

FAO-1859-2015(O&M) &
FAO-2589-2015(O&M)

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

(1) FAO-1859-2015(O&M)

Lalit Mohan Sharma and another

...Appellants

Versus

Rajesh Kumar and others

...Respondents

(2) FAO-2589-2015(O&M)

Kamani Sharma and others

...Appellants

Versus

Rajesh Kumar and others

...Respondents

Date of Decision:-9.9.2019

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

Present: Mr.Bahadur Singh, Advocate
for the appellants in both appeals.

Ms.Madhu Sharma, Advocate
for respondent No.3 – insurance company in both the appeals.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-1859-
2015 filed on behalf of appellants – Lalit Mohan Sharma and another and

FAO-2589-2015 filed on behalf of appellants – Kamani Sharma and others, which have arisen out of the same accident.

Briefly stated, facts of the case as per the version of the claimants are that on 23.9.2011, Sh.Bharat Bhushan Sharma was driving motorcycle bearing registration NO.HR02J-0376 make Splendor on which Sh.Shiv Parshad Sharma was pillion riding; they were going from Naharpur to District Courts, Yamuna Nagar; the motorcycle was being driven on left side of the road at a moderate speed by Bharat Bhushan Sharma; Dimple Sharma, brother of Bharat Bhushan Sharma was following the said motorcycle on his separate motorcycle; at about 10:30 a.m. when the motorcycle had covered some distance towards Jagadhri from ITI Chowk on Yamuna Nagar to Jagadhri road, in the meanwhile a truck bearing registration No.HR39A/8748 (hereinafter referred to as the offending vehicle) being driven by Rajesh Kumar – respondent No.1 in a rash and negligent manner came from behind at a very high speed; the offending vehicle overtook motorcycle of Dimple Sharma and then by taking the truck on extreme left side of the road on kachha portion hit against the motorcycle being driven by Bharat Bhushan Sharma on which Shiv Parshad Sharma was pillion riding, from behind, resultantly both the riders along with the motorcycle fell down and they were dragged along with the motorcycle by the offending vehicle up to a long distance; both the riders suffered injuries to which they succumbed at the spot; respondent No.1 – Rajesh Kumar stopped the offending vehicle after covering a considerable distance. As the case of the claimants goes, Shiv Parshad Sharma was aged about 62 years; he had retired from Income Tax

Department and was getting pension of Rs.5,776/- per month. After retirement, he was running tea stall in the rented premises let out by Parshotam Parshad Proprietor/partner of Chopra Prop. and Advisor and he was earning Rs.10,000/- monthly, in that way, the total income of deceased Shiv Parshad Sharma was Rs.15,776/- per month. The wife of deceased Shiv Parshad Sharma had pre deceased him. Shiv Parshad Sharma had left behind his two unmarried sons i.e. Lalit Mohan Sharma and Murlidhar Sharma, widowed daughter Kamani Sharma and a married daughter Monika Sharma as well as two other sons Mukesh Sharma and Devinder Sharma. However, he had disowned and disinherited them on account of the fact that they used to harass and beat up the deceased.

Claimants Lalit Mohan Sharma, Murlidhar Sharma, Kamani Sharma and Monika Sharma had brought a claim petition bearing No.46 of 2012 against respondents i.e. Rajesh Kumar – driver, Vipula Khurana – owner and Oriental Insurance Company Ltd., Yamuna Nagar – insurer of the offending vehicle, claiming compensation. They had also impleaded Mukesh Sharma and Devinder Sharma as proforma respondents.

With regard to other deceased Bharat Bhushan Sharma, his legal representatives, namely, his wife Kamani Sharma, minor daughter Divya Sharma, minor son Utkarsh Sharma, mother Ram Murti and father Raj Kumar Sharma had brought a claim petition bearing No.73/2012 against the above-said respondents. According to their version Bharat Bhushan Sharma was aged about 31 years; he was an Advocate by profession running his practice at District Courts Yamuna Nagar at Jagadhri as well as at Ambala and Saharanpur; he was a prominent and

competent lawyer; he got enrolled as an Advocate vide enrollment No.P/744/2003 with Punjab and Haryana Bar Council; he was earning more than Rs.15,000/- per month and his income was increasing day by day.

