

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

**FAO No. 7943 of 2015 (O&M)
Date of Decision: 23.09.2019**

Mahindro Devi and others

..... Appellants

Versus

Balkar Singh and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Chetan Goyal, Advocate,
for the appellants.

Mr. A.S. Manaise, Advocate, Amicus curiae
for respondent No.1.

None for respondent No.2.

Mr. Radhey Shyam, Advocate,
for respondent No. 3.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed by the the claimants/appellants seeking enhancement of compensation as allowed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') vide its award dated 07.04.2015 whereby a compensation of ₹ 9,89,000/- along with interest @ 6% per annum was granted on account of death of Varinder Kumar in a motor vehicular accident, which had allegedly taken place on 13.05.2014.

2. In brief, facts of the case are that a claim petition came to be filed by mother - Mahindro Devi-petitioner No.1, father - Harphool Kumar @ Haphool and Vickey-petitioner No.3, who is the minor brother of deceased. It was alleged that Varinder Kumar son of Harphool Kumar @ Harphool, resident of Ward No. 15 Malkana Patti Samana, District Patiala aged 20 years was working as a driver and earning a sum of ₹ 15,000/- pere month. On 13.05.2014, Varinder Kumar along with Rahul son of Hardev Singh, Happy son of late Joga Singh and Prince Arora son of Bhim Sain was going in canter bearing registration No. PB-13-X-9764 from Samana to Rajpura, which was being driven by deceased Varinder Kumar on his correct side of the road at a normal speed. When they reached in front of Lalgarrhh Dera on Samana- Patiala road at about 10.30 a.m. in the meantime a PRTC bus bearing registration No.PB-19-F-0510 came from behind, which was being driven by its driver respondent no.1 at a very high speed, in a rash and negligent manner and struck against the right side of the canter driven by Varinder Kumar, who died at the spot. FIR No. 101 dated 13.05.2014 under Sections 304-A, 283, 337 & 427 IPC came to be registered at Police Station Samana against respondent No.1. With these averments, the claimants filed the claim petition.

3. On notice, respondents appeared and filed separate sets of written statement contesting the petition.

4. Respondent No.1 in his written statement has denied all

the allegations while taking preliminary objections regarding cause of action, a false petition has been filed just to extort money, the petition is bad for non-joinder of necessary parties. The answering respondent prayed for dismissal of the claim petition.

5. Written statement on behalf of respondent No.2 was also filed on the same lines of written statement of respondent No.1.

6. In the written statement submitted by respondent No.3- Insurance Company various preliminary objections were taken contending that the claim petition is not maintainable; that the driver of Bus No. PB-19-F-0510 was not holding valid and effective Driving Licence at the time of alleged accident; that the claim petition is bad for non-joinder of owner and insurance company of Canter No. PB-13-X-9754, who were essential and necessary parties in the case to adjudicate the matter since the accident had taken place due to rash and negligent act of contributory negligence on the part of the deceased; that deceased Varinder Kumar was not holding a valid and legal driving licence, route permit and fitness certificate etc. On merits, the material assertions in the claim petition have been denied. However, the factum of insurance was admitted while praying for dismissal of the claim petition.

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

“1. Whether Varinder Kumar son of Harphool Kumar @ Harphool had suffered injuries in a motor

vehicular accident which took place on 13.05.2014 at about 10.30 a.m. Police station Samana District Patiala due to rash and negligent driving of PRTC Bus No. PB-19-F-0510 by respondent No.1 Balkar Singh to which he succumbed?OPP

2. *Whether the petitioners /claimants are entitled to recover any amount of compensation, if so, from whom? OPP*
3. *Whether the petition is not maintainable?OPR*
4. *Whether respondent no.1 was not holding a valid and effective driving licence at the time of accident, if so its effect ?OPR-3*
5. *Whether respondent no.2 insured has violated terms and conditions of the insurance police, if so its effect?OPR-3*
6. *Whether the claim petition is bad for non joinder of necessary parties?OPR*
7. *Relief.”*

8. The parties led their respective evidence in support of their pleadings and on the basis of the findings, the Tribunal by considering the income of the deceased Varinder Kumar to be ₹ 8,000/- per month, since deceased was a bachelor, 50% deduction towards personal expenses was made and by doing so, the dependency came to be ₹ 4,000 x 12 = 48,000/- per annum and keeping in view his age, multiplier of 18 was allowed and the total compensation was assessed at ₹ 48,000/- x 18 = ₹ 8,64,000/-. In addition, to it another sum of ₹ 25,000/- was allowed towards funeral expenses and ₹ 1,00,000/- on account of loss of love and affection. Therefore, the claimants were held entitled to total

compensation @ ₹ 9,89,000/-. Consequently, respondents herein were directed to pay compensation amount jointly and severally.

9. Learned counsel appearing on behalf of the appellant contends that the compensation awarded for the accident that occurred is not in terms of the judgment rendered by Hon'ble Apex Court of India in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*** decided on 31.10.2017 since nothing has been awarded towards future prospects.

10. Whereas, learned counsel appearing on behalf of the respondents would submit that the Tribunal has allowed the compensation on the higher side and the same should be granted on the lower side.

11. I have heard learned counsel for the parties and find that the award that has been passed needs to be modified in terms of the judgment rendered by the Constitutional Bench of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others*** case (supra).

12. It is not in dispute that deceased was 19 years of age and according to his age, the multiplier of 18 is just and proper. The Tribunal has rightly taken his income to be ₹ 8,000/- as there was no proof regarding his income. Further increase of 40% towards future prospects would be justified and by adding the same, the annual income of the deceased comes out to ₹ 11,200/-. Keeping in view the

fact that he was bachelor, the dependency would work out to 50% which would amount to ₹ 5,600/- and therefore, compensation payable to the claimants-appellants is re-worked and tabulated as under :-

Sr. No	Heads	Calculation
(i)	Name of the deceased	Varinder Kumar
(ii)	Date of accident	13.05.2014
(iii)	Age of the deceased	19 years
(iv)	Monthly income of the deceased	₹ 8,000/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 8,000 +₹ 3,200) = ₹ 11,200/- per month
(vi)	50% of (v) above deducted towards personal expenses	(₹ 11,200 - ₹ 5,600) = ₹ 5,600/- per month
(vii)	Compensation calculated after applying the multiplier of 18	₹ 5,600 x 12 x 18 = ₹12,09,600/-
(viii)	Conventional heads i.e. loss of estate and funeral expenses i.e. ₹ 15,000/- each.	₹ 30,000/-
	Total	₹12,39,000/-

13. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 9,89,000/- to ₹12,39,000 /-.

14. 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.

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

23.09.2019
Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes.
Whether reportable	No.