

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2438 of 2019 (O&M)

Date of Decision: 03.04.2019

Cholamandlam MS General Insurance Co. Ltd.

.....Appellant

Versus

Mrs. Rekha Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjeev K. Arora, Advocate
for the appellant.

AVNEESH JHINGAN, J.(oral)

The present appeal has been filed against award dated 21.11.2018 passed by the Motor Accident Claims Tribunal, Panchkula, (hereinafter referred to as 'the Tribunal') by the insurer of Tiper bearing registration No.PB-11AX-8529 (for short 'the offending vehicle') being aggrieved of quantum of compensation awarded.

Parents of Ajay @ Sobha Singh have been arrayed as respondents No. 1 and 2 and driver and owner of the offending vehicle have been arrayed as respondents No. 3 and 4.

The facts necessary for adjudication of the present appeal are that on 27.12.2015 Ajay along with Bipan Singh was riding on a scooter bearing registration No.PB-23-4842. The scooter was being driven by Ajay. When they reached near T-point of village Nanhera, the scooter was struck by the offending vehicle. As a result of the impact, both the riders of the scooter sustained injuries. They were taken to AP Jain Hospital Rajpura, where Ajay succumbed to the injuries. FIR No. 173 dated 28.12.2015 was

The Tribunal after considering the facts and on appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The owner and driver were held liable jointly and severally to pay the compensation. The offending vehicle was insured, hence, the insurer was directed to make the payment at the first instance to the claimants and then to recover the same from the driver and the insured.

In the claim petition it was pleaded that the deceased was 22 years of age and he was doing computer typing work at Rajpura Courts and on Sunday he used to maintain accounts on computer of Poultry Farm. His earning was claimed as Rs.12,000/- per month. The claimants failed to prove the monthly earning of the deceased. The monthly income was assessed as Rs.9320/-, 40% future prospects were awarded, ½ deduction for self-expenses was made as the deceased was un-married and in consonance with the decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21**, multiplier of 18 was applied as the deceased was 22 years of age at the time of accident. The Tribunal awarded a sum of ₹ 14,39,184/- along with interest at the rate of 6% per annum. The amount awarded included ₹ 15,000/- each for loss of estate and for funeral expenses.

The only grievance raised by learned counsel for the appellant is that the income assessed by the Tribunal is more than the minimum wages prevalent for unskilled labourer at the relevant time.

The contention raised lacks merit. The deceased was 22 years old young boy. It was pleaded that he was doing typing work and maintaining accounts on computer, albeit, the claimants failed to prove his monthly earning. His mark-sheet was exhibited which showed that he was

an educated young man, in such circumstances, it would not be just to equate him with an unskilled labourer. In cases where the claimants failed to prove the monthly earning of the deceased, the minimum wages prevalent in the State at the time of accident is one of the yardstick to be considered while assessing the monthly income. The Courts and the Tribunals are duty bound to award just and equitable compensation. The only restriction is that it should not prove to be a windfall.

The Supreme in ***M.R.Krishna Murthi Versus New India Assurance Company Ltd. and others*** 2019 (4) Scale 362, has held as under:

23) From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:

(i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poseer would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning.

(ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc. If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii) There may be cases like Deo Patodi where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.

(iv) After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected

thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case.

Considering the facts of the present case and the principles culled out by the Supreme Court, the income assessed by the Tribunal cannot be said to be exaggerated. It only provides just and equitable compensation to the parents who have lost their young son.

No interference is called for in the impugned award.

The appeal is accordingly dismissed.

03.04.2019

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	Yes