

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

FAO No. 4396 of 2011(O&M)

Date of decision: 2.9.2019

Ram Kumar and anotherAppellants

VERSUS

Amarjeet Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Munish K. Garg, Advocate for the appellants.

Mr. Pardeep Kumar, Advocate for the insurance company.

REKHA MITTAL, J.(Oral)

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Kaithal (in short 'the Tribunal') on account of death of Surender Singh in a motor vehicular accident that took place on 18.04.2009, though the deceased succumbed to the injuries on 19.04.2009.

The Tribunal awarded Rs.8,10,000/- detailed hereunder:-

Monthly income of the deceased	Rs.15000/-
Deduction for personal expenses	50%
Multiplier	9
Loss of dependency	Rs.8,10,000/-

However, claimants have been paid Rs.6,07,500/- as 25% negligence has been attributed to driver of motorcycle on which the deceased was traveling as a pillion rider.

Counsel for the appellants would argue that since no negligence for the occurrence has been attributed to the deceased who was

traveling as pillion rider on the motorcycle driven by Sanjay, claimants are entitle to entire compensation assessed by the Tribunal and additional compensation, if any, assessed by this Court.

To press their claim for enhancement of compensation, counsel would argue that claimants are entitle to addition in income for future prospects and appropriate multiplier on the basis of age of deceased. Adequate compensation may be allowed under conventional heads. It is further argued that income of the deceased assessed by the Tribunal is on lower side and needs enhancement in the light of testimony of Manoj Kumar, Section Executive (HR) from Sona-Kayo Steering System Ltd., Gurgaon PW-3. It is further argued that claimants are also entitle to reimbursement of medical expenses on the basis of bills Ex.P12 and P13.

Counsel representing the insurance company, on the contrary, has supported the award. It is argued that since 25% negligence has been attributed to driver of motorcycle on which the deceased was traveling as a pillion rider, insurance company should be given the liberty to recover compensation to the extent of 25% from owner or/and insurer, if any, of the motorcycle driven by Sanjay.

The Tribunal while deciding issue No.1 (Whether Surender Singh son of the claimants had died on account of the injuries sustained by him in a road side vehicular accident which had occurred on 18.04.2009 in the area of Police Station, Palam Nagar (Gurgaon) on account of rash and negligent driving of the Bus No.HR-55C-0603 by respondent No.1? OPP) had concluded to the following effect:-

“...Relying upon this evidence I hold that Surender Singh had died on account of the injuries sustained by him in a road side

vehicular accident which had occurred on account of the rash and negligent driving of the above motor-cycle and the above bus by Sanjay (PW2) and this respondent No.1. Both of them contributed towards causing of this accident in the ratio 25:75. This issue stands disposed of accordingly.”

Perusal of the aforesaid extract makes it evident that no negligence for the occurrence has been attributed to deceased Surender who was traveling on the pillion seat of motorcycle driven by Sanjay. Even if the present is taken as case of composite negligence of both the vehicles, claimants are at liberty in law to claim compensation from either of the joint tortfeasors. In the case at hand, claimants have asserted their claim for compensation against driver, owner and insurer of offending vehicle No.HR-55-C0603. That being so, the Tribunal has grossly erred by holding that claimants are entitle to compensation to the extent of 75% only against driver, owner and insurer of aforesaid vehicle No.HR-55-C-0603. This apart, as driver, owner and insurer, if any, of the motorcycle driven by Sanjay have not been impleaded as a party in the claim application, findings of the Tribunal attributing 25% negligence to Sanjay, driver of the motorcycle otherwise cannot be allowed to sustain and are accordingly set aside. In this view of the matter, driver, owner and insurer of vehicle No.HR-55-C-0603 shall be jointly and severally liable to pay entire compensation assessed by the Tribunal and additional compensation, if any, determined by this Court.

This brings the Court to quantum of compensation assessed in the case. Ram Kumar, father of the deceased appeared in the witness box and deposed that deceased was a diploma holder in Mechanical

Engineering and working in M/s Sona-Kayo Steering System Ltd., Gurgaon at salary of Rs.22000/- per month. The matriculation certificate of the deceased is Ex.P11. The Tribunal has noticed that another certificate was placed on file, though not exhibited, that reflects that Surender Singh was holding diploma in Mechanical Engineering which he received in February 2006 after passing his 10+2 examination in 2002. The claimants also examined Manoj Kumar, a representative of the aforesaid company to prove employment and salary of the deceased. The Tribunal has noticed that as is evident from the appointment letter Ex.P3, deceased was appointed as Junior Engineer w.e.f. 01.11.2007. His salary certificate Ex.P4, salary-sheet Ex.P5 and letter Ex.P6 show that he was confirmed employee in the aforesaid company w.e.f. 01.05.2008 and drawing consolidated salary of Rs.17000/- per month. On perusal of documents on record in respect of emoluments of the deceased paid by Sona-Kayo Steering System Ltd., it comes out that deceased was paid conveyance allowance, uniform allowance, education allowance, petrol allowance (if not using the company transport) and telephone expenses reimbursement. Even if uniform allowance, education allowance, petrol allowance and telephone expenses reimbursement are excluded, monthly income for computing loss of dependency would be Rs.16,300/- and annual income is Rs.1,95,600/-. Annual income after deducting income tax comes to Rs.1,92,040/-.

Deduction for personal expenses allowed by the Tribunal is correct and affirmed. Claimants shall be entitled to addition in income for future prospects at the rate of 50%. However, as deceased was less than 25 years of age, admissible multiplier is 18. In this context, reference can be

made to judgments of Hon’ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77; Munna Lal Jain and others versus Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447** and **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.** In this manner, loss of dependency comes to Rs.25,92,540/- [Rs.34,56,720/- (Rs.192040 x 18) + Rs.17,28,360/- (50% addition towards future prospects) – Rs.25,92,540/- (50% deduction towards personal expenses)].

Claimants shall be entitle to reimbursement of medical expenses to the tune of Rs.1,30,000/- on the basis of bills Ex.P12 and P13.

Under conventional heads, the claimants shall be entitled to Rs.30,000/- detailed hereunder:-

Funeral expenses	Rs.15,000/-
Loss to estate	Rs.15,000/-

In view of the above, total compensation is Rs.27,52,540/- and the additional amount is Rs.19,42,540/- (Rs.27,52,540/- - Rs.8,10,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to mother of the deceased, to be invested in fixed deposit for a period of three years.

The appeal is partly allowed in the aforesaid terms.

SEPTEMBER 2, 2019	(REKHA MITTAL)
‘D. Gulati’	JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no