

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 5829 of 2015

Date of Decision: 22.11.2018

Kamlesh and others

.....Appellants

Vs.

Ranbir and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Arvind Kumar Yadav, Advocate, for the appellants.

Mr.Vishal Aggarwal, Advocate, for
respondent No.3/Insurance Company.

DR. RAVI RANJAN, J.

This appeal has been filed for enhancement of compensation awarded to the appellants vide Judgment and Award dated 12.05.2015 passed by the Motor Accident Claims Tribunal, Rewari.

I have heard learned counsel for the parties and perused the records.

Short facts which emanates out of the pleadings of the parties stand enumerated as under:

On the fateful night i.e. on 09.30 p.m. on 18.05.2013, the deceased-Mohit who was going along with his father Mahabir towards Jhajjar Chowk from Railway Chowk on foot met with an accident as a tanker bearing registration No.UP-15BT-0766 which was driven by respondent No.1-Ranbir in a rash and negligent manner at a very high speed.

The vehicle hit Mohit from behind. As a result, he fell down on the road and

sustained grievous and fatal injuries to which he succumbed. When he was

brought in the hospital, he was declared died.

The case of the claimants/appellants is that the accident was caused by rash and negligent driving of the tanker concerned. Appellant/claimant No.1 is the mother, appellant No.2 is the father, appellant No.3 is the minor sister and appellant No.4 is the minor brother of the deceased. The deceased was just 19 years of age at the time of accident. The case of the claimants is that the deceased was working as a helper in Kishan furniture Factory, Rewari and used to earn Rs.9000/- per month and claimants were totally dependent upon his income. Thus, they had suffered great loss, pain and agony due to untimely death of Mohit in the unfortunate accident. The respondent No.1 is driver, respondent No.2 is the registered owner and respondent No.3 is insurer of the offending vehicle.

Upon notice given to the respondents, respondents No.1 and 2 appeared through their counsel but did not file their written statement and later on the claim case proceeded *ex-parte* against them. Respondent No.3 filed written statement taking the ground that the accident might have taken place due to the negligence on the part of the deceased himself and denied that the accident by the tanker had actually taken place and further that respondent No.1 was not holding a valid and effective driving licence on the date of the accident.

The Tribunal framed the following issues on 16.07.2014:

1. Whether any accident took place on 18.05.2013 at about 9-30 p.m. Near bank of Baroda, Rewari fall in the jurisdiction of police station, City Rewari due to rash and negligent driving of the offending vehicle i.e. Tanker bearing registration No.UP-15BT-0766 by respondent No.1, as alleged ? OPP.

2. If issued No.1 is proved, whether Mohit received injuries in the said accident and died due to said injuries? OPP.
3. If issues No.1 and 2 are proved, whether the petitioners are entitled to any compensation, if so to what amount and from whom? OPP
4. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR.
5. Relief.

The appellant/claimant No.2 was examined as PW-1 and another witness namely Gagan and Naresh Kumar were examined as PW-2 and PW-3 respectively. Documentary evidences were also brought on record as Ex.P1, Ex.P2, Ex.P3, Ex.P4 and Ex.P5 which were copies of FIR, certified copy of the police report submitted under Section 173 Cr.P.C, the site plan of the spot of accident prepared by the investigating officer, attested copy of the postmortem report of the deceased and copy of driving licence of the respondent No.1 issued by Licensing Authority, Moradabad and many other documents as stated in the paragraph 7 of the judgment and Award.

Only documentary evidence was brought on record by respondent No.3 as Ex.RA which is a copy of the package insurance policy of the concerned tanker.

The Tribunal after considering the materials on record has come to the conclusion that death was caused due to rash and negligent driving by respondent No.1, especially, since the driver of the offending vehicle did not come forward to deny his negligence as the matter has been proceeded *ex-parte* against him. Thus, adverse inference has been drawn against him holding and presuming him to be negligent. So far as issue No.4 is

having valid licence on the fateful day when the accident took place, it was its bounden duty to lead evidence in this regard but it has miserably failed to bring on record anything, whereas, the claimants have brought a copy of the driving licence on record issued by the competent authority as Ex.P5 and nothing has been brought on record to show the same is fake in any manner. Therefore, the finding has been recorded in favour of the claimants.

The Tribunal has further held that the claimant/appellants No.1 and 2 certainly be said to be dependents on the income of the younger son i.e. Deceased-Mohit. However, it was held that nothing has been brought on record to show that claimants/appellants No.3 and 4, who are the minor sister and brother of the deceased-Mohit, were also dependent upon him for their livelihood in any manner. Accordingly, it has been held that only claimants No.1 and 2 are entitled to claim compensation for the death of their younger son in an unfortunate accident.

