

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

FAO-1610-2006(O&M)

Date of decision:-14.10.2019

Smt.Kamal Kaur and others

...Appellants

Versus

Devinder Kumar and others

...Respondents

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

Present: Ms.Amandeep Kaur, Advocate
for the appellants.

Mr.Sagar Aggarwal, Advocate
for respondent No.1.

Mr.Rajender Singh, Advocate for
Mr.G.D. Gupta, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that on account of death of Sh.Hardev Singh son of Sh.Mahender Singh, resident of village Thur, P.O. Daftriwal, Tehsil Samana, District Patiala in a motor vehicular accident, which took place on 19.10.2004 at about 9:30 a.m. in the area of road leading from Samana to Patran near Bazigarh Basti, Ghagga, statedly on account of rash and negligent driving of canter bearing registration No.PB-11T-2445 (hereinafter referred to as the offending vehicle) by respondent No.1 – Devinder Kumar, legal representatives of such deceased, namely, his wife – Smt.Kamal Kaur, aged about 45 years, son –

Beant Singh, aged about 24 years, minor daughter – Ms.Harpreet Kaur had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Devinder Kumar – driver, Smt.Kishwer Begum – owner and National Insurance Company Ltd., Patiala – insurer of that canter, claiming compensation to the tune of Rs.10 lacs along with interest and cost.

On notice, all the three respondents had appeared and contested the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as the Tribunal) while allowing the petition partly vide award dated 5.12.2005, awarded compensation of Rs.1,92,000/- along with interest @ 6% per annum from the date of filing of the petition till payment, payable by respondents No.1 to 3 jointly and severally. Whereas the claim of the claimant No.2 – Beant Singh was rejected for the reason that he had attained majority. The apportionment of such amount and other details with regard to disbursement of the compensation amount are given in the award.

Feeling that the compensation awarded to them was on lower side, the claimants No.1 and 3 have filed the present appeal seeking enhancement of compensation, notice of which was given to respondents and respondents No.1 and 3 appeared through counsel.

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

The Tribunal on appreciation of the evidence adduced before

it has arrived at the conclusion that respondent No.1 – Devinder Kumar was responsible for the accident by his rash and negligent driving of the offending canter and deceased Hardev Singh has lost his life in the said accident, it being so, driver, owner and insurance company of the offending vehicle are obviously liable to pay compensation to the claimants, who are legal heirs and legal representatives of the deceased. The Tribunal while assessing the compensation payable has taken the age of deceased to be 50 years. As per the case of the claimants, the deceased was having six acres of agricultural land and he used to keep six buffaloes selling 25 liters milk to Talwandi Nabha dairy everyday, in that manner, he used to earn Rs.10,000/- per month from those avocations. The Tribunal, however, considered him as a daily wager, taking his monthly income to be Rs.2,400/-. The claimants are aggrieved by the said fact. According to them, the monthly income taken is on the lower side. Keeping in view the version of the claimants and evidence available on the record, I find that monthly income of deceased assessed as Rs.2,400/- is somewhat on the lower side and it would be proper and appropriate to take it as Rs.3,000/- per month.

The Tribunal has not awarded any amount towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, keeping in view the age of deceased, 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.3,000} + 750 = \text{Rs.3,750/-}$.

Considering the number of dependents, $\frac{1}{3}^{\text{rd}}$ of the amount

was rightly deducted by the Tribunal towards personal and living expenses. Doing that the dependency of claimant comes out to Rs.2,500/- per month, annual dependency comes out to Rs.2,500 x 12 = Rs.30,000/-.

The multiplier of 13 was rightly used by the Tribunal. Thus the compensation payable comes out to Rs. 30,000 x 13 = 3,90,000/-.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-.

Thus, the total compensation comes out to Rs. 3,90,000 + 70,000 = 4,60,000/-.

The Tribunal has awarded compensation of Rs.1,92,000/-.

In this way, the enhanced amount comes out to Rs.2,68,000/- (4,60,000 - 1,92,000). The appellants/claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.2,68,000/-. The claimants would share the amount of compensation equally. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

14.10.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No