

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 10463 of 2014 (O&M)
Date of Decision: 22.08.2019

Maninder Kaur and others

..... Appellants

Versus

Lakhwinder Singh and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajbir Singh, Advocate,
for the appellants.

Mr. Vikram Bali, Advocate,
for respondent No.1.

Mr. Aseem Aggarwal, Advocate,
for respondent No.5.

None for other respondents.

JAISHREE THAKUR, J.

1. This appeal has been filed by the claimants on account of death of Narinder Singh in a motor vehicular accident for enhancement of compensation. The Tribunal had awarded compensation of ₹12, 83,000/-.

2. In brief, the facts are that the claimant-appellants herein, had preferred a claim petition under section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') against the respondents alleging that on 18.02.2009, deceased Narinder Singh and his brother

Rajinder Singh, Lakhwinder Singh son of Inderjit Singh, Avtar Singh son of Sukhdev Singh resident of Kishan Pura Basti had gone to Phagwara for work and after completing the work on asking of Lakhwinder Singh, all went to village Nauhra (Banga) to meet his sister and after meeting the sister of Lakhwinder Singh, all were returning to Sangrur. Deceased Narinder Singh was with Lakhwinder Singh in his car bearing registration No. PB-19A-9671, whereas Rajinder Singh along with Avtar Singh were travelling in car bearing registration No. PB-13T-9898. The car bearing registration No. PB-19A-9671 was being driven by Lakhwinder Singh and was going ahead from their car bearing No. PB-13T-9898. At about 8.30 p.m. when all of them were crossing Lal Dhaba situated at G.T. road, Mohallo, the lights of on coming vehicle reflected in the eyes of Lakhwinder Singh and as a result of which the car bearing registration No. PB-19A-9671, which was being driven by respondent No.1 rashly and negligently struck into the back side of Tempo bearing No. PB-07B-3220, which was wrongly parked on the road without any parking lights or indicators on and the back dhalla of the said tempo was also opened and was hanging with the supports of side by chains of tempo. Lakhwinder Singh could not notice the said tempo and struck in the back side of the said tempo. Due to the said collision, front side of car was totally damaged and Lakhwinder Singh and Narinder Singh sustained multiple grievous injuries on their person and Narinder Singh died at the spot. Accident was

witnessed by Rajinder Singh and Avtar Singh, who were following the car. On the basis of statement of Rajinder Singh FIR No. 26 dated 19.02.2009 under Sections 279, 283, 304-A, 337 & 338 IPC was registered at Police Station, City Nawanshahar.

3. On notice respondents No.1 & 2 did not turn up and they were proceeded against ex parte, whereas respondents No. 3 & 5 put in appearance through counsel and filed separate written statements.

4. Respondent No.3 filed separate written statement by raising preliminary objections of maintainability, suppressing of material facts, petition being filed in connivance with respondent No.1 & 2 and that the petition is not verified as per law. On merits, it was denied that deceased was skilled welding works mechanic and running the business under the name and style of M/s Vishavkarma welding works as alleged. Accident had been denied. Age and income of the deceased was also denied. It was also denied that the deceased was travelling in car No. PB-19A-9671. It was also denied that deceased had employed three workers or that he was income tax assessee.

5. Respondent No.4 filed his separate written statement by denying income of the deceased. Accident has also been denied. Denying all other averments, a prayer for dismissal of the claim petition was made. After filing written statement, respondent No.4 did not appear before the Tribunal, consequently, he was proceeded against ex parte.

6. Respondent No.5 filed written statement by raising objections that respondents No. 1 & 4 were not holding valid driving licences. The petition had been filed in connivance and collusion with respondents No. 1, 2 and 4. Car No. PB-19A-9671 was not having valid and effective registration and tempo bearing No. PB-07B-3220 was not having valid route permit, fitness certificate to ply on road. On merits, accident, income and avocation of the deceased was denied. It was also denied that the deceased was travelling with Lakhwinder Singh in car No. PB-19A-9671. All other averments were denied and a prayer for dismissal of the petition was made.

7. From the pleadings of the parties, the Tribunal framed the following issues :-

- “1. Whether Narinder Singh died in a motor vehicle accident which took place on 18.2.09 due to rash and negligent driving of car bearing no. PB-19A-9671 being driven by Lakhwinder Singh and tempo bearing No. PB-07B-3220 being driven by Rana Singh, if so its effect?OPA*
- 2. Whether the claimants are entitled to compensation, if so to what extent and from which of the respondent? OPA*
- 3. Whether the claimants have no locus standi to file the present claim petition? OPR*
- 4. Whether the claim petition is not maintainable in the present form? OPR*
- 5. Whether claimants have not come to the court with clean hands and have suppressed the facts?OPR*

6. *Whether Lakhwinder Singh, driver of alleged car and Rana Singh, driver of alleged tempo were not having valid and effective driving licences, if so its effect?OPR*

7. *Relief.”*

8. The parties were given opportunities to adduce evidence in support of their respective pleadings and on the basis of the findings, the Tribunal, awarded a sum of ₹ 12,83,000/- with interest @ 12% per annum from 17.03.2009 till realization on account of death of Narinder Singh. Feeling aggrieved, the instant appeal for enhancement of compensation has been filed.

9. Learned counsel for appellants submits that admittedly the deceased was 33 years of age, however, as per the post mortem report he was 35 years of age and was earning ₹8,000/- per month, as assessed by the Tribunal. It is submitted that increase on account of future prospects has not been afforded in view of the judgment of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009***. It is further submitted that an amount of ₹ 1,00,000/- each for love and affection to widow and mother and ₹ 1,00,000/- for love and affection to minor children should also be awarded.

10. On the other hand, learned counsel respondent No.5— Insurance Company does not dispute the age of the deceased— Narinder Singh i.e. 31-35 years at the time of accident; nor disputes the income of the deceased i.e. ₹8,000/- per month as assessed by the

learned Tribunal, but argues that adequate compensation has been awarded by the Tribunal.

11. I have heard learned counsel for the parties and find that the Tribunal, while awarding compensation, has not awarded the compensation as per the tabulation done by 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 claimants are re-worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Narinder Singh
(ii)	Date of accident	18.02.2009
(iii)	Age of the deceased	35 years
(iv)	Monthly income of the deceased	₹ 8000/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 8000+₹ 3200)= ₹ 11,200 per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 11,200 - ₹ 2800) = ₹ 8,400/- per month
(vii)	Compensation calculated after applying the multiplier of 16	(₹8400 X 12 X 16) = ₹ 16,12,800/-
(viii)	Conventional heads i.e. loss of estate, loss of consortium and funeral expenses	₹ 70,000/-
<i>Total</i>		₹ 16,82,800/-

12. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 12,83,000/- to ₹ 16,82,800/-.

13. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellants with interest @ 7.5% per annum from the date of filing of the petition till

realization in terms of the judgment rendered by the Supreme Court in *Dara Singh @ Dhara Banjara vs. Shyam Singh Varma & Ors., Civil Appeal No. 4528 of 2019 [SLP(C) No. 5720 of 2019]* decided on 01.05.2019.

14. The award is modified and the appeal is allowed to the above extent.

22.08.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.