Since both the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri.

On being put to notice, all the respondents were appeared in both the cases and contested the claim petitions.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petitions were allowed partly by the Tribunal vide award dated 13.10.2014. In Claim Petition No.46 of 2012, a compensation of Rs.3,56,000/- was awarded to be shared equally by claimants No.1 and 2 and in Claim Petition No.73/2012 compensation of Rs.14,60,000/- was awarded to the claimants along with interest at the rate of 7.5% per annum from the date of filing of the petitions till final realization payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

Claimants/petitioners Lalit Mohan Sharma and Murlidhar Sharma in Claim Petition No.46 of 2012 and claimants/petitioners Kamani Sharma and others in Claim Petition No.73 of 2012 were dissatisfied with the compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

Notice of the appeals was issued to the respondent No.3 – insurance company, who put in appearance through counsel.

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

As far as compensation awarded by the Tribunal on account of death of Shiv Parshad Sharma, who was aged about 62 years as per the case of the claimants. However considering the age of deceased mentioned in his postmortem report Ex.P22, it was taken to be 65 years, since the claimants had not placed on file any birth certificate or school certificate of the deceased to show his exact age. Regarding monthly income of the deceased, the Tribunal on analysis of the evidence adduced by the claimants took his monthly income as a skilled labourer to be Rs.6,000/- per month. The version of the claimants that he was running a tea stall and earning Rs.10,000/- per month was however rejected by the Tribunal giving valid reasoning. Therefore, I do not tend to disagree with the same. Since the age of deceased Shiv Parshad Sharma has been found to be about 65 years, no addition was rightly made towards future prospects. Considering the public notice got published by the deceased in Newspaper Dainik Bhaskar dated 10.8.2010 Ex.P28 disowning and disinheriting respondents No.4 and 5 and their wives depriving them from his movable and immovable properties, they were not granted any share in the compensation and claimants No.1 and 2 being unmarried sons were said to be dependent upon him. 1/3rd amount was deducted towards personal expenses finding dependency of deceased to be Rs.4,000/- per month, annual Rs.48,000/-. Then multiplier of 7 was applied and total

compensation arrived at Rs.3,36,000/-.

The claimants were granted compensation of Rs.10,000/- on account of funeral expenses and Rs.10,000/- for loss of love and affection.

The total compensation comes out to Rs.3,56,000/-. However, in terms of ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs.3,36,000+ 30,000 = 3,66,000/-.

The Tribunal has awarded compensation of Rs.3,56,000/-.

In this way, the enhanced amount comes out to Rs.10,000/- (3,66,000 - 3,56,000). 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.10,000 /-.

As far as FAO-2589-2015 filed on behalf of claimants is concerned, the Tribunal had taken the age of the deceased Bharat Bhushan Sharma to be 32 years considering his date of birth as mentioned in his identity card issued by District Bar Council, Jagadhri to be 5.1.1979. He had got himself enrolled as an Advocate in the year 2003 and the accident had taken place on 23.9.2011, that means he had spending of about eight years at the bar. The Tribunal had taken his monthly income to be Rs.10,000/- without adding any amount towards future prospects. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)**, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the

monthly income of the deceased is taken as Rs.10,000 + 4000 = Rs.14,000/-.

In terms of the ratio of authority *Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77* where the number of dependent family members are four to six, deduction towards self-expenses is to be taken as 1/4th. In this case the Tribunal has rightly deducted 1/4th of the amount towards self expenses. Doing that the dependency of claimants comes out to Rs.10,500/- per month, annual dependency comes out to Rs.10,500 x 12 = Rs.1,26,000/-.

The Tribunal has used multiplier of 16, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.1,26,000 x 16 = 20,16,000/-.

The Tribunal has further awarded a sum of Rs.10,000/- towards transportation and expenses on last rites and Rs.10,000/- towards loss of love and affection. However, 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/-. The total compensation comes out to Rs.20,16,000 + 70,000 = 20,86,000/-.

The Tribunal has awarded compensation of Rs.14,60,000/-.

In this way, the enhanced amount comes out to Rs.6,26,000/- (20,86,000 - 14,60,000). The claimants would be entitled to get interest

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@ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.6,26,000/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modifications, both the appeals are allowed partly.

9.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No