

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

**FAO-5530-2015 (O&M)
Date of Decision:01.10.2018**

Usha & others

... Appellants

Versus

Mukerian & others

... Respondents

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

Present:- Ms. Deepa Jain, Advocate for
Mr. Yash Dev Kaushik, Advocate for the appellants.

Mr. Vikrant Rana, Advocate for
Mr. Suman Jain, Advocate for respondent No.3.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

This is claimants' appeal seeking enhancement of compensation.

2. Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicle Act before the Motor Accident Claims Tribunal, Faridabad seeking compensation to the tune of Rs.12 lakhs on account of death of Rohit in a motor vehicle accident that took place on 24.11.2013.

3. Claimants were the parents, two sisters and minor brother of the deceased.

4. It was asserted in the claim petition that on 24.11.2013 while Rohit (since deceased) was proceeding on a motorcycle, he was struck by a tractor trolley bearing registration No.HR-30-G-6358 and on account of which, he suffered fatal injuries. FIR No.956, dated 24.11.2013, under Sections 279/304-A IPC was accordingly registered at Police Station City

Ballabgarh.

5. Claim petition having been contested, the following issues were framed by the Tribunal:

“1. Whether the present accident had taken place due to rash and negligent driving of Tractor No.HR-30G-6358 by respondent No.1? OPP.

2. If issue No.1 is proved, whether the claimants are entitled for any amount of compensation, if so to what amount and from whom? OPP.

3. Whether respondent no.1 was not holding a valid and effective driving license at the time of accident and insured had also violated the other terms and conditions of the policy and as such respondent no.3 is not liable to make payment of compensation, if any? OPR3.

4. Relief.”

6. Insofar as issue No.1 is concerned, findings were returned in favour of the claimants and it was held that death of Rohit occurred on account of injuries suffered in the accident involving the offending/insured tractor trolley and which was being driven in a rash and negligent manner by Mukeem/driver.

7. With regard to quantum of compensation, an amount of Rs.5,29,000/- has been awarded in favour of claimant No.1 i.e. mother of the deceased. Claim petition qua claimants No.2 o 5 i.e. father, two sisters and minor brother was dismissed. The liability to pay the compensation amount was held to be joint and several.

8. Since the only issue raised in the instant appeal is with regard to enhancement of compensation, I have heard counsel for the appellants as also counsel representing respondent No.3/contesting Insurance Company.

9. At the outset, it may be noticed that even though the claim petition qua claimants No.2 to 5 had been dismissed and they have chosen to file the instant appeal along with mother of the deceased, yet counsel does not press the instant appeal as regards appellants No.2 to 5 i.e. father, two sisters and brother of the deceased.

10. As per statement made by counsel, the instant appeal for purposes of enhancement of compensation survives only qua appellant No.1, namely, Usha i.e. mother of the deceased.

11. Claimants had asserted that deceased was working with M/s Hemu Auto Repairing Centre under the control and supervision of Sharma Automobile and was getting a monthly salary of Rs.11,500/-. To substantiate such assertion, claimants had examined Hemu, Proprietor of Hemu Auto Repairing Centre, Faridabad as PW1 and who deposed that he was running a truck repairing centre and Rohit (Since deceased) was being paid a salary of Rs.11,500/- per month while working as a truck mechanic. However, no record had been produced by PW1 Hemu towards the employment having been given to Rohit (since deceased). No record/evidence was adduced even with regard to payment of salary of Rs.11,500/- per month. Even the claimants had not adduced any evidence which was reflected Rohit to possess any technical qualification in the nature of ITI diploma/certificate of a mechanic. Under such circumstances, Tribunal has assessed the monthly income of the deceased as Rs.6000/- per month. This Court does not find any error in such monthly assessment of income as Rs.6000/- and which would be almost at par with the minimum wages admissible to a daily wager at the relevant point of time i.e. in the year 2013.

12. There is no dispute as regards the factual premise that deceased Rohit was a bachelor. His age has been accepted to be 22 years as per version set up by the claimants as also as per post mortem report, Ex.P-7. Being a bachelor, the Tribunal has rightfully made a deduction of 50% from the monthly income towards personal and living expenses of the deceased.

13. Tribunal has, however, erred in overlooking the aspect of granting any addition in income towards future prospects. Keeping in view the age of the deceased to be 22 years on the date of accident and the claim set forth by the claimants that deceased was self employed, an addition in income at the rate of 40% is granted towards future prospects.

14. Furthermore, Tribunal has erred in applying the multiplier of 14 on the basis of the age of the claimants i.e. mother of the deceased. By applying the parameters laid down by the Apex Court in **Sarla Verma & others Vs. Delhi Transport Corporation & another, 2009 (3) RCR (Civil) 77**, it was the age of the deceased that had to be kept in mind while applying multiplier to the multiplicand. Against the age of the deceased to be 22 years as on the date of accident, it is directed that multiplier of 18 is to be applied to the multiplicand.

15. The Tribunal has awarded Rs.25,000/- towards funeral expenses. By following the dictum laid down by the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi & others, 2017 (4) RCR (Civil) 1009**, a total amount of Rs.30,000/- instead is awarded under the conventional heads i.e. Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

16. In view of the above, the compensation amount is re-assessed

and calculated as follows:

Sr. No.	Computation/Head	Revised calculation
1.	Income Rs.6,000/-	Rs.6000/-
2.	Addition in income @ 40% towards future prospects	Rs.2400/- 6000+2400=8400/-
3.	50% deduction towards personal and living expenses of the deceased	8400-4200=4200/-
4.	Compensation after applying multiplier of 18	4200 x 12 = 50,400/- 50,400 x 18 =9,07,200/-
5.	Conventional Heads i.e. loss of estates, funeral expenses and loss of consortium etc.	Rs.30,000/-
6.	Total	9,07,200+30,000=9,37,200/-

17. The afore calculated/enhanced compensation amount be released in favour of appellant No.1/Smt. Usha along with interest at the rate of 6% from the date of filing of the instant appeal till actual realization.

18. Appeal is allowed in the aforesaid terms.

01.10.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

- i) Whether speaking/reasoned?

Yes/No
- ii) Whether reportable?

Yes/No