

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

**FAO No.8109 of 2015 (O&M)
Date of decision: 10.12.2019**

National Insurance Company Limited

....Appellant

Versus

Manoj Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vipul Sharma, Advocate,
for Mr. Paul S. Saini, Advocate,
for the appellant.

Mr. Shakti Mehta, Advocate,
for respondent Nos.1 to 4.

Mr. D.K. Sihag, Advocate,
for respondent Nos.5 & 6.

RITU BAHRI J. (Oral)

National Insurance Company Limited-appellant has come up in appeal against the award dated 12.08.2015 passed by the Motor Accident Claims Tribunal, SAS Nagar (Mohali) (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.25,50,000/- has been awarded in favour of claimants-respondent Nos. 1 to 4 on account of death of Suresh Kumar Singh in a motor vehicular accident which took place on 01.01.2014. Respondent No. 1 to 4 are brother and sisters of deceased Suresh Kumar Singh.

Brief facts of the case are that on 01.01.2014, deceased-Suresh Kumar Singh was going towards his house at village Balongi on a bicycle.

Claimant No.1-Manoj Kumar was following him on another bicycle. When

they reached near ESI, Hospital, Phase-7, Industrial Area, Mohali, a truck bearing registration No. HP-64-0538 being driven by Satpal-respondent No.6 (respondent No.2 in claim petition) in a rash and negligent manner, came from behind and hit the bicycle of Suresh Kumar Singh, as a result of which, he (Suresh Kumar Singh) fell down, received multiple injuries and died at the spot. With regard to the accident, FIR was registered against the driver of offending vehicle. Consequently, the claimants (respondent Nos. 1 to 4 herein) filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by its driver and thus, returned finding on issue No.1 in favour of the claimants-respondent Nos. 1 to 4. This finding was rightly given on the basis of deposition of Manoj Kumar (PW-1), who was an eye witness of the accident and on whose statement, the FIR was registered. Further, the claimants have proved on record postmortem report Ex.C1.

As per salary statement Ex.PW2/A, deceased was getting salary of Rs.16,498/- per month. Accordingly, the Tribunal has taken the income of deceased as Rs.16,498/- per month i.e. Rs.1,97,976/- per annum. In this income, 50% addition was made on account of future prospects. By doing so, total income of deceased came to Rs.2,96,964/- per annum, out of which, one-half was deducted towards his personal expenses. Total income came to Rs.1,48,482/- per annum. The deceased was aged about 22½ years of age at the time of death/accident. However, multiplier of 17 was applied by the Tribunal. After applying the multiplier of 17, dependency of claimants-respondent Nos.1 to 4 came to Rs.25,24,194/-. Apart from this, an amount

of 25,000/- was awarded on account of funeral expenses. Ultimately, the claim petition was accepted and a sum of Rs.25,49,194/-, rounded off to Rs.25,50,000/- was awarded as compensation in favour of the claimants. Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

The insurance company is challenging the impugned award on the following grounds:-

1. The offending vehicle did not have the requisite permit issued by the Transport Authority.
2. Claimants, who are brother and sisters of the deceased, are major, therefore, they are not entitled to get any compensation.
3. Future prospects should have been given to the extent of 40%, whereas it has been granted to the extent of 50%.

Learned counsel for the insurance company-appellant has argued that the offending vehicle i.e. truck No.HP-64-0538 did not have a valid permit for driving the same in Punjab. The vehicle was only permitted to be driven in the State of Himachal Pradesh. Therefore, insurance company-appellant should have been given recovery rights against the owner and driver of the offending vehicle.

Heard. This aspect has been considered by the Tribunal by making reference to a judgment passed by this Court in **National Insurance Company vs. Rajender Giri and others**, FAO No.3859 of 2009 and FAO No.1124 of 2010 and held that liability of the insurance company can only be absolved, if owner of the truck had got no permit to ply the same in any State. If, he had got a valid permit of the State of Himachal Pradesh, in that

eventuality, even if the truck was driven in State of Punjab, the insurer cannot be absolved of its liability. In the present case, learned counsel for the insurance company-appellant has not been able to refer any judgment in support of his argument. Therefore, on this ground, the impugned award does not require any interference.

Other ground taken is that the claimants are brother and sisters of the deceased and are major. While considering this aspect, the Tribunal has referred to a judgment passed by this Court in **Ram Kishore Gupta vs. Munshi Ram**, 2006 (4) RCR (Civil) 809, whereby it has been held that the brothers and sisters are entitled to claim compensation being LR's of deceased brother. In that judgment, it has been further observed as under:-

“7. Having heard learned Counsel for the parties and after perusing the record I am of the considered view that this appeal deserves to be allowed. The Tribunal has not taken correct view that father of the deceased alone was the legal representative of the deceased as against his sisters and brothers. In para 32 of the Full Bench judgment in Parkash Chand's case (supra) this Court has categorically held that the provisions of the [Fatal Accidents Act](#) 1855 would continue to govern the compensation claimed after the enactment of [Section 110A](#) and [110F](#) of the Act. Placing reliance on a judgment of Madhya Pradesh High Court in the case of ***Shanker Rao v. Babulal Fauzdar***, AIR 1980 Madhya Pradesh 154, the Full Bench has observed as under:

