

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

**FAO No. 260 of 2015 (O&M)
Date of Decision: 28.08.2019**

Urmila and others

..... Appellants

Versus

Akhlesh Chaudhary and other

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. C.R. Olla, Advocate,
for the appellants.

None for respondents No.1 & 2.

Mr. Punit Jain, Advocate,
for respondent No.3.

JAISHREE THAKUR, J.

CM-788-CII-2015 & CM-789-CII-2015

The instant applications have been filed seeking condonation of delay of 491 days in filing of the appeal as well as 55 days in refiling.

For the reasons mentioned in the applications, the same are allowed.

Delay in filing and refiling the appeal is hereby

condoned. However, the appellants will not be entitled to seek interest on the compensation amount for such period the appeal had been filed beyond the period of limitation.

FAO No. 260 of 2015

1. This appeal has been filed by the claimants (the appellants herein), namely Urmila, being widow, Himanshi being daughter, Satbir and Santosh being parents and Priyanka being sister of Naveen (deceased) for enhancement of compensation awarded by the Tribunal on account of his death in a motor vehicular accident. The Tribunal awarded compensation of ₹10,83,000/-.

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 22.09.2011, Gaurav son of Rajpal and Naveen, since deceased were travelling from Badshahpur to Gurgaon on a motorcycle bearing registration No. HR-72-2088, being driven by Gaurav and Naveen was pillion rider. When they reached near Sohna Petrol Pump, a canter bearing registration No. HR-55-M-1448 (hereinafter referred to as 'the offending vehicle') being driven by respondent No.1-Akhlesh in a rash and negligent manner, without observing the traffic rules, came there and hit the motorcycle occupied by Gaurav and Naveen and fled away while leaving the offending vehicle at the spot. Due to the impact, both Gaurav and

Naveen fell down along with their motorcycle and sustained injuries on their persons. Naveen was taken to Govt. Hospital, Gurgaon where he was declared brought dead. It was further alleged that the accident took place due to the rash and negligent driving of offending vehicle by respondent No.1. An FIR No. 351 dated 22.09.2011 came to be registered under Sections 279, 304A IPC at Police Station, Sadar Gurgaon. On account of death of Naveen in a vehicular accident, the said claim petition was filed for claiming compensation.

3. On notice, respondents No.1 & 2 put in an appearance and filed their joint written statement admitting the factum of accident, however, it was asserted that accident took place due to the fault on the part of Gaurav, the driver of the motorcycle because he was driving his motorcycle rashly, negligently and caused accident while coming on the wrong side of the road. It was further alleged that a false case was registered against respondent No.1 in collusion with the local police.

4. Respondent No.3 in its written statement took various preliminary objections, one of them was that the driver of offending vehicle was not holding a valid and effective driving licence at the time of accident. On merits, factum of accident had been denied. Age, income and profession of the deceased have been denied and it had been pleaded that the answering respondent was not liable to pay any compensation.

5. No replication was filed. From the pleadings of the parties, the Tribunal, framed the following issues :-

1. *Whether the accident has been caused on 22.09.2011 at about 1.00 P.M. due to rash and negligent driving of respondent no.1, while driving offending vehicle bearing Reg. No.HR55M-1448 and caused death of Mr. Naveen, as alleged?OPP*
2. *If issue no.1 is proved, then what amount of compensation the petitioner is entitled to and from whom?OPP*
3. *Whether respondent no.1 holding a valid and effective driving licence at the time of accident?OPR*
4. *Whether the respondent has violated any terms and conditions of the insurance policy?OPR*
5. *Whether the insurer is liable to indemnify the insured?OPR*
6. *Whether the petition is not maintainable in the present form?OPR*
7. *Whether the petitioner has no locus standi and cause of action to file the present petition?OPR*
8. *Whether the petition is bad for mis-joinder and non-joinder of necessary parties?OPR*
9. *Relief."*

6. The parties led their respective evidence in support of their pleadings and on the basis of the findings, the Tribunal, awarded a sum of ₹ 10,83,000/- with interest @ 6% per annum from the date of filing of the claim petition till realization on account of death of Naveen. Feeling aggrieved, the instant appeal for enhancement of compensation has been filed.

7. Learned counsel for appellants submits that Naveen died at the age of 20 years and, thus, keeping in view the age of the deceased higher multiplier ought to have been applied while assessing the compensation. He further submits that the compensation awarded to the appellants towards loss of consortium and funeral expenses is inadequate and no compensation has been awarded on account of love and affection, transportation and loss of estate. He, thus, prayed for modification of the award by submitting that increase on account of future prospects should be allowed in terms of the judgment of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009.***

8. On the other hand, learned counsel respondent No.3—Insurance Company argues that just and adequate compensation has been awarded by the Tribunal.

9. I have heard learned counsel for the parties and find that the Tribunal has rightly taken the age of the deceased Naveen as 20 years and three months on the basis of the matriculation certificate Ex. P-2, wherein the date of birth of deceased was shown as 08.06.1991, consequently, the multiplier of 18, as awarded by the Tribunal, was just and proper. The Tribunal has rightly treated his income equal to the income of a daily wager since the claimants failed to produce and prove the employment of the deceased with any

firm. Further, since there were five dependents upon the deceased, the Tribunal has rightly made 1/4th deduction for his personal and living expenses. Hence, in terms of the judgment rendered by the Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009*, compensation payable to the claimants is re-worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Naveen
(ii)	Date of accident	22.09.2011
(iii)	Age of the deceased	20 years 3 months
(iv)	Monthly income of the deceased	₹ 5,000/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 5,000+₹ 2,000)= ₹ 7,000 per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 7,000 - ₹ 1,750) = ₹ 5,250/- per month
(vii)	Compensation calculated after applying the multiplier of 18	(₹5,250 X 12 X 18) = ₹ 11,34,000/-
(viii)	Conventional heads i.e. loss of consortium, love and affection, funeral expenses etc.	₹ 70,000/-
<i>Total</i>		₹ 12,04,000/-

10. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 10,83,000/- to ₹ 12,04,000/-.

11. 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, while deducting for the number of days of delay in filing the appeal.

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

28.08.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.