

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

FAO-8275-2014 (O&M)

Date of Decision:23.03.2018

Nirmala Devi and another

.....Appellants

Versus

Rajinder Singh and others

.....Respondents

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

**Present: Mr. Ankur Gupta, Advocate,
for the appellants.**

**Mr. Vipul, Advocate for
Mr. Nitin Mittal, Advocate,
for respondent No.2.**

**Mr. Parshant Garg, Advocate and
Mr. Paul S. Saini, Advocate,
for respondent No.3-Insurance Company.**

HARI PAL VERMA, J.(Oral)

CM-22431-22432-CII-2014

For the reasons stated in the applications, same are allowed and the delay of 130 days in filing and 25 days in re-filing the appeal is condoned.

FAO-8275-2014

Appellants-claimants have filed the present appeal seeking enhancement of compensation over and above the compensation awarded by learned Motor Accident Claims Tribunal, Ludhaina (for short “the Tribunal”) vide award dated 10.09.2013.

In a claim petition under Sections 166, 167 read with Section 140-A of the Motor Vehicles Act, 1988, filed by injured Nawin Kumar with an averment that on 24.10.2007 at about 9.30 AM, when he (Nawin Kumar) was coming from his house to Anand Medical Store, Machhiwara on a motorcycle bearing registration No.PB-43-C-0828 for daily duties, as he was working with the said medical store and had hardly reached in front of the shop of Tilka Cylinder Wala, a truck bearing registration No.PB-11-D-3792 was moving from one side to other side on the road. The truck was being driven by respondent No.1-driver in a rash and negligent manner. The driver of the truck suddenly made a rash cut and struck against the motorcycle of the claimant. The impact was so strong that Nawin Kumar fell down on the metalled road at about 10 feet from the spot of accident. His right arm, shoulder and spinal cord received grievous injuries along with other injuries on the other parts of the body. The accident was witnessed by Surinder Kumar son of Mangat Rai, who was the maternal uncle of the claimant. Surinder Kumar was following the motorcycle of the injured Nawin Kumar. Nawin Kumar remained admitted in Omni Hospital, Chandigarh from 25.12.2007 to 04.01.2008 as he suffered serious spinal cord injury in the accident. Surgery was conducted on the person of Nawin Kumar in CMC, Ludhiana. Another surgery of backbone of Nawin Kumar was conducted in Omni Hospital, Chandigarh in which metal plate was inserted to support the backbone. Nawin Kumar was about 21 years of age at the time of accident. Considering the injuries suffered by Nawin Kumar, he remained confined to bed but ultimately he died on 17.09.2011. While the aforesaid claim petition filed by Nawin Kumar (deceased) was pending, wherein he has claimed compensation on account of injuries suffered by

him, Nawin Kumar had died on 17.09.2011 and therefore, his parents have joined as the claimants on account of death of Nawin Kumar. The Tribunal had awarded a total compensation of ₹4,77,285/- in favour of claimant No.1. Out of the aforesaid awarded compensation, an amount of ₹1,72,285/- was granted on account of treatment of the deceased.

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

Learned counsel for the appellants has argued that deceased Nawin Kumar met with an accident on 24.10.2007. He was 21 years of age at the time of the accident. On account of grievous injuries suffered by the deceased on his right arm, shoulder, spinal cord and other parts of the body, he remained admitted number of times in the hospital i.e. Omni Hospital, Chandigarh and CMC, Ludhiana. On his treatment, about ₹1,72,285/- had been spent on medical expenses alone, which is sufficient to establish the nature of injuries suffered by deceased Nawin Kumar in the accident. The Tribunal has wrongly assessed the income of the deceased, who was a young boy of 21 years having capacity to earn sufficient. The Tribunal has considered the income of the deceased as ₹2,500/- per month whereas the income has to be treated from the date when the deceased had died i.e. 17.09.2011 and on 17.09.2011, even the minimum wages were more than ₹4,000/- per month. As held by the Hon'ble Apex Court in case **National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009**, the Tribunal has not awarded future prospects as well as appropriate amount under the conventional heads to the claimants.

On the other hand, learned counsel for respondent No.3-

Insurance Company has argued that since the claimants have failed to establish the regular and fixed income of the deceased, the Tribunal has rightly assessed the minimum wages as on date when the accident was caused. He has further argued that the claimants have not been able to establish that deceased Nawin Kumar had died because of injuries suffered in the accident.

