13
(vi)	<i>Total Loss of dependency</i>	₹ 66,673 x 13 = ₹ 8,66,749
(vii)	<i>Compensation for loss of estate</i>	₹ 15,000
(viii)	<i>Compensation for loss of consortium</i>	₹ 40,000
(ix)	<i>Compensation for Funeral Expenses</i>	₹ 15,000
	<i>Total Compensation</i>	₹ 9,36,749

In view of above, the present appeal is allowed and impugned award dated 03.03.2005, passed by learned Tribunal, is modified and amount of compensation is enhanced along with interest @ 8% per annum.

Needless to say that amount of compensation, already paid to the claimants/appellants, shall be adjusted and remaining balance amount shall be paid within a period of six weeks from the date of receipt of certified copy of this order in the same proportionate as awarded by learned Tribunal.

Disposed off in the above terms.

September 19, 2018

dkp/Gagan

(MAHABIR SINGH SINDHU)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>