

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

FAO No.1736 of 2011(O&M)

Date of Decision:26.11.2018

United India Insurance Co. Ltd.
Vs.

.....APPELLANT

Meera and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.R.C.Gupta, Advocate for the appellant.

Mr.M.S.Randhawa, Advocate for
respondents No. 1 and 2.

DR. RAVI RANJAN, J.(Oral)

I have heard learned counsel for the parties and perused the record as well as the case file.

This appeal is being disposed of at this stage without calling for the Lower Court's record with the consent of the parties, for the reasons that the facts are admitted and law governing the field is also admitted.

The challenge has been made by the appellant to the judgment and award dated 22.11.2016 passed by the Motor Accident Claim Tribunal, Narnaul, in MACT case No.128 of 2009 deciding the claim petition filed under Section 166/140 of the Motor Vehicles Act, 1988, (for short, "the M.V. Act")

Short facts of this case necessary to be considered for deciding the *lis*, stands enumerated as under:-

As per the claimants, on 03.06.2009, deceased-Mohit was going to his village by way of crossing the road at about 12.30 p.m. however, he met with an accident when a truck bearing registration No.HR-37B-3329 driven by respondent No.1 rashly and negligently in a very high speed came from Dadri side and over-ran the deceased, due to which Mohit died at the spot. The

accident was witnessed by petitioner No.2-Dharambir i.e. the father of the deceased and other passers-by.

Respondents No. 1 to 3 filed a separate written statement. Considering the respective claims and the materials on record, the Tribunal formed the following two issues:-

1. *Whether Mohit died in road side accident which took place on 3.6.2009 at about 12.30 p.m. in the area of village Jat (PS Mahendergarh) due to rash and negligent driving of Truck bearing No.HR-37B-3329, being driven by respondent no.1, owned by respondent no.2 and insured with respondent no.3, as alleged? OPP.*

2. *Whether petitioners are entitled to any compensation, if yes, amount of compensation, the petitioners are entitled to and from whom? OPP.*

The evidence was led on behalf of the claimants and respondent no.3 in support of their respective claims on the aforesaid issues whereas respondents No. 1 and 2 did not lead any evidence. Both the issues being inter-related were considered jointly by the Tribunal. Upon consideration of materials available on record including witnesses and documents produced, the Tribunal has come to the finding that it is established beyond any shadow of doubt that accident in question did occur due to the rash and negligent driving of respondent no.1, on account of which Mohit died at the spot after having received multiple fatal injuries suffered on his person.

On the amount of compensation, taking into account the law laid down in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 ACJ SC page 1296**, after deducting 1/3rd for personal expenses, the income of the deceased was assessed at Rs.32,000/- per annum and after calculation upon choosing the multiplier of 15, the compensation amount was assessed at Rs.4,90,000/- and apart from that Rs.5,000/- each was given to the claimants for funeral expenses and loss of estate. Thus, the total amount of

compensation given to the claimants comes out to Rs.4,90,000/- and the interest was also imposed @ 12% per annum in view of the ratio of law laid down in Smt. Sarla Verma case (supra), from the date of accident till realization of the amount.

The award has been challenged by the appellants stating that even as per Smt. Sarla Verma case (supra), the income assessed and the interest given @ 12% is at higher side, as the deceased was merely seven years old. Income should be taken as notional income in view of the fact that the deceased was minor and deduction should have been 50% of that income.

However, learned counsel for the respondents has placed reliance upon a decision of Hon'ble Supreme Court rendered in Kishan Gopal and another Vs. Lala and others, 2014 (1) SCC 244, to impress upon this Court that in case of death of a child of 10 years of age, the total compensation amount has been assessed by the Apex Court to be Rs.5 lacs and since the impugned award is less than Rs.5 lacs, as has been given in view of the aforesaid decision of the Apex Court, no challenge can be made to the same by the appellants.

Upon consideration of rival contentions raised on behalf of learned counsel for the parties, I find force in the submission raised on behalf of learned counsel for the respondent.

The law laid down in Kishan Gopal case (supra), would be applicable in case of the deceased in present case also, as in the aforesaid case also there was an accidental death of a child of 10 years of age and admittedly Rs.5 lacs has been allowed by the Apex Court.

So far as the interest part is concerned, I am of the view that since the minor child was killed due to rash and negligent driving of the truck, no case is made out for reduction of the interest.

Resultantly, this appeal fails and the same is hereby dismissed.

(DR. RAVI RANJAN)
JUDGE

26.11.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No