

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

FAO-3441-2017(O&M)

Date of decision:-11.12.2019

Sant Ram and another

...Appellants

Versus

Pavinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Kartar Singh, Advocate
for the appellants.

Mr.Hardeep Singh, Advocate for
Mr.Ram Bilas Gupta, Advocate
for respondent No.1.

Mr.Pardeep Kumar, Advocate
for respondent No.3.

H.S. MADAAN, J.

On account of death of Bal Ram son of claimants i.e. Sant Ram aged about 50 years – father and Smt.Shyam Wati aged 49 years, in a road side accident, which took place on 5.11.2014 at about 7:30 a.m. in the area of just ahead of Gurgaon turn picket, Faridabad, statedly on account of rash and negligent driving of truck/dumper bearing registration No.HR-38T-9627 (hereinafter referred to as the offending vehicle) by respondent No.1 – Pavinder Singh, the claimants had brought a claim petition under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Pavinder Singh – driver, Surender – owner and M/s HDFC ERGO General Insurance Company Ltd., New Delhi - insurer of the offending truck, claiming compensation

of Rs.50 lakhs.

On being put to notice, all the three respondents had appeared and filed written statements contesting the claim petition.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, after hearing arguments, the Motor Accidents Claims Tribunal, Faridabad (hereinafter referred to as the Tribunal) while allowing the petition partly vide award dated 2.12.2016, awarded a compensation of Rs.6,57,000/- along with interest @ 7.5% per annum to claimant No.2 – Smt.Shyam Wati from the date of filing of the petition payable by respondents No.1 to 3 jointly and severally. Whereas the claim petition was dismissed qua claimant No.1.

Feeling that the compensation awarded was on lower side, the claimants have filed the present appeal seeking enhancement of compensation, notice of which was given to respondents and respondents No.1 and 3 appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence before it has come to the conclusion that respondent No.1 was author of the accident by his rash and negligent driving of the offending truck in which Bal Ram had suffered injuries and had died. Such finding is proper and appropriate and does not call for any interference. It being so, the driver, owner and insurance company of the offending truck are liable to pay compensation to the claimant No.2, who is mother of the deceased, as such his legal heir

and legal representative.

For the purpose of quantifying the compensation, the Tribunal had taken the age of deceased to be 24 years as pleaded by the claimants. However, the contention of the claimants that the deceased was engaged in agriculture as well as dairy farming earning Rs.40,000/- per month was not accepted due to lack of cogent and convincing evidence in that regard. It was observed that the deceased was an able bodied young boy capable of earning his livelihood by doing labour work. Therefore, as per the norms set up by State of Haryana, his income was assessed to be Rs.8,100/- per month as an unskilled worker.

Though learned counsel for the insurance company has disputed such amount stating that as per circular issued by Labour Commissioner, Haryana, the minimum wages payable to unskilled worker were Rs.5,537.10. According to him, monthly income of the deceased was taken to be on higher side.

Whereas learned counsel for the claimants has countered the argument stating that deceased was engaged in avocation of agriculture and dairy farming, though the Tribunal has not accepted the oral evidence adduced by the claimants in that regard. Nevertheless the monthly income taken by the Tribunal cannot be faulted for any reason.

After hearing learned counsel for the parties, I find that considering all facts and circumstances of the case, monthly income of the deceased taken to be Rs.8,100/- can certainly be not taken to be on higher side. The minimum wages fixed by the State Government can be taken into consideration for the purpose of assessment of income of a person

and it is certainly not the last word. Therefore, taking into view all the facts and circumstances of the case, the monthly income of deceased fixed as Rs.8,100/- is found to be proper and appropriate.

The Tribunal has not made any addition towards future prospects. A young person working to earn his livelihood is expected to put in more efforts and hone his skills in a particular field with passage of time so as to earn more money for meeting his needs and those of his family. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased was below 40 years, then 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.8,100} + 3,240 = \text{Rs.11,340/-}$.

The Apex Court in **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** has clearly observed in para No.15 where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle and normally 50% is deducted as personal and living expenses. Doing that the dependency of claimants comes out to Rs.5,670/- per month, annual dependency comes out to $\text{Rs.5,670} \times 12 = \text{Rs.68,040/-}$.

Keeping in view the age of the deceased, multiplier of 18 is to be used. Thus the compensation works out to $\text{Rs.12,24,720/-(68,040} \times 18)$. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-.

The total compensation comes out to Rs. 12,24,720 + 30,000 = 12,54,720/-.

The Tribunal had used multiplier of 13 keeping in view the ages of claimants. However, the matter has been clarified in judgment *National Insurance Company Limited Versus Pranay Sethi and Ors.*(supra), wherein it has been categorically stated that age of the deceased at the time of suffering injuries in the accident is to be taken into consideration and not the ages of the claimants/petitioners.

The Tribunal has awarded compensation of Rs.6,57,000/-.

In this way, the additional amount comes out to Rs.5,97,720/- (12,54,720 - 6,57,000). The claimant No.2 would be entitled to receive this amount with interest @ 7.5% per annum from the date of filing of the appeal till actual realization. The other terms and conditions given in the relief clause by the Tribunal shall apply to the additional amount as well.

With such modification, the appeal is allowed partly with costs.

11.12.2019

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(H.S.MADAAN)
JUDGE