

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

FAO No. 2748 of 2001 (O&M)
Date of decision: 25.3.2019

Darshan Devi and others

...Appellants

Versus

Joginder Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ramesh Hooda, Advocate,
for the appellants.

None for respondents No. 1 and 2.

Mr. Sandeep Suri, Advocate,
for respondent No.3.

JAISHREE THAKUR, J.

1. This appeal seeks to challenge the award dated 17.5.2001 passed by the Motor Accident Claims Tribunal, Sonapat, wherein the appellants herein have been allowed compensation of ₹4,32,000/- on account of death of Satbir.

2. In brief, the facts are that on 10.6.2000, deceased Ram Kishan, along with Naresh, was going on his scooter bearing HR-12B/8054 from Village Kabulpur to Rohtak and when they had yet covered the distance of 1-2 k.m. towards Rohtak, a Tata-407, bearing registration No. HR-46/3481, being driven by respondent No.1, came from the opposite direction in rash and negligent manner and hit against the scooter. As a result of which, Ram

Kishan fell down and received grievous injuries and ultimately succumbed

to the injuries. It was alleged that the accident took place due to the rash and negligent driving of respondent No.1 and consequently FIR 173 dated 10.6.2000 under Sections 279/337 and 304-A IPC came to be lodged with the Police Station Sadar, Rohtak. With these averments, claim petition was filed by the widow and the children of the deceased claiming they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was working as an operator with Hissar W/S Mechanical Division, Govt. of Haryana and was drawing monthly salary of ₹7580/- along with other perks.

3. The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action has accrued etc. Issues were framed and thereafter evidence was led by the parties. In order to substantiate the claim, appellant No.1 stepped into the witness box as PW1 and examined eye witness Ramesh son of Sher Singh as PW.2 and Foreman Haryana Water Services Mechanical Division, Hisar as PW.3 and the witnesses also tendered documents in evidence Exs. P.1 to P.5. On the other hand, the respondents examined respondent No.1 as RW1 and produced insurance cover note Ex. R.1. Learned counsel appearing on behalf of the insurance company tendered in evidence insurance policy, Ex. P.2 and closed the evidence.

4. After scrutiny of the evidence brought on record, the Tribunal held that the the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it allowed compensation of ₹4,32,000/- which has been now challenged in the instant appeal.

5. Learned counsel for the appellant submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the compensation amount awarded to the appellants deserves to be enhanced. It is further submitted that as per last pay certificate Ex. P.4 the monthly salary of the deceased was ₹7599/- but the Tribunal took it at ₹6879/- after deducting the contribution ₹500/- towards GPF and ₹30/- towards GIS, which is against the law. It is further submitted that in view of the fact that the deceased was 49 years of age, multiplier of 13 should have been applied instead of 9 as applied by the Tribunal.

6. On the other hand, learned counsel appearing on behalf of respondent No.3—Insurance Company submits that the amount of compensation awarded by the Tribunal is just and fair and no interference is called for.

7. The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 49-1/2 years of age. It was further held that as per last pay certificate Ex. P.4, the deceased was drawing monthly salary of ₹7599/-. Out of which, he used to contribute a sum of ₹500/- towards GPF and ₹30/- towards GIS and thus his carry home salary held to be at ₹6879/- per month. The Tribunal deducted 1/3rd towards personal expenses of the deceased. This Court is of the opinion that the carry home salary of the deceased could not have been assessed after deducting his contribution towards GPF and GIS. Reliance in this regard can be placed on the judgment rendered in **Shyamwati Sharma and others Versus Karam Singh and others 2010 (12) SCC 378**, wherein the Hon'ble

Supreme Court held as under:-

“...The High Court has assessed the deduction as 30% and on the facts, we do not propose to disturb it. We however make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.”

8. Furthermore, in view of the fact that the deceased was 49-1/2 years of age, multiplier of 13 should have been applied and apart from that increase in income on account of future prospects at the rate of 30% and other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**. Therefore, compensation payable to the appellants are re-worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Ram Kishan
(ii)	Date of accident	10.6.2000
(iii)	Age of the deceased	49-1/2years
(iv)	Monthly income of the deceased	₹ 7599/-
(v)	30% of (iv) is to be added towards future prospects	(₹ 7599+₹2279)= ₹ 9878/- per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 9878-₹2469.5= ₹ 7408/- per month
(vii)	Compensation calculated after applying the multiplier of 13	(₹7408X12X13) = ₹ 11,55,726
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹12,25,726

9. As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 12,25,726/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the instant appeal till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

25.3.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No