

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

**FAO No.1983 of 2011 (O&M)
Date of Decision: 27.08.2018**

Safican (mother of deceased-Riyaj Ahmad @ Riaz)
through her legal heirs-Kaushar and others

..... Appellants

Versus

Raj Rani and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Ms. Ekta Thakur, Advocate for the appellants.

Mr. D.R.Bansal, Advocate for respondent No.1.

None for respondent No.2.

Mr. Pardeep Goyal, Advocate for respondent No.3.

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 10.08.2010, passed by learned Motor Accident Claims Tribunal, Chandigarh (*for short 'Tribunal'*) for enhancement of compensation on account of death of Riyaj Ahmad @ Riaz (*for short 'deceased'*), who was working as 'Hair Dresser' with 'OK Hair Dresser', S.C.F. No. 43/5, Sector 18-D, Chandigarh.

(2) The claim petition was filed before learned Tribunal by appellants, claiming compensation of ₹ 25,00,000/- (Twenty Five Lakh) along with interest @ 18% per annum from the date of filing of the claim

petition till its realization, but learned Tribunal awarded compensation of ₹ 4,41,500/- along with interest @ 7.5% per annum.

(3) Brief facts of the case are that on 11.12.2007 at about 05:35 PM, deceased was coming from Sector 20 and going to Sector 18-D, Chandigarh on his Scooter bearing registration No.HR-03-F-5993, whereas Waquil Ahmed was the pillion rider. When they were in the process of crossing the road of Sector 18-D, Chandigarh, then Maruti Esteem Car bearing registration No.CH-01-M-0302 (*for short 'offending vehicle'*), driven by respondent No.2, came in a rash and negligent manner and hit the Scooter. As a result thereof, deceased and pillion rider fell down on the road along with their Scooter. The impact was so much that deceased jumped in the air at a distance and received grievous head injuries. Immediately, he was taken to General Hospital, Sector 16, Chandigarh, but could not survive and died. It is averred in the claim petition that deceased succumbed to the injuries on account of rash and negligent driving of the offending vehicle by respondent No.2. An FIR No.196 dated 11.12.2007, under Sections 279, 337 and 304-A IPC, Police Station Sector 19, Chandigarh was registered in the matter.

(4) Upon notice, respondent Nos.1 and 2 filed joint reply and denied the claim petition while submitting that accident had not taken place due to rash and negligent driving of respondent No.2/driver, rather the same has occurred due to rash and negligent driving of deceased. Further submitted that respondent No.2 tried his level best to avoid the accident, but deceased was driving the Scooter in a rash and negligent manner and hit the offending vehicle. Also submitted that FIR No.196 dated 11.12.2007 has been registered against respondent No.2 just to get the compensation.

Respondent No.3/Insurance Company filed separate reply and denied the averments made in the claim petition by submitting that respondent No.2 was not having a valid and effective driving licence at the time of accident and the same had occurred due to the contributory negligence of deceased.

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

1. *Whether Riyaz Ahmed @ Riaz died in a road accident which took place on 11.12.2007 in the area of Chandigarh due to rash or negligent driving of car No.CH01-M-0302 by its driver-respondent No.2? OPP*
2. *Whether the claimants are entitled to any amount as compensation for the death of Riyaz Ahmed, if so, how much and from whom? OPP*
3. *Whether the respondent No.2 was not holding a valid and effective driving licence at the time of accident? OPR-3*
4. *Relief.*

(6) Claimants/appellants, in order to prove their case, examined Waquil Ahmed (eye-witness) as PW-1; PW 2-Sehnaz (appellant No.2), Mohd. Koshar, partner of OK Hair Dresser as PW-3 and produced documentary evidence i.e. FIR (Ex.P-1); Post Mortem Report (Ex.P-2) and Partnership Deed (Ex.P-3).

On the other hand, respondents produced driving licence of respondent No.2 as Ex.R-1 and copy of Insurance Policy as Ex.R-2.

(7) Learned Tribunal, while deciding Issue No.1, came to the conclusion that accident occurred due to rash and negligent driving of

respondent No.2 and as a result thereof, deceased Riyaj Ahmad @ Riaz died on 11.12.2007.

Respondent No.1 is proved to be the registered owner and respondent No.3 as insurer of the offending vehicle.

While deciding Issue No.3, learned Tribunal came to the conclusion that respondent No.2 was having a valid and effective driving licence up to 16.05.2009 and Insurance Policy was also proved to be genuine. Consequently, this Issue was decided against respondent No.3.

