

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

FAO No. 6328 of 2015 (O&M)
Date of decision: April 10, 2019

Gurcharan Singh and another

...Appellants

Versus

Shalinder Kumar Malhotra and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. J.S. Cooner, Advocate,
for the appellants.

Mr. Paul S. Saini, Advocate,
for respondent No.3—Insurance Company.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 24.2.2015 passed by the Motor Accident Claims Tribunal, Amritsar, wherein the appellants herein have been allowed compensation of ₹2,50,000/- on account of death of their son Sukhdeep Singh.

In brief, the facts are that on 3.2.2014, deceased Sukhdeep Singh, aged about 3 years, along with his grand father Ravel Singh, was going from his house to Mallian on his bicycle. Gurcharan Singh, father of the deceased (claimant No.1) was following them on his separate bicycle and his wife Baljit Kaur (claimant No.2) was sitting on the carrier of the bicycle. When Sukhdeep Singh and Ravel reached near Dana Mandi, Jandiala Guru, they were hit by a truck bearing registration No. PB-30-G-1811 from the behind, being driven by respondent No. 2 in rash and

negligent manner, as a result of which both of them fell down and suffered multiple and grievous injuries and ultimately succumbed to the injuries on the spot. It was alleged that the accident took place due to the rash and negligent driving of respondent No.2 and consequently FIR 29 dated 3.2.2014, under Sections 304-A, 279, 427 IPC came to be lodged with the Police Station Jandiala Guru, Amritsar. With these averments, claim petition was filed by the appellants. It was submitted that the deceased was hale and hearty at the time of accident and that the claimants suffered mental agony on account of death of their son and were deprived of his love and affection.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable etc. Issues were framed and thereafter evidence was led by the parties. In order to substantiate the claim, appellant No.1 himself appeared as PW1 and tendered into evidence his affidavit Ex. PW1/A. On the other hand, respondent No.2 appeared as RW1 and tendered into evidence his affidavit Ex. RW1/A. Learned counsel for respondent No.3 tendered into evidence a copy of the insurance policy Ex. R1 and thereafter closed the evidence.

After scrutiny of the evidence brought on record, the Tribunal held that the accident was the result of rash and negligent driving of respondent No. 2 and on assessment of the facts and evidence before it allowed compensation of ₹2,50,000/- which has been now challenged in the instant appeal.

Learned counsel for the appellants submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the

compensation amount awarded to the appellants deserves to be enhanced. It is submitted that the Tribunal has not awarded any compensation for the loss of love and affection to the parents/appellants.

On the other hand, learned counsel appearing on behalf of respondent No.3—Insurance company submits that adequate amount of compensation has been awarded by the Tribunal and no interference is called for in the instant appeal.

I have heard learned counsel for the parties and perused the impugned award.

The Tribunal noticed that the child was 3 years old at the time of occurrence. Therefore, taking into consideration the income of a non-earning person only notional income is to be considered for assessing the amount of compensation and the same was assessed as ₹15,000/- per annum and by applying multiplier of 15, awarded compensation of ₹2,25,000/-. Apart from that ₹25,000/- was awarded towards funeral expenses. Learned counsel for the appellants relies on **Kishan Gopal Versus Lala 2013 (4) RCR (Civil) 276** to contend that notional income of ₹30,000/- ought to have been taken of a non-earning person.

In **Kishan Gopal's case (supra)**, the deceased was 10 years of age and the parents had claimed that he used to earn ₹2,000/- per month, whereas in the instant appeal the deceased was just about 3 years of age. Therefore, the ratio of the aforesaid case would not be applicable to the facts of the present case. However, the parents deserves to be awarded compensation under loss of consortium on the death of the minor child, which is assessed at ₹50,000/-. Thus, the appellants would be entitled to the

total compensation of ₹3,00,000/-.

As a sequel of my discussion above, the appeal is allowed to the above extent. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 3,00,000/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the instant appeal till the date of payment.

April 10, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No