

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

FAO No.6338 of 2013 (O&M)

Date of Decision: 09.07.2018

Sushila and another

... Appellants

Versus

Brij Mohan and others

... Respondents

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

Present:- Mr. Ram Pal Verma, Advocate,
for the appellants.

Ms. Swati Batra, Advocate,
for respondent No.3-Insurance Company.

TEJINDER SINGH DHINDSA, J.

CM No.25905-CII of 2013

For the reasons stated in the application, prayer is
allowed.

The delay of 184 days in re-filing the appeal stands
condoned.

Application disposed of.

CM No.25906-CII of 2013

Instant application has been filed under Section 5 of the
Limitation Act seeking condonation of delay of 245 days that has
occurred in filing the accompanying appeal.

In view of the averments made in the application and
keeping in view that it is a claimants' appeal seeking enhancement
of compensation, delay is condoned.

Application is allowed.

Disposed of.

Main Appeal

This is claimants' appeal seeking enhancement of compensation.

Briefly noticed, the present appellants/claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') claiming compensation on account of death of their son, namely, Sunil in an accident that occurred on 12.12.2010. Deceased Sunil was stated to be a passenger in an auto-rickshaw. When the auto-rickshaw reached in the area of Vardhman Chowk, Sector 7-8 Chowk, G.T. Road i.e. within the jurisdiction of Police Station Rai, a car bearing registration No.HR-07N-3644 being driven by respondent No.1-Brij Mohan in a rash and negligent manner came from behind and struck the auto-rickshaw. As a result, the auto-rickshaw turned turtle and deceased Sunil along with other occupants of the auto-rickshaw sustained multiple injuries. Sunil (since deceased) was shifted to General Hospital and in view of his serious condition was referred to PGIMS Rohtak. Sunil is stated to have died on 31.01.2011, during the course of treatment. Deceased was stated to be about 16 years of age.

It would also be apposite to notice that the matter having been reported to police, case FIR No.343 dated 12.12.2010, under Sections 279, 337, 338 IPC was registered at Police Station Roi. After death of Sunil, Section 304-A IPC was added in the FIR.

Compensation amount of Rs.10 lacs along with interest

was claimed by the claimants/appellants who happened to be the mother and father of the deceased Sunil respectively.

From the pleadings of the parties, the following issues were framed by the Motor Accident Claims Tribunal, Sonipat.

- 1. Whether death of Sunil took place on 12.12.2010 due to rash and negligent driving of car No.HR-07N-3644 by respondent No.1?OPP***
- 2. If issue No.1 is proved in affirmative, what compensation the claimants are entitled to and from whom? OPP***
- 3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident, if so its effect? OPR-3***
- 4. Relief.***

Since the issue involved in the instant appeal is only regarding quantum of compensation, this Court would refer to the findings recorded by the Tribunal qua issue No.2.

Insofar as issue No.2 is concerned, the Tribunal took the notional income of the deceased boy aged 15-16 years as Rs.24,000/- per annum and applied a cut off 1/3rd and as such dependency of the claimants on the deceased was assessed at Rs.16,000/- per annum. Multiplier of 13 was applied and the compensation amount of Rs.2,08,000/- was arrived at. That apart an amount of Rs.10,000/- was awarded towards transportation charges and funeral expenses. Claimants were also held entitled to a sum of Rs.15,220/- incurred during the course of treatment of the deceased as per evidence adduced on record in the shape of

bills Ex. P-6 to P-16. The total compensation awarded as such was to Rs.2,33,220/-. The Tribunal further directed the payment of the awarded compensation along with interest @ 7.5% per annum from the date of institution of the claim petition till realization of the awarded amount. The respondents were held jointly and severally liable to pay the amount of compensation.

I have heard counsel for the parties at length.

In a recent judgment rendered by the Hon'ble Supreme Court of India in ***Puttamma and others Vs. K.L.Narayana Reddy and another, 2014(1) RCR (Civil) 443***, it had been observed that the second schedule to Section 163-A of the Act was enacted by Act 54 of 1994 w.e.f. 14.11.1944, but inspite of 19 years having passed by, no amendment in the same has been made by the Central Government. It was further observed that the cost of living has gone up many folds and as such, it was held that the second schedule as enacted in 1994 has become redundant, irrational and unworkable due to changed scenario including present cost of living, current rate of inflation and increased life expectancy.

In ***Kishan Gopal and another V. Lala and others, 2013 (4) RCR (Civil) 276***, the Hon'ble Apex Court again taking cognizance of the fact that the rupee value had come down drastically from the year 1994 and the notional income of the non-earning member prior to the date of the accident had been fixed at Rs.15,000/- as per second schedule to Section 163-A of the Act had taken the notional income of a deceased child, who was 10 years at the time of accident, to be Rs.30,000/-.

By applying the dictum as laid down by the Hon'ble Supreme Court in ***Puttamma and others' case and Kishan Gopal's case (supra)***, I am of the considered view that the compensation awarded to the claimants/appellants deserves to be enhanced.

In the present case also, the notional income would be taken as Rs.30,000/- and further by applying the legal principles laid down in the case of ***Sarla Verma Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77***, a multiplier of 15 would be applied to the multiplicand, thus, $30,000 \times 15 = 4,50,000$. Out of such amount, $1/3^{\text{rd}}$ to be deducted and the amount payable would come to Rs.3 lacs. Even the amount awarded towards funeral expenses i.e. Rs.10,000/- would stand enhanced to Rs.15,000/- in view of parameters laid down by the ***Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009***. The award of Rs.15,220/-towards medical expenses during the course of treatment of deceased would remain intact.

In view of the above, the total compensation amount assessed in favour of the appellants would be Rs.3,30,220/-. The present appeal is accordingly allowed and the compensation amount awarded enhanced from Rs.2,33,220/- to Rs.3,30,220/-. Enhanced compensation amount be released to the claimants/appellants along with interest @ 6% per annum from the date of institution of the claim petition till disbursement of such

amount.

It is, however, clarified that while computing interest so awarded the delay period of 245 days in filing the instant appeal would be excluded.

Appeal is allowed in the aforesaid terms.

09.07.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes