

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

- (1)

FAO-1187-2002 (O&M)
Date of decision: 26.03.2019
- Ram Partap and another

...Appellants
- Versus
- Gulesh Kumar and others

...Respondents
- (2)

FAO-1186-2002 (O&M)
Date of decision: 26.03.2019
- Saroj and others

...Appellants
- Versus
- Gulesh Kumar and others

...Respondents
- (3)

FAO-1188-2002 (O&M)
Date of decision: 26.03.2019
- Simla Devi @ Dholan and another

...Appellants
- Versus
- Gulesh Kumar and others

...Respondents
- (4)

FAO-1200-2002 (O&M)
Date of decision: 26.03.2019
- Vidya and others

...Appellants
- Versus
- Gulesh Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Arjun Kundra, Legal Aid Counsel with
Ms. Mriganki Nagpal, Advocate
for the appellants in all cases.

Mr. Ajay Partap Singh, Advocate
for respondent Nos.1 & 2 in all cases.

Mr. Ravinder Arora, Advocate for respondent No.3
in all cases.

H.S. MADAAN, J. (Oral)

Briefly stated facts of the case are that on intervening night of 23/24.07.1999, Ramesh Kumar, Giani Ram @ Gian Singh and Hari Singh were going to Hisar in a Jeep bearing registration No.RJ-07-C-0475 which was being driven by Kartar Singh. When the jeep reached in the area of Village Peeranwali, then, bus No.RJ-10-P-0987 (hereinafter referred to as offending bus) driven by respondent No.1-Gulesh Kumar in a rash and negligent manner came from Hisar side and struck against the jeep, resultantly jeep turned turtle. All the occupants of the jeep suffered multiple injuries and they died at the spot. The matter was reported to the police by Balbir Singh on 24.07.1999, which formed the basis for registration of FIR No.413 for offences under Sections 279 and 304-A of IPC at Police Station Sadar, Hisar.

Legal representatives of the deceased had filed separate claim petitions. Smt. Simla Devi @ Dholan widow and Surender minor son of Kartar Singh had filed claim petition No.45 of 1999. In the said claim petition, they had impleaded Gulesh Kumar-driver, Sita Ram-owner and United India Insurance Company Ltd.,-insurer of the offending bus as

respondents. Similarly, Ram Partap-father and Smt. Girdawari-mother of Ramesh Kumar deceased had brought claim petition No.46 of 1999 against those very respondents, whereas, Smt. Saroj-widow, Vikrant-minor son, Suman Rani, Raman Rani and Priyanka, minor daughters and Smt. Gomti Devi mother of deceased Giani Ram had brought claim petition No.47 of 1999 and Smt. Vidya-widow, Raj Bala-minor daughter, Sharda, Kuldeep and Krishan, minor sons of Hari Singh had brought claim petition No.48 of 1999. All the claim petitions having arisen out of the same accident, were disposed of by Motor Accidents Claims Tribunal, Sirsa, vide a single award passed on 02.08.2001.

The claim petitions were contested by all the three respondents. Though, written statement were filed by them separately in all the cases but those were on similar lines. In the written statement submitted on behalf of respondent No.1-Gulesh Kumar, driver, he denied that he had caused any accident by driving the offending bus in a rash and negligent manner, rather, he alleged that he had been roped in wrongly at behest of certain influential and politically strong persons. He had taken various legal objections also. In the written statement submitted on behalf of respondent No.2-Sita Ram, owner of the bus, he came up with a version that the accident had taken place due to rash and negligent driving of jeep by Kartar Sigh and not due to any fault of respondent No.1 in driving the bus. He had also taken various legal objections, contending that petition is bad for non-joinder of necessary parties i.e. owner and insurer of the jeep. He too prayed for dismissal of the

petitions. In the written statement filed on behalf of respondent No.3- Insurance Company, while denying the material assertions in the claim petitions, it was contended that the insurance company was not liable to pay compensation for the reason that respondent No.1 was not holding a valid driving licence at the time of accident and the claim petitions were bad for mis-joinder and non-joinder of necessary parties.

All the four claim petitions were consolidated for trial and following issues were framed:-

1. Whether the death of Kartar Singh, Giani Ram @ Gian Singh, Hari Singh and Ramesh Kumar took place due to rash and negligent driving of bus No.RJ-10P-0987 by the respondent No.1? OPP.
2. Whether the petitioners in the above claim petitions are the legal heirs of the deceased and entitled to compensation? If so, how much and from whom? OPP.
3. Whether respondent No.1 was not holding a valid driving licence at the time of accident. If so to what effect? OPR.
4. Whether the petitions are bad for non-joinder of necessary parties as alleged? OPR.
5. Relief.

The parties led evidence in support of their respective claims.

After hearing arguments, the tribunal decided issue No. 1 in favour of the petitioners/claimants. Issue No.2 was also decided in favour of the petitioners; issue No.3 against respondent No.3 and issue No.4 against respondents. Resultantly, all the four claim petitions were accepted and compensation was awarded as detailed below:-

Petition No.		Title of the petition	Amount Awarded
45-MACT 1999	of	Simla Devi etc. Vs. Gulesh Kumar etc.	Rs.2,96,000/-
46-MACT 1999	of	Ram Partap etc. Vs. Gulesh Kumar etc.	Rs.1,37,000/-
47-MACT 1999	of	Saroj and others Vs. Gulesh Kumar etc.	Rs.2,98,000/-
48-MACT 1999	of	Vidya and others Vs. Gulesh Kumar etc.	Rs.2,44,000/-

The claimants felt dissatisfied with the amount of compensation awarded to them by the tribunal and they have approached this Court, by way of filing separate appeals, seeking enhancement of compensation awarded to them, notice of those appeals were given to the respondents, who have put in appearance to offer a contest.

I have heard learned counsel for the parties besides going through the record.

With regard to the claim petition for compensation filed by legal representatives of deceased Kartar Singh, the tribunal had taken his monthly salary to be Rs.2100/- by working as driver and after making deduction of 1/3rd towards personal expenses, the dependency of his legal representatives numbering two had been taken to be Rs.1400/- per month, annual dependency Rs.16,800/- (1400 X 12). However, the tribunal has not taken into account the fact that with the passage of time, the salary/income of the deceased would have increased and in view of the ratio of authority National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009, in case, the deceased was on a fixed salary, an addition of 40% of the established income

should be granted, where deceased was below the age of 40 years. In this case, the deceased was aged about 25 years. Thus, making an addition of 40% of the amount (Rs.1400+560 = Rs.1960), the annual dependency comes out to Rs.23520/-(1960 X 12). The tribunal has applied the multiplier of 17. However, in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, when the deceased was in the age group of 15 to 25 years, then, multiplier of 18 should be applied. Doing that, the total compensation is worked out to Rs.4,23,360/-. The tribunal has awarded an amount of Rs.10,000/- towards funeral expenses, loss of consortium and loss of estate, whereas, in view of the ratio of authority Pranay Sethi (supra), an amount of Rs.70,000/- is required to be granted. Adding that amount, the total compensation is worked out to Rs.4,93,360/-. The tribunal has awarded compensation of Rs.2,96,000/-. Thus, an additional compensation of Rs.1,97,360/- (Rs.4,93,360 -Rs.2,96,000/-) is awarded to the claimants.

With regard to the claim petition filed by legal representatives of Ramesh Kumar, who was aged about 18/19 years and was unmarried, stated to be assisting his father Ram Partap in avocation of agriculture and dairy farming, the tribunal has taken his monthly income to be Rs.2000/- per month, however, no addition towards future prospects has been made. Allowing an addition of 40% of the amount towards future prospects, his monthly income comes out to Rs.2800/-. Considering that he was a bachelor and would have got married in due