So far as the income of the deceased is concerned, it has been claimed by the claimants that deceased-Rohit was earning Rs.9,000/- per month as he was working as a helper in a Furniture Factory. Though, one Mr.Gagan, who has been examined as PW-2, has stated in his affidavit that he is the proprietor of the godown in the name and style of 'Kishan Furniture' and the deceased was working for last 5 to 6 months with him as carpenter and he used to give him fixed amount of Rs.9,000/- per month as wages but he could not trying anything record showing the proprietorship of such shop or godown including his tax returns etc. and registration of shop under the concerned statute or any income proof or even the attendance register of the deceased or any other proof regarding he is working with him.

being given Rs.9,000/- as emoluments. The case of the claimants is that the deceased was working as a helper and not as a carpenter. In the aforesaid background of the matter, the Tribunal has held that it will be very difficult to prove that deceased was earning Rs.9,000/- by working as helper as no cogent evidence could be produced. However, it has accepted that minimum wages fixed by the State Government in the year 2013 would be his income. The monthly income has been taken as Rs.4500/- per month; admittedly, the deceased was unmarried and issueless, basing upon the calculation of the compensation in terms of ratio of the law laid down in Sarla Verma and others Vs. Delhi Transport Corporation Limited and others 2009 (3) RCR (Civil) 77, the Tribunal has deducted the personal and living expenses of the deceased as 50% of the said amount, and after considering the ages of the deceased as well as the ages of the claimants has come to the conclusion that multiplier as applicable in this case would be 15. As such, the compensation amount has been calculated as Rs.4,05,000/- (Rs.2250/- X 12 X 15) and Rs.20,000/- was given towards pain and suffering. Rs.20,000/- has been awarded towards transportation, funeral and last rites expenses of the deceased and Rs.20,000/- has been awarded towards loss of love and affection. Accordingly, the total compensation has been calculated to be Rs.4,65,000/-.

The driver, the registered owner and respondent No.3/insurer were held liable to make compensation jointly and severally.

Learned counsel appearing for the appellants has submitted that though the Tribunal has based its finding and calculation of compensation amount upon the ratio laid down by the Apex Court in Sarla Verma's case

(Supra) , but surprisingly, has chosen the multiplier in the case to be as 15,

whereas, according to Sarla Verma's case (Supra), the multiplier should be 18. It is not a case in which provisions of Section 163 A would be applicable rather, this is a case under Section 166 of the Motor Vehicles Act, 1988. Learned counsel further submitted that the Tribunal has completely forgotten to consider the future prospects of the deceased as even taking the deceased to be an employee of fixed salary, an addition of 40% income would be warranted where the deceased was aged upto 40 years as per law laid down upon a constitution Bench of the Hon'ble Supreme Court in National Insurance Company Limited Versus Pranay Sethi and Ors. JT 2017 (10) SC 450 . Learned counsel further submits that even the monthly income of the deceased has not been calculated in terms of minimum wages fixed by the State Government as in the year 2013 it was Rs.5215.15 monthly or was Rs.200.46/- per day which has prevalent in the State of Haryana w.e.f. 01.01.2013.

Per contra, learned counsel for the respondent/Insurance Company has submitted that correct law, correct multiplicand and multiplier have been chosen by the Tribunal.

After considering the rival contentions, this Court finds force in the submissions made on behalf of appellants. The Hon'ble Supreme Court has in clear terms laid down in Sarla Verma's case (Supra) where, in the case falling under Section 166 of the Motor Vehicles act, Davies method is applicable and has held that multiplier would starts with 18 in the age group of 15 to 20 and 21 to 25. That apart, it is further apparent from the the document produced by the appellants that the minimum wage was fixed as 5215.15 per month. It could not be denied by the learned counsel for the

prevalent in the state of Haryana w.e.f. 01.01.2013 was Rs.5212.15/- per month for an unskilled worker. Even if assuming that the deceased was not a skilled carpenter rather merely a helper in the godown, his income cannot be considered below the aforesaid amount. As a result I hold that his monthly income has to be taken as Rs.5212/- per month.

Secondly, 40% of income should also be added to the income to calculate the just and proper multiplicand as per law laid down by the Constitution Bench in National Insurance Company Limited Versus Pranay Sethi and Ors. (supra). On the aforesaid count in my view the calculation should be made afresh with respect to the selection of multiplicand and multiplier which being done as under:

Sr.No.	Heads of compensation	Amount
1	Income	Rs.5212/- per month
2	Income after addition of 40% as future prospects	Rs.5212/- --- Rs.2085/-= Rs.7297/-
3.	Deduction 50%	Rs.7297/- --- Rs.3649/-= Rs.3648/- per month
4.	Total loss of dependency after applying the multiplier of 18	Rs.3648/- X 12 X 18= Rs.7,87,968/-
5.	Pain and suffering	Rs.20,000/-
6.	Transportation, funeral and last rites expenses	Rs.20,000/-
7.	Loss of love and affection	Rs.20,000/-
	Total	Rs.8,47,968/-
	Enhanced amount of compensation	Rs.8,47,968/- --- Rs.4,65,000/-= Rs.3,82,968/-

Apart from the above, the interest imposed which has been assessed as 7.5% per month is also enhanced to 9% per month to be calculated from the date of filing of the claim petition till the date of payment of the enhanced amount.

The counsel fee at Rs.2200/- remains unchanged.

Accordingly, the judgment and Award of the learned Tribunal stands modified and enhanced to the extent above.

In the result, this appeal stands allowed to the extent as indicated above. However, parties shall bear their own costs.

(DR. RAVI RANJAN)
JUDGE

22.11.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No