Learned Tribunal, while deciding Issue No.2, found that deceased had left behind widow, three sons and mother, who were dependent upon him. Monthly income of the deceased was assessed as ₹ 3,000/- and after imposing a cut of 1/4th towards his personal expenses, annual dependency was calculated as ₹ 27,000/-. While relying upon the Post Mortem Report (Ex.P-2), learned Tribunal accepted the age of deceased as 33 years and after applying the multiplier of 16, calculated the compensation ₹ 27,000/- x 16 = ₹ 4,32,000. In addition, ₹ 25,000/- was awarded on account of loss of estate; ₹ 2,000/- as funeral expenses and ₹ 5,000/- as consortium. Hence, total amount of ₹ 4,41,500/- was awarded to the appellants in equal share along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. All the respondents were held liable jointly and severally.

(8) It is argued on behalf of the appellants that learned Tribunal has committed a grave error of law while assessing the monthly income of deceased as ₹ 3,000/- as in view of the testimony of PW 2-Sehnaz, it should have been accepted at least as ₹ 11,000/- per month. Also argued that

appellants are entitled for compensation towards future prospects as well as under other conventional heads in view of the judgment of Hon'ble Supreme Court in '**National Insurance Company Limited Versus Pranay Sethi and others**', (2017) 16 SCC 680.

(9) On the other hand, learned Counsel for respondent Nos.1 and 3 opposed the present appeal and prayed for dismissal of the same.

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

(11) In the claim petition, specific averments have been made that deceased was earning ₹ 11,000/- per month while working as Hair Dresser as well as doing part time job in the same line. PW 2-Sehnaz has supported the claim petition and deposed that deceased was earning ₹ 11,000/- per month and her testimony goes unrebutted at the instance of the respondents.

It is a matter of common knowledge that now-a-days, the job of Hair Dresser is a specialized work and more particularly in the city like Chandigarh. Evidently, the deceased was working as Hair Dresser with OK Hair Dresser, Sector 18-D, Chandigarh and that is centrally located and even he was doing the part time job of Hair Dresser after the working hours. Therefore, keeping in view the totality of facts and circumstances as well as nature of job the deceased was doing, this Court deems it appropriate to consider the minimum monthly income of deceased as ₹ 7500/-. Since learned Tribunal accepted the age of deceased as 33 years at the time of accident, therefore, 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', multiplier of 16 has been correctly applied and the deduction of 1/4th also fairly made as per

the guidelines of the above judgment (**Sarla Verma**). Still further, in view of the judgment of Hon'ble Supreme Court in **Pranay Sethi's case (supra)**, the appellants are also entitled for addition of 40% towards future prospects as well as compensation under other conventional heads i.e. loss of estate, loss of consortium and funeral Expenses.

In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that the following amount of compensation would be the “just compensation” which should be awarded in favour of the appellants:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	<i>Monthly income of the deceased</i>	<i>₹ 7500</i>
(ii)	<i>Annual Income of the deceased</i>	<i>₹ 7500 x 12 = ₹ 90,000</i>
(iii)	<i>1/4th of (ii) deducted for personal expenses</i>	<i>₹ 90,000 - ₹ 22,500 = ₹ 67,500</i>
(iv)	<i>40% addition for future prospects</i>	<i>₹ 67,500 + ₹ 27,000 = ₹ 94,500</i>
(v)	<i>Net annual income of the deceased</i>	<i>₹ 94,500</i>
(vi)	<i>Multiplier</i>	<i>16</i>
(vii)	<i>Total Loss of dependency</i>	<i>₹ 94,500 x 16 = ₹ 15,12,000</i>
(viii)	<i>Compensation for loss of estate</i>	<i>₹ 15,000</i>
(ix)	<i>Compensation for loss of consortium</i>	<i>₹ 40,000</i>
(x)	<i>Compensation for Funeral Expenses</i>	<i>₹ 15,000</i>
	<i>Total Compensation</i>	<i>₹ 15,82,000</i>

In view of above, the present appeal is allowed and impugned award dated 10.08.2010, passed by learned Tribunal, is modified and amount of compensation is enhanced from ₹ 4,41,500/- to ₹ 15,82,000/-.

Needless to say that amount of compensation, already paid to the appellants, shall be adjusted and remaining balance amount shall be paid to the appellants 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.

August 27, 2018
dkp/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

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