32. In ***Shanker Rao v. Babulal Fauzdar***, AIR 1980 Madhya Pradesh 154, the Bench has held that despite the enactment of [Sections 110-A to 110-F](#) in the [Motor Vehicles Act](#) the provisions of the [Fatal Accidents Act](#) would continue to govern the compensation claim applications. The Bench as a result of the aforesaid formulation held that the brother of the deceased was entitled to claim compensation in regard to loss to the estate of the deceased. With respect we agree with the view that in a case that was before the said bench brother as legal representative was entitled to lay a claim in terms of [Section 2](#) of the Fatal Accidents Act read with [Section 110-A](#) of the Motor Vehicles Act to the loss to the estate of the deceased but with respect we do not agree with the view that

[Sections 110-A](#) to [110-F](#) of the Motor Vehicles Act are merely adjectival and procedural in nature and were enacted only to provide to cheap and quick remedy to the claimants who were earlier required to file a civil suit paying ad valorem Court fees in the Court of general jurisdiction and that any question pertaining to a substantive law had to be determined in accordance with the general law of tort and the [Fatal Accidents Act](#).

8. I am further of the view that the reliance of the learned Counsel for the appellants on the judgment of Hon'ble the Supreme Court in Ramanbai's case (supra) is also meritorious on the issue of entitlement of legal representatives to claim compensation. The views of Hon'ble the Supreme Court are discernible from para 11 and 13 of the judgment which reads as under:

11. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have remedy for realisation of compensation and that is provided by [Section 110-A](#) to [110-F](#) of the Act. These provisions are in consonance with the provisions of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents tribunal to determine the compensation which appears to it to be just as provided in [Section 110-B](#) of the Act to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by [Section 110-B](#) of the Act amongst the legal representatives for whose benefit an application may be filed under [Section 110-A](#) of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers sisters and brothers children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident there is no justification to deny them compensation relying upon the provisions of the [Fatal Accidents Act](#) 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in [Magjibhai Khimji Vira v. Chaturbhai Taljabhai](#) (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under [Section 110-A](#) of the Act if he

is a legal representative of the deceased.

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13. Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission Parliament did not choose to amend [Section 110-A](#) of the Act by defining the expression 'legal representatives' in relation to claims under Chapter VIII of the Act as 'the spouse parent and children of the deceased' as recommended by the Law Commission. The Law Commission had observed in its 85th report that it would be appropriate to assign to the expression 'legal representative' the same meaning as had been given to the expression 'representative' for the purposes of the [Fatal Accidents Act](#) 1855 and that would effectively carry out the purpose of social justice underlying Chapter VIII of the Act to which the [Fatal Accidents Act](#) 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression 'legal representatives' in [Section 110-A](#) of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression 'legal representative' in [Section 110-A](#) of the Act should be given a wider meaning and it should not be confined to the spouse parent and children of the deceased.

9. A perusal of the aforementioned principles as laid down by Hon'ble the Supreme Court as well as by the Full Bench of this Court would make it manifest that brothers and sisters are also entitled to claim compensation as legal representatives of their deceased brother. Therefore, the view of the Tribunal that father alone was entitled to claim compensation is hereby set aside.”

Third argument raised by learned counsel for insurance company-appellant is that the benefit of 40%, towards future prospects, should have been given instead of 50%.

A perusal of the impugned award shows that the deceased was 22½ years of age at the time of accident. Therefore, multiplier of 18 should have been applied instead of 17. Further, benefit of 40% should have been given on account of future prospects. Accordingly, in the peculiar facts and

circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77, **National Insurance Company Limited vs. Pranay Sethi and others**, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017), and **Magma General Insurance Company Ltd. vs. Nanu Ram alias Chuhru Ram and others**, Civil Appeal No.9581 of 2018, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.16,498/- per month
(ii)	40% of (i) above to be added as future prospects	16,498 + 6599 = Rs.23,097/-
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	23,097 – 11,548 = Rs.11,548/-
(iv)	Compensation after multiplier of 18 is applied	Rs.11,548/- x 12 x 18 = Rs.24,94,368/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of filial consortium to brother & sisters-respondent Nos.1 to 4 (claimants).	Rs.1,60,000/- (Rs.40,000/- each)
(viii)	TOTAL COMPENSATION AWARDED	Rs.26,84,368/-
(ix)	Enhanced amount of compensation	Rs.26,84,368 – 25,50,000 = Rs.1,34,368/-

The enhanced amount of compensation of **Rs.1,34,368/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of

2019) (decided on 01.05.2019). Remaining conditions of disbursal of amount shall remain unaltered.

The impugned award stands modified to the above extent and the present appeal is disposed of accordingly.

(RITU BAHRI)
JUDGE

10.12.2019
ajp