

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

FAO-1489-2013(O&M)

Date of decision:-30.8.2019

Ramesh and another

...Appellants

Versus

Sukhbir Singh and others

...Respondents

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

Present: Mr.Naveen Batra, Advocate
for the appellants.

Mr.R.K.Bashamboo, Advocate
for respondent No.3.

H.S. MADAAN, J.

On account of death of Baby Suman aged about 5 years due to the injuries suffered in a road side accident, which took place on 3.12.2009 at about 6:30 p.m. in the area of Dashmesh Academy Road, Anandpur Sahib, allegedly on account of rash and negligent driving of Maruti Alto car bearing registration No.PB-16-C-5500 (hereinafter referred to as the offending car) by respondent No.1 – Sukhbir Singh, the parents of deceased Suman i.e. her father - Ramesh Kumar aged about 34 years and mother - Smt.Maya aged about 30 years had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Sukhbir Singh – driver, Manjit Singh – owner and Oriental Insurance Co. Ltd. Ropar – insurer of the offending car, claiming compensation to

the tune of Rs.20 lacs.

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.

After contest, the Motor Accidents Claims Tribunal, Rupnagar (hereinafter referred to as the Tribunal) while allowing the petition vide award dated 1.5.2012, awarded compensation of Rs.50,000/- to the claimants in equal shares, payable by respondents No.1 to 3 jointly and severally. It was directed that the payment of compensation be made within three months from the date of award, failing which, the claimants would be entitled to interest at the rate of 9% per annum from the date of filing of claim petition till realization.

Feeling that the compensation awarded to them was on lower side, the claimants have filed the present appeal seeking enhancement of compensation, notice of which was given to respondents and respondent No.3 (insurance company) has put in appearance through counsel.

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

It may be mentioned here that Suman had suffered injuries in the mishap, which took place on 3.12.2009. The injuries received by her were there on her left leg and other parts of the body. She was taken to Civil Hospital, Anandpur Sahib from where she was referred to PGI, Chandigarh and she remained admitted there till her discharge on 27.12.2009 and she had died on 25.12.2010. The Tribunal has observed that in absence of postmortem examination on the dead body of Suman

and omission on the part of claimants to lead evidence that Suman had died because of the injuries suffered in the accident, which was after about one year of the accident, the claimants were found entitled to Rs.26,000/ as expenses incurred on the treatment of Suman on account of the injuries received in the accident and Rs.24,000/- being miscellaneous expenses spent by them while Suman remained admitted in the hospital for treatment of injuries received in the accident, total amount being Rs.50,000/-.

However, I find that the approach of the Tribunal was not correct in arriving at the conclusion that there was nothing to show that Suman had died as a result of suffering injuries in the motor vehicular accident. Since she was an infant, the postmortem examination on her dead body might have been avoided. However, a young girl, who had received injuries in a motor vehicular accident and had remained admitted in the hospital had lost her life. In natural course, she would have lived a long life unless the same was disrupted. The relevant evidence in that regard pointing out towards death of the deceased on account of injuries suffered in the mishap seems to have skipped attention of the Tribunal. The cross-examination of PW1 Ramesh, father of the deceased is very relevant. He stated that he is a labourer and used to earn Rs.200/- daily. He further stated that PGI, Chandigarh had referred Suman to Ropar Civil Hospital for further treatment, but the doctor there refused to give her treatment. He further stated that he took her daughter to PGI for treatment, though he was unable to give the name of the doctor there. PW2 Dr.M.K. Tyagi in his statement had stated that Suman was having a severe injury

on her head and CT scan of her brain was carried out, which revealed right frontal contusion i.e. diffused brain oldema (swelling); that she had been transferred to ICU and then put on ventilator; that she was discharged on 27.12.2009 and at that time, she could open her eye but was not obeying, when pinched she could turn her hand and feet but could not respond. He proved her discharge slip Ex.P5 stating that she had been referred to hospital at Ropar. He had categorically stated that there were more chances of her death on account of injuries suffered and when she was discharged, she had moderate head injury and she was not in her senses.

That was a crucial evidence to provide the link between the injuries and her death. The medical documents available on record also point out towards that. Therefore, the Tribunal returning a finding that it was not so proved was a wrong conclusion drawn and rather it is to be taken that her death was on account of the injuries suffered by her in the road side accident.

Learned counsel for the appellants has referred to authority **Smt.Sushma and Anr. Versus State of Haryana and Ors., 2014(2) RCR(Civil) 452** by a Co-ordinate Bench of this Court where while dealing with case for grant of compensation on account of death of a child aged about three years in a road side accident, the compensation of Rs.5 lakhs had been granted. He has further referred to judgment **Kishan Gopal and another Versus Lala and others, 2013(4) RCR(Civil)276** by the Apex Court wherein while dealing with death of a child aged about 10 years, compensation of Rs.5 lakhs had been given, making reference to the

entries in second schedule under Section 163-A of the Motor Vehicles Act contending that criteria for award of compensation was taking notional income of children and non-earning persons provided therein; the notional income of the child is taken as Rs.30,000/- using multiplier 15, compensation was assessed as Rs.4.50 lakhs and Rs.50,000/- were awarded under conventional heads i.e. loss of love and affection, funeral expenses and last rites, making a total compensation of Rs.5 lakhs.

I find that such judgments are applicable to the present case and compensation in this case also deserves to be enhanced to Rs.5 lakhs and it is ordered accordingly.

The Tribunal has awarded a compensation of Rs.50,000/-.

In this way, the enhanced amount comes out to Rs.4,50,000/- (5,00,000 - 50,000). The 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.4,50,000/-. The enhanced amount be apportioned among both the claimants in equal shares.

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

30.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No