

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

FAO-1682-2015 (O&M)

Date of Decision:25.04.2018

Neelam and another

.....Appellants

Versus

Kashmir Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Saurabh Kapoor, Advocate for
Mr. Ashit Malik, Advocate,
for the appellants.

Mr. Abhishek Goyal, Advocate for
Mr. Gobind Dhanda, Advocate,
for respondent Nos.1 and 2.

Mr. Sudhir Gupta, Advocate for
Mr. R.C. Gupta, Advocate,
for respondent No.3-Insurance Company.

Ms. Neeraj Chandel, Advocate for
Mr. Hari Ram, Advocate,
for respondent Nos.4 and 5.

HARI PAL VERMA, J.(Oral)

Power of attorney filed on behalf of respondent Nos.1 and 2
and memo of appearance filed on behalf of respondent Nos.4 and 5 are
taken on record.

CM-5034-CII-2015

Prayer in this application is for condonation of delay of 204
days' in filing the appeal.

For the reasons stated in the application, same is allowed and

the delay of 204 days in filing the appeal, is condoned.

FAO-1682-2015 (O&M)

Appellants-claimants have filed the present appeal seeking enhancement of compensation over and above the amount awarded by learned Motor Accident Claims Tribunal, Jind (for short “the Tribunal”) vide award dated 15.04.2014.

Briefly stated, the claimants have filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, on account of death of Vinod Kumar, who died in a motor vehicular accident, which took place on 19.10.2012. As per the claim petition on the relevant date, Vinod Kumar (since deceased) along with his uncle Satbir Singh was going from his village Nehra to Narwana via village Danoda on a motorcycle bearing registration No.HR-34D-2610 make Hero Honda. Deceased Vinod Kumar was driving the motorcycle at a normal speed on the correct left side of the road, whereas Satbir Singh was the pillion rider. At about 11.00 a.m., when they have reached near D.M. Hotel in the area of village Sacha Khera, Vinod Kumar stopped the motorcycle on the kacha portion of the road on his correct left side as Satbir Singh wanted to urinate. In the meanwhile, the offending truck bearing registration No.HR-24GA-0234 came from Narwana side being driven by respondent No.1 in a rash and negligent manner and struck against the motorcycle of Vinod Kumar after coming on the kacha portion of the road. Due to this impact, Vinod Kumar fell down and received multiple serious and grievous injuries. He was taken to General Hospital, Narwana and thereafter, was shifted to Jindal Hospital, Hisar. However, he succumbed to his injuries on 25.10.2012. An FIR No.242 dated 24.10.2012 under Sections 279, 337, 427 IPC was registered in Police Station Sadar, Narwana and after the death of deceased, section

304-A IPC was also added on 25.10.2012.

The Tribunal while holding the driver guilty for rash and negligent driving, has awarded a total compensation of ₹9,99,000/- to the claimants on account of death of Vinod Kumar.

Not satisfied with the aforesaid amount of compensation, the claimants have filed the present appeal, seeking enhancement of compensation.

Learned counsel for the appellants has argued that as per claim petition filed by the claimants, the deceased was 23 years of age, whereas in the post mortem report, his age has been shown as 25 years. But in the medical record, the age of the deceased has wrongly been shown as 26 years. Therefore, considering the age of the deceased as 23 years, multiplier 18 was required to be applied. Similarly, as held in the case of **National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009**, no addition has been made towards future prospects. The deceased being less than 40 years of age, addition of 40% towards future prospects is required to be made.

On the other hand, learned counsel for respondent No.3- Insurance Company has argued that the Tribunal has already awarded adequate compensation. The age of the deceased has rightly been considered as 26 years, which has duly been reflected in the medical record. Therefore, multiplier 17 has rightly been applied. He has argued that the Tribunal has made 1/4th deduction, whereas considering the number of dependents, the deduction should have been 1/3rd. He has further argued that the compensation under the conventional heads has to be awarded in terms of the judgment of the Hon'ble Apex Court in **Pranay Sethi's case**

(supra). The claimants have been awarded an amount of ₹1,00,000/- towards loss of consortium, whereas this amount has to be ₹40,000/-. So far as the amount of ₹25,000/- awarded towards performance of last rites and funeral expenses is concerned, the same has to be reduced to ₹15,000/-. An amount of ₹5,000/- was awarded to the claimants on account of loss of estate. He has further argued that as against the total awarded amount of ₹1,30,000/-, a sum of ₹70,000/- is required to be awarded under the conventional heads.

I have heard the learned counsel for the parties.

The argument of learned counsel for respondent No.3-Insurance Company that instead of 1/4th deduction, 1/3rd deduction should have been made, no such evidence has been placed on record by respondent No.3-Insurance Company to suggest that the father was having an independent source of livelihood, therefore, this Court does not find any reason to interfere on the deduction part. Considering the family contribution of the deceased, the Tribunal has rightly deducted 1/4th income.

The argument raised by learned counsel for the appellants that the Tribunal has applied multiplier 17 considering the age of the deceased, whereas multiplier 18 should have been applied, carries weight. In the claim petition as filed by the claimants, under Section 166 of the Act, age of the deceased has been shown as 23 years. Even in the post mortem report, deceased has been shown as 25 years. It is only in the medical record, somehow the age of the deceased has been reflected as 26 years. As held in the case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another**, 2009(6) SCC 121, the multiplier 17 will come into application only when the deceased is 26 years or above. But in case,

the deceased is less than 26 years of age, then multiplier 18 has to be applied. Therefore, considering the age as reflected in the claim petition as well as in the post mortem report, this Court finds that age of the deceased is less than 26 years, for which multiplier 18 has to be applied. In view of the law laid down by the Hon'ble Apex Court in **Pranay Sethi's case (supra)**, the deceased being less than 26 years of age, the claimants are entitled for an addition of 40% towards future prospects. Similarly, under the conventional heads as against the total awarded amount of ₹1,30,000/-, this Court finds that the claimants are entitled for a total amount of ₹70,000/-, which included an amount of ₹15,000 on account of funeral expenses, ₹15,000/- towards loss of estate and ₹40,000/- on account of loss of consortium.

Accordingly, this Court finds that the claimants are entitled to compensation in the following manner:-

Monthly income	:	₹5,500/-
Future prospects (40%)	:	₹2,200/-
Total monthly income	:	₹7,700/-
Annual income	:	₹92,400/-
Annual dependency (after 1/4 th deduction)	:	₹69,300/-
Total loss of dependency (₹69,300/-x 18)	:	₹12,47,400/-
Medical expenses	:	₹27,500/-
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-
Loss of consortium	:	₹40,000/-

Total amount of compensation	:	₹13,44,900/-
Amount already awarded	:	₹9,99,000/-

Enhanced amount : ₹3,45,900/-

The enhanced amount of compensation shall be disbursed to the appellants in the similar manner, as indicated in the award of the Tribunal.

The enhanced amount of compensation shall also carry interest @ 7.5% per annum from the date of filing of claim-petition till its realization.

Since the appeal has been filed after a delay of 204 days, the appellants-claimants shall not be entitled to interest for the delayed period.

With the aforesaid modification in the award, the present appeal stands disposed of.

April 25, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No