course, raising his own family, 50% of the amount is to be deducted towards his personal expenses, the dependency of his parents is worked out to Rs.1400 per month and annual dependency Rs.16800. The tribunal fell in error in adopting the multiplier of 11, considering the ages of his parents, whereas, in view of law laid down by the Apex Court judgment *Pranay Sethi (supra)*, the age of the deceased is to be taken into consideration and not of the parents. As such, multiplier of 18 is required to be applied. Doing that, the total compensation comes out to Rs.3,02,400/-. The tribunal has awarded Rs.10,000/- towards funeral expenses and loss of estate etc., however, in view of ratio of authority *Pranay Sethi (supra)*, the claimants are entitled to get a sum of Rs.15,000/- under the head loss of estate and Rs.15,000/- also under the head funeral expenses, total Rs.30,000/-. Therefore, total compensation is worked out to Rs.3,32,400/-. The tribunal has awarded compensation of Rs.1,37,000/-. Thus, an additional compensation of Rs.1,95,400/- (Rs.3,32,400 -Rs.1,37,000/-) is awarded to the claimants.

Coming to the claim petition filed by legal representatives of Giani Ram @ Gian Singh, who was aged about 35 years at the time of his death and had left behind four children, his wife besides mother Gomati, considering the contention of the claimants that he was cultivating the land of others on contract basis besides maintaining 2/3 buffaloes for sale of milk, the tribunal had taken monthly income of the deceased to be Rs.2000/-, however, no addition towards future prospects was made. Adding 40% of that amount, the monthly income comes out to Rs.2800/-.

The tribunal has rightly deducted $\frac{1}{4}$ th of that amount towards personal expenses. Doing that the dependency of claimants comes out to Rs.2100, annual dependency Rs.25200/-. The tribunal has correctly applied multiplier of 16. Doing that, the total compensation comes out to Rs.4,03,200/-. The tribunal has granted a sum of Rs.10,000/- to the claimants under the conventional heads, whereas, in view of ratio of authority Pranay Sethi (supra), an amount of Rs.70,000/- is to be granted. Adding that amount, the total compensation is worked out to Rs.4,73,200/-. The tribunal has awarded compensation of Rs.2,98,000/-. Thus, an additional compensation of Rs.1,75,200/- (Rs.4,73,200 - Rs.2,98,000/-) is awarded to the claimants.

With regard to the claim petition filed by legal representatives of Hari Singh, on the basis of evidence adduced by the parties, the tribunal has taken his age to be 45 years at the time of his death and found that he was cultivating land of one Aad Ram Pilonia on contract basis. In that way, he was an agricultural labourer. His monthly income was taken to be Rs.2000/-. In this case also, no addition was made towards future prospects. In view of the ratio of authority Sarla Verma (supra), when the deceased was in age group of 40-50 years, an addition of 25% is to be made in such circumstances. Thus, the monthly income comes out to Rs.2500/-. Doing deduction of $\frac{1}{4}$ th towards personal expenses, the dependency of his wife and children comes out to Rs.1875/-, annual dependency Rs.22500/-. The tribunal has applied multiplier of 13, when in view of ratio of the authority Sarla Verma

(supra) when the deceased is in age group of 41-45 years, multiplier of 14 should be applied. Doing that, the total compensation comes out to Rs.3,15,000/-. The tribunal has awarded Rs.10,000/- only under the conventional heads, whereas, in view of ratio laid down in Pranay Sethi (supra), an amount of Rs.70,000/- is to be awarded. Doing that, the total compensation comes out to Rs.3,85,000/-. The tribunal has awarded compensation of Rs.2,44,000/-. Thus, an additional compensation of Rs.1,41,000/- (Rs.3,85,000 -Rs.2,44,000/-) is awarded to the claimants.

In that way, the appeals are accepted with costs. The claimants shall be entitled to get enhanced compensation with interest @ 7.5% p.a. from the date of filing of appeals till actual realization. Liability of all the three respondents being joint and several. The other terms & conditions with regard to apportionment will be same as in the original award except when the minors claimants have attained majority. On furnishing proof of their having attained majority, their shares in the enhanced compensation be paid to them.

26.03.2019

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(H.S. MADAAN)
JUDGE

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