

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

FAO No.3746 of 2006 (O&M)

Date of decision: 19.04.2018

Balwant Kaur and others

....Appellants

Versus

Sh. Darshan Singh Chhina and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. N.S. Sodhi, Advocate,
for the appellants.

Mr. Narinder S. Lucky, Advocate,
for respondent Nos.1 and 2

Mr. Vipul Sharma, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

Claimant-appellants have come up in appeal against the judgment dated 03.04.2006 passed by the Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as 'the Tribunal'), whereby claim petition filed by claimant-appellants seeking compensation on account of death of Gurmej Singh in a motor vehicle accident, which took place on 30.09.2001, has been dismissed.

Brief facts of the case are that on 30.09.2001, Gurmej Singh (since deceased) along with his cousin Hardeep Singh @ Billoo was going from Ferozepur towards Rukna Beguon on a scooter, Bajaj Chetak, bearing registration No.PB-05-D-0394. The scooter was being driven by Gurmej Singh, whereas Hardeep Singh was a pillion rider. When they reached near

Patel Nagar on Ferozepur-Faridkot Road, a Maruti car bearing registration No. PB-08-Y-0597 being driven by Jatinder Singh-respondent No.2 in a rash and negligent manner came from the opposite side. On seeing the car, Gurmej Singh slowed down the speed of the scooter and took it towards left side. At the same time, a stray cow came from their right side and stepped on the road, where the car was to cross. In order to save the car, he turned the same towards his right side and in that process, he struck the car with scooter, as a result of which, Gurmej Singh and Hardeep Singh received injuries. The injured were taken to the Mission Hospital, Ferozepur, where Gurmej Singh succumbed to the injuries. With regard to the accident, DDR was got lodged. Consequently, claimants-appellants filed claim petition before the Tribunal.

Initially, the claim petition was filed under Sections 163-A and 166 of the Motor Vehicle Act (hereinafter referred to as 'the Act'). Later on, claim petition under Section 166 of the Act was withdrawn on 14.05.2004 by the claimants and the application was moved for scaling down the income of deceased.

On the basis of evidence led by the parties, Tribunal dismissed the claim petition on the ground that income of deceased Gurmej Singh was stated to be Rs.9000/- per month and after making deduction of 1/3rd amount, dependency of claimants came to Rs.6000/- per month i.e. Rs.72,000/- per annum. Hence, it was beyond the scope of Section 163-A of the Act, whereas maximum income under this Section should be Rs.40,000/- per annum. It was further observed that there was no provision under the Act to scale down the income of deceased.

Feeling dissatisfied with the impugned award, claimants have

preferred the present appeal.

I have heard learned counsel for the appellant and perused the case file.

A perusal of the impugned award shows that Gurmej Singh (since deceased) and his cousin were going on a scooter. On the way, a maruti car being driven by respondent No.2 in a rash and negligent manner was seen coming from the opposite side. On seeing the car, Gurmej Singh slowed down the speed of scooter and took it towards left side. At the same time, a stray cow came from the right side and stepped on to the road, where the car was to cross. In order to save the car from striking with the cow, driver turned the car towards right side and in this process, car struck against the scooter. After the accident, car turned turtle. This accident was witnessed by Baltej Singh, who was going on a separate scooter. The accident was admitted by the respondents in their written reply. They admitted that a stray cow had come on the road right in front of the car and respondent No.2-driver, in order to avoid collision, turned his car towards right side and in this process, struck the same with the scooter.

Since the accident had taken place as respondent No.2 lost control over his vehicle when a stray cow suddenly came in front of him, the claim petition under Section 166 of the Act is maintainable. A perusal of the impugned award shows that initially, the claim petition was filed under Section 166 of the Act, but later on, it was withdrawn on 14.05.2004 because evidence with regard to negligent of the driver was required to be led in that petition. Subsequently, claimants made an application for scaling down the income of deceased from Rs.9000/- per month to Rs.900/- per month. This application along with the claim petition was dismissed on the

ground that there was no provision in the Act to scale down the income of deceased.

Heard, counsel for the parties. In the present case, accident had taken place when the driver (respondent No.2) lost his control over the offending car as a stray cow came in front of the car. After registration of the DDR, claim petition under Section 166 of the Act itself was maintainable. Moreover, the earlier petition was withdrawn only under the misconception that evidence of negligence was required to be led. In these circumstances, while exercising suo moto powers, this petition is being converted to Section 166 of the Motor Vehicle Act. As recording of DDR is not being disputed by the Insurance Company, this Court proceeds to assess the compensation to be awarded in favour of the claimants. The powers of revisional jurisdiction is exercised keeping in view that widow along with three minor children is not expected to go ahead in life without any compensation. The deceased was 38 years of age approximately. In the absence of any direct evidence, his income is assessed as Rs.3000/- per month. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby assessed in view of the judgments passed by Hon'ble the Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77 and **National Insurance Company Limited Vs. Pranay Sethi and others**, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.3000/- per month
(ii)	40% of (i) above to be added as future prospects	3000 + 1200 = Rs.4200/-

(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	4200 – 1400 = Rs.2800/-
(iv)	Compensation after multiplier of 15 is applied	Rs.2800/- x 12 x 15 = Rs.5,04,000/-
(v)	Compensation under the conventional heads	Rs.70,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.5,74,000/-

The amount of compensation of **Rs.5,74,000/-** shall be payable by respondent No.3-Insurance Company within a period of two months from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “**Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others**, Civil Appeal No.448 of 2018 (decided on 19.01.2018).

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

19.04.2018
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No