I have heard the learned counsel for the parties.

The accident and liability are not in dispute. What is in dispute is cause of death and the quantum of compensation awardable to the claimants.

Initially, claim petition was filed by Nawin Kumar himself, who appeared in the witness-box and proved injuries sustained by him. He has also examined Dr.Gaurav Sahni, CW-7 and Dr. Balbir Singh CW-8 to substantiate and prove the fact that he has suffered grievous injuries in the accident, which took place on 24.10.2007. Since the injuries were as such, which eventually turned serious and because of injuries suffered by him, he was living like a vegetable on account of spinal injuries and it had become difficult for him to move. CW-7 Dr. Gaurav Sahni has proved the discharge summary (Ex.C-7). This witness has stated that Nawin Kumar was admitted in the hospital on 25.10.2007 as he sustained grievous injuries. There was fracture dislocation D-11/D-12 of the spinal cord and on account of this accident, Nawin Kumar lost the ability to stand on his legs. He had also lost control at the time of passing of toilet and in this manner, all the functions were performed on the bed side. For the injuries so suffered by him, the doctor has operated Nawin Kumar on 26.12.2007 but without any positive results. Since Nawin Kumar remained on bed for a long period, it caused

bed sores and eventually he died on 17.09.2011. Similarly, CW8-Dr. Balbir Singh has stated that he had been examining Nawin Kumar regularly and had given a regular treatment. Therefore, there is no dispute so far as the injuries suffered by Nawin Kumar in the accident, which took place on 24.10.2007, is concerned. On the basis of the evidence so made by CW-7-Dr. Gaurav Sahni and CW-8-Dr. Balbir Singh, it is established that the death of Nawin Kumar is a direct consequence of the injuries suffered by him in the accident, which took place on 24.10.2007, though he died on 17.09.2011.

Present is the case which is difficult on facts. Nawin Kumar had died after a long fight. He had been at the mercy of others as the nature of injuries were as such. He remained confined to bed throughout. Considering the injuries so suffered by him where on account of spinal cord injury, deceased Nawin Kumar lost control even at the time of passing of toilet and all functions were performed on the bed side area. Therefore, this Court cannot brush aside the fact that for a patient like Nawin Kumar, the claimants must have hired the services of some attendant and as the treatment continued for about four years and deceased Nawin Kumar was in a vegetable condition, transportation facilities must have been hired. Therefore, this Court cannot ignore the expenses so incurred by the claimants on the attendant and transportation facilities. On the date on which the deceased had died, minimum wages were ₹4,016/- per month as he was a young boy of 21 years of age. Therefore, it can safely be presumed that he must have been earning ₹4,000/- per month. Since the deceased remained under treatment for about four years and remained in a vegetable condition throughout, this Court finds that a lump sum amount of

₹1,00,000/- towards attendant charges and another amount of ₹50,000/- on account of transportation charges is awarded to the claimants. However, as held by the Hon'ble Apex Court in Pranay Sethi's case(supra), the claimants are held entitled to compensation for an amount of ₹30,000/- under the conventional head whereas the Tribunal has awarded ₹35,000/- under this head. Similarly, the claimants are also entitled for future prospects @ 40%.

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

Monthly income	:	₹4,000/-
Future prospects (40%)	:	₹1,600/-
Total monthly income	:	₹5,600/-
Annual income	:	₹67,200/-
Deductions (50%)	:	₹33,600/-
Total loss of dependency (₹33,600 x 18)	:	₹6,04,800/-
Attendant charges	:	₹1,00,000/-
Transportation charges	:	₹50,000/-
Medical expenses	:	₹1,72,285/-
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-

Total amount of compensation :		₹9,57,085/-
Amount already awarded :		₹4,77,285/-

Enhanced amount	:	₹4,79,800/-

Since, this Court is awarding compensation on account of death of deceased Nawin Kumar, this Court finds that the claimants shall be held entitled to interest on the enhanced compensation only from the date of death of Nawin Kumar and the interest would be @ 7.5% per annum instead of 6% as awarded by the Tribunal.

Further as the present appeal has been filed after a delay of 130 days, the claimants shall not be held entitled to interest for this delayed period.

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

March 23, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No