

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-6484-2012 (O&M)
Date of Decision: 13.07.2018

Ashok Kumar & another

--Appellants

Versus

Tarlochan Singh @ Nodi & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Bhriгу Agnihotri, Advocate for
Mr. B.D. Sharma, Advocate for the appellants.

Mr. Tarun Sharma, Advocate for
Mr. R.S. Bajaj, Advocate for respondents no.2 & 3.

Mr. Harsh Aggarwal, Advocate for respondent no.4.

TEJINDER SINGH DHINDSA.J (Oral)

This is claimants' appeal seeking enhancement of compensation.

A claim petition under Section 166 of the Motor Vehicle Act was filed before the M.A.C.T., Jalandhar on account of death of Charanjit in a motor vehicle accident that took place on 5.12.2009. Compensation to the tune of Rs.40 lacs was claimed. Claimants were the parents and sister of the deceased.

On behalf of the claimants it was asserted that Charanjit at the time of the accident was 25 years old and was working as a Newspaper Hawker as also a Salesman with Sachdeva Fashioners and his total monthly income was Rs.8,000/- per month. On 5.12.2009 in the early morning Charanjit (since deceased) was proceeding on a bicycle and was struck by a Tata-407 School Bus bearing registration no. PB-08-BD-8917 color yellow being driven in a rash and negligent manner by Tarlochan Singh driver/respondent no.1.

The claim petition having been contested, the following issues were framed by the Tribunal:-

- “1. Whether respondent no.1 was not holding the valid licence at the time of accident?OPR*
- 2. Whether the respondent no.2 and 3 violated the terms of insurance policy?OPR*
- 3. Whether the petition is not maintainable in the present form?OPR*
- 4. Whether the accident took place due to negligence of deceased himself, if so, its effect?OPR*
- 5. Whether the petitioners are entitled to get compensation from respondents for death of Charanjit, if so, to what and from whom?OPR*
- 6. Relief.”*

Issues no.4 and 5 being connected were taken out together. Findings were recorded in favour of the claimants that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by Tarlochan Singh respondent no.1 and Charanjit died on account of the injuries suffered in the accident.

In so far as quantum of compensation is concerned, claimants examined Neeraj Kumar as PW-3, who deposed that Charanjit (since deceased) used to supply newspapers to him. However, no conclusive evidence was adduced to prove the income of Rs.4,000/- per month as a Newspaper Hawker. The Tribunal by way of approximation has taken the income of the deceased to be Rs.2,000/- per month in the capacity of a Newspaper Hawker. As far as claimants' plea that deceased was working as a Salesman with M/s Sachdeva Fashioners, documents at Ex.P-1 to P-3 were adduced which reflected a salary of Rs.3179/- in the month of October, 2009 and Rs.2816/- in the month of November, 2009. Tribunal, accordingly,

took a view that the deceased while serving as Salesman was not on a fixed salary. As such, an average income per month of the deceased in the capacity of a Salesman was taken to be Rs.3,000/- per month. Total income of the deceased, as such, was assessed at Rs.5,000/- per month. Since deceased was not married, 50% deduction in income was taken toward personal expenditure. Multiplier of 11 has been applied by taking into reckoning the age of parents of deceased in the bracket of 51 to 55 years. Rs.2,000/- was awarded as funeral expenses. Prior to his death Charanjit had been admitted to Oxford Hospital, Jalandhar and evidence in the shape of medicines, treatment and bills of Oxford Hospital i.e. Ex. PW-5/1 to Ex. PW-5/0 and Ex. PW-4/Y was adduced reflecting total expenditure on medicines and treatment to be Rs.1,31,228/- and which has also been awarded by the Tribunal.

The total compensation amount including the amount spent on medical treatment and expenses has been computed to be Rs.4,63,228/-.

Tribunal has taken a view that in so far as claimant no.3 Savita is concerned, she cannot be taken to be dependent on her unmarried brother.

Accordingly, the compensation amount of Rs.4,63,228/- along with interest @ 6% per annum from the date of filing of the claim petition till realization was awarded in favour of parents of the deceased i.e. claimants no.1 and 2.

As regards Issues no.1 and 2 the Tribunal has recorded a finding that the Tarlochan Singh driver was not authorized to drive the school bus i.e. a Light Transport Vehicle and there being a violation of the terms of the insurance policy, the insurance company is liable to pay the compensation amount in the first instance but recovery rights were granted

to get the compensation amount reimbursed from the owner.

I have heard counsel for the appellants as also counsel representing the respondents.

The only issue involved in the instant appeal is with regard to quantum of compensation.

The monthly income of the deceased which has been assessed at Rs.5,000/- per month does not call for any intervention. However, the Tribunal has completely overlooked the aspect as regards addition in income towards future prospects. Since deceased was 25 years of age and was self employed, an increase in income at 40% towards future prospects is awarded as per guidelines furnished by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) R.C.R (Civil), 1009.***

Since the deceased was concededly a bachelor, a deduction of 50% would be made towards his personal and living expenses.

The Tribunal has further erred in applying the multiplier of 11 by taking into reckoning the age bracket of the parents of the deceased. The Tribunal ought to have applied the multiplier of 18 instead in view of the age of the deceased i.e. 25 years as per dictum laid down by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77*** and ***Pranay Sethi's*** case (supra). It is so directed. Even the amount of Rs.2,000/- awarded by the Tribunal towards funeral expenses would stand enhanced to Rs.15,000/-.

In view of the above, the compensation amount is reassessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Income as assessed by the Tribunal	5,000/- per month
2.	40% increase in income towards future prospects	5,000+40%=7,000/-
3.	50% deductions towards personal expenses of the deceased.	7,000 ÷ 2 = 3500/- 7,000-3500 = 3500/-
4.	Compensation after applying multiplier of 18	3500x12 = 42,000/- 42,000x18 = 7,56,000/-
5.	Conventional heads (funeral expenses)	15,000/-
6.	Medicines/treatment expenses as awarded by the Tribunal.	Rs.1,31,228/-
7.	Total	Rs.9,02,228/-

The afore-calculated enhanced compensation amount be released in favour of the claimants/appellants along with interest @ 6% per annum from the date of filing of the instant appeal till actual realization.

Appeal is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

13.07.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No