

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 6549 of 2016 (O&M)

Date of Decision: 01.04.2019

Kamlesh Rani

..... Appellant

VERSUS

Dilshad Mohammad alias Dilshad Khan and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Arvind Kashyap, Advocate,
for the appellant.

Mr. Gopal Mittal, Advocate
for respondent No.2.

JAISHREE THAKUR, J.

1. The instant appeal has been filed for enhancement of compensation by Kamlesh Rani and Rajesh Tewari being parents of deceased Naveen Tewari aged 13 years in a motor vehicular accident, which took place on 29.03.2014.

2. In brief facts of the case are that on 29.3.2014 at about 2.45 p.m. Paras Ram father of claimant No.1 was coming from village Bhadal Thuha after meeting his brother on scooter No.PB-48A8805 and at that time, claimant No.1 along with his son Naveen Tewari were coming to Amloh on his motorcycle No.PB-23N-6035 ahead of his father Paras Ram and when they reached near Punjab Tent House, Amloh, then the offending truck No.HR-

37B-9181 came from opposite side being driven in a rash and negligent manner by respondent No.1, struck into the motorcycle of claimant Rajesh Tewari and due to the said accident, his motorcycle got entangled under the tyre of offending truck and head of Naveen Tewari minor struck with the offending truck and he died at the spot. It was further alleged that the post mortem examination on the dead body of minor Naveen Tewari had taken place at Civil Hospital, Amloh. FIR No.29 dated 29.3.2014 under Sections 279/337/304A/427 IPC was lodged against the driver of offending truck at Police Station Amloh on the statement of Paras Ram. It was further averred that deceased was 13 years of age and was studying in Class V in St. Xaviour's School, Bhadal Thuha, Amloh and due to untimely death of minor Naveen Tewari, the life of the claimants has been ruined. It is contended 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 deprived from his love and affection. By way of present claim petition, the claimants claimed compensation from the respondents.

3. On notice, respondent No.1 driver-cum-owner of offending vehicle appeared through counsel and contested the claim petition by filing written statement taking preliminary objections regarding maintainability of claim petition; concealment of material facts; time barred etc. On merits, respondent No.1 denied all the averments of the claim petition. It was submitted that no such accident as alleged had taken place and the offending vehicle has been falsely involved in this case and false FIR has been registered and the claimants are not entitled to any compensation. While denying all the averments of claim petition, respondent No.1 prayed for dismissal of the same.

4. Respondent No.2 Insurance Company of offending vehicle filed

its written statement by taking objections inter-alia concealment of material facts; locus standi and cause of action of claimants to file the claim petition; driver of offending vehicle was not holding a valid and effective driving licence and offending vehicle did not have a valid registration certificate, fitness certificate and route permit on the alleged date of accident etc. On merits, the fact regarding manner of accident and age of deceased as alleged in claim petition were denied. It was submitted that no such accident as alleged had taken place due to rash and negligent driving of respondent No.1 and the offending vehicle has been involved in the false case. While denying all other averments of the claim petition, respondent No.2 also prayed for dismissal of the claim petition.

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

- “1. *Whether on 29.3.2014 at about 2.45 p.m. in the area of opposite Punjab Tent House, Nabha road, Amloh, Tehsil Amloh, Naveen Tiwari son of Rajesh Kumar died as a result of rash and negligent driving of Truck No.HR-37B-9181 by respondent No.1?OPP*
2. *Whether the claimants are entitled to compensation, as prayed for, if so, from which of the respondents? OPP.*
3. *Whether respondent No.1 was not holding a valid and effective driving license, registration certificate, fitness certificate and valid route permit at the time of accident, if so, its effect? OPR2*
4. *Whether the claimants have no locus standi and cause of action to file the present petition? OPR*
5. *Whether the claim petition is not maintainable in the present form? OPR*
6. *Relief.”*

6. 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 ₹ 4, 00,000/- as compensation while awarding ₹ 25,000/- towards funeral expenses, which was to be paid jointly and severally along with interest @ 7% per annum from the date of filing of the claim petition till realization.

7. Learned counsel for the appellants submits that the amount of compensation that has been awarded is on the lower side.

8. On the other hand, learned counsel appearing on behalf of the Insurance Company submits that more than adequate compensation has been allowed while referring to a judgment of a Co-ordinate Bench in **FAO No.530 of 2015** titled **Palo vs. Rajesh Sahni and another**, decided on 22.02.2018 wherein compensation had been assessed for the death of a nine year child at ₹ 2,25,000/- and another sum of ₹ 15,000/- has been awarded for expenses on funeral /last rites.

9. I have heard learned counsel for the parties and have also gone through the case law as relied upon.

10. In the case of **Lata Wadhwa vs. State of Bihar and others, 2001 (8) SCC 197**, the Hon'ble Apex Court had observed that income of a tender child could not be assessed based on any mathematical computation. In the case of a death of a minor in the age group of 11-15 years their contribution was taken to be ₹ 24,000/- per annum and with a multiplier of 15, compensation was assessed at ₹ 3,60,000/- an additional sum of ₹50,000/-as compensation. In the judgment rendered in **Palo vs. Rajesh Sahni and another (supra)**, the claimant was held entitled for compensation for the death of a 9 year old at ₹ 2,40,000/-. By relying upon the ratios in the cases cited above, this Court finds that adequate compensation has been awarded at ₹ 4,00,000/-

with funeral expenses at ₹ 25,000/-, hence, no ground to interfere in the same is made out.

Dismissed.

01.04.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No