

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

**FAO No.6242 of 2014 (O&M)
Date of decision: 23.01.2018**

Lal Mohan RoyAppellant

Versus

Tejinder Singh and othersRespondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. H.S. Brar, Advocate, for the appellant.

Mr. Ishan Gupta, Advocate, for respondent Nos. 1 and 2.

Mr. Satpal Dhamija, Advocate, for respondent No.3-insurance company.

RITU BAHRI J. (Oral)

CM No.16987-CII of 2014

In view of the averments mentioned in the application, same is allowed and delay of 799 days in re-filing of the appeal is condoned.

FAO No.6242 of 2014

This appeal has been filed against the award dated 08.02.2012 passed by the Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'the Tribunal'), whereby claim petition seeking compensation on account of death of Anup Roy in a motor vehicular accident which took place on 15.12.2009, has been dismissed. Appellant is father of deceased Anup Roy.

Brief facts of the case are that on 15.12.2009, Swapon Roy along with his brother Anup Roy (since deceased) was coming from oil

depot on a scooter bearing registration No. PB-13-R-3377, which was being driven by Anup Roy himself. At about 5.00 P.M., when they came out from the oil depot, a tanker bearing registration No. PB-29-H-8825, being driven by Kuldeep Singh-respondent No.2 in a rash and negligent manner, came from the side of Patran and struck against the scooter, as a result of which, Anup Roy fell down and received injuries. He was got admitted in Slibia Hospital, Sangrur, from where, he was referred to Dayanand Medical College & Hospital, Ludhiana. However, he succumbed to the injuries on 20.12.2009. With regard to the accident, FIR No.376 dated 22.12.2009, under Sections 279/304-A/427 IPC was registered at Police Station, City, Sangrur against respondent No.2 on the statement of Swapon Roy. Consequently, claimants-appellants filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending tanker by respondent No.2 and thus, returned finding on issue No.1 in favour of claimant-appellant. This finding was rightly given on the basis of deposition of Swapon Roy (AW-6), who was eye witness of the accident and on whose statement, FIR, Ex.A3 was registered.

While deciding issue No.2, the Tribunal observed that the claimant (appellant) has failed to prove that the deceased was earning Rs.6000/- per month by working in M/s Perfect Engineering and Fabrication, Sangrur. In the absence of any documentary proof, income of deceased was assessed as Rs.4,104/- per month, out of which, ½ (one-half) amount was deducted towards his personal expenses. The annual

dependency of claimants, thus, came to Rs.2052 x 12 = Rs.24,624/-. As per postmortem report Ex.A1, deceased was 37 years of age at the time of accident/death.

The Tribunal has further observed that claimant-appellant, being father of deceased Anup Roy, was not dependent upon him. Therefore, he was not held entitled to claim compensation on account of death of his son in a motor accident. With these observations, the claim petition filed by appellant was dismissed vide impugned award dated 08.02.2012. Feeling dissatisfied, claimant-appellants have preferred the present appeal.

Learned counsel for the appellant has argued that the Tribunal has wrongly concluded that the appellant was not dependent on his deceased son on the ground that he was living at Calcutta. In fact, the appellant was fully dependent upon the deceased.

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

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Having examined the impugned award, this Court is of the view that the appellant has been able to prove that he was dependent upon the deceased. Therefore, the Tribunal has wrongly held him not entitled to get compensation under the provisions of Section 166 of the Act on account of death of his son (Anup Roy) in a motor vehicular accident. Provisions of section 166 and 163-A of the Act have been enacted just to provide financial help to the legal heirs and family members of the victims. Thus, it is held that the claimant-appellant was dependent upon the deceased and is entitled to get

adequate compensation for the death of his son. The offending vehicle was insured with respondent No.3-insurance company. Therefore, it is held that all the respondents are jointly and severally held liable to pay compensation to the claimant-appellant. As per minimum wages, income of the deceased is assessed as Rs.4104/- per month, rounded off Rs.42,000/- per month. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby assessed in view of the judgments passed by Hon'ble the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) and Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.4200/- per month
(ii)	40% of (i) above to be added as future prospects	4200 + 1680 = Rs.5880/-
(iii)	½ of (ii) above is deducted as personal expenses of the deceased	5880 – 2940 = Rs.2940/-
(iv)	Compensation after multiplier of 15 is applied	Rs.2940/- x 12 x 15 = Rs.5,29,200/-
(v)	Compensation towards conventional heads	Rs.30,000/-
(vi)	Compensation on account of medical treatment of deceased	Rs.16,797/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.5,75,997/-

The amount of compensation of **Rs.5,75,997/-** shall be payable to the appellant by respondents jointly and severally within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of Shri Nagar Mal and

others vs. The Oriental Insurance Company Ltd and others, Civil Appeal
No.448 of 2018 (arising out of SLP (C) No.26853 of 2016) decided on
19.01.2018.

The present appeal is allowed accordingly.

23.01.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No