

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 1752 of 2012 (O&M)
Date of Decision: 04.07.2019

Kamla and others

..... Appellants

VERSUS

Balraj and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sunny Namdev, Advocate, for
Mr. Saurabh Dalal, Advocate,
for the appellants.

None for respondents No.1 & 2.

Ms. Anamika Mehra, Advocate,
for respondent No.3.

Respondent No.4 ex parte.

Service upon respondent No.5 was dispensed with.

JAISHREE THAKUR, J.

CM-7239-CII-2012

This is an application that has been filed under Section 5
of the Limitation Act seeking condonation of delay of 49 days in
filing the appeal.

For the reasons mentioned in the application, the same is
allowed.

The delay of 49 days in filing the appeal stands condoned.

FAO No. 1752 of 2012

1. The instant appeal by claimants/appellants No.1 to 5, namely Kamla, being wife, Sarita, Pooja and Pushpa, minor daughters and Rohit Kumar minor son of deceased Wazir Singh, who died in a motor vehicular accident, which allegedly took place on 25.12.2009, has been filed for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as the 'Tribunal').

2. In brief, facts are that on 25.12.2009 at about 6.40 p.m., deceased Wazir Singh was going from village Jahazgarh to his village Kasni on motorcycle bearing registration No. HR-14-C-3895 (hereinafter referred to as 'the ill-fated vehicle'). Wazir Singh reached near Dabas Hotel situated in the area of village Jahazgarh while plying the ill-fated vehicle, the offending vehicle was standing on the middle of the road, whose parking lights were off. Respondent No.1-driver did not place any indicator around the offending vehicle to indicate its existence. Therefore, the offending vehicle was not visible from the safe distance. Consequently, the ill-fated vehicle struck against the offending vehicle and the accident in question took place. Wazir Singh died at the spot due to the injuries sustained by him in the accident in question. Jai Bhagwan son of Mool Chand, while travelling in the car also reached the spot and witnessed the accident,

who reported the matter to the police of Police Station Beri vide FIR No. 285 dated 25.12.2009. Post Mortem examination was conducted on the body of Wazir Singh by the doctor of Govt. Hospital, Jhajjar. On account of death of Wazir Singh, in the accident, the appellant/claimants claimed compensation from respondents No. 1 to 3 being driver, owner and insurer, respectively of the offending vehicle. The appellants/claimants also arrayed respondents No.4 & 5 as proforma respondents in the petition because they were the married daughters of the deceased and they were not dependent on him.

3. Respondent Nos.1 and 2 i.e. driver and owner of the offending vehicle in their joint written statement have denied all the allegations while admitting the factum of accident but they pleaded that the accident in question took place only because of rash and negligent driving of the ill-fated vehicle by the deceased himself. The petition was contested by them, inter alia, taking preliminary objections that the petition was not maintainable, no cause of action had accrued etc.

4. On the same lines, separate written statement was filed by respondent No.3 - Insurance Company. Thereafter, issues were framed and respective evidence was led by the parties apart from tendering relevant documents. On appreciation of evidence, the Tribunal held responsible respondent No.1 and the deceased Wazir Singh, who were the drivers of the offending and the ill-fated vehicles respectively for causing accident. Thereafter, on assessment of the

facts and evidence before it, took the net income of the deceased to be ₹ 7,000/- per month and ₹ 84,000/- per annum. After deducting 1/3rd, his annual dependency was assessed at ₹ 56,000/-. Multiplier was taken as 11 and total amount of dependency was calculated at ₹ 6,16,000/-. Apart from this a sum of ₹ 14,000/- was allowed towards transportation and cremation and a sum of ₹ 5,000/- was allowed towards consortium. The total compensation was calculated at ₹ 6,35,000/-. However, keeping in view the findings on issue No.1 whereby the deceased and respondent No.1 were equally held responsible for causing the accident in question, the claimants were held entitled to get 50% of the aforesaid amount of ₹ 6,35,000/- from respondents No.1 to 3 jointly and severally. The total amount of compensation payable came to be allowed at ₹ 3,17,000/-, which has been now challenged in the instant appeal.

5. Learned counsel for the appellants submits that the amount of compensation awarded by the Tribunal is on the lower side. He further submits that the Tribunal has erred in taking the income of the deceased at ₹ 7,000/- per month despite the fact that he was also doing agriculture work, however, no document in this regard has been proved on the record.

6. Learned counsel for the appellants further submits that the Tribunal has erred in applying the multiplier of 11 and the multiplier should be 13 keeping his age to be of 50 years. He further submits that the Tribunal has erred in taking the deduction to be 1/3rd

as per the law laid down by the Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*** and ***Vimla Devi vs. National Insurance Company Ltd. 2019(1) RCR (Civil) 86*** it should be 1/4th. In view of this, the award passed by the Tribunal deserves to be modified and enhanced.

7. 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 ***Pranay Sethi and others*** case (supra) and ***Vimla Devi*** case (supra).

8. 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 ***Pranay Sethi and others*** case (supra) and ***Vimla Devi*** case (supra).

9. It is not in dispute that there is no evidence available on the record to substantiate that the deceased was earning handsome amount as claimed. Hence, the Tribunal has rightly taken the annual income to be ₹ 84,000/-. Having five dependents, 1/4th deduction is to be applied and since he was self employed, his future prospects have to be allowed accordingly.

10 The question regarding the age of the deceased has to be settled. The Tribunal by relying upon the ration card which is available on the record as Ex. P-4 came to hold that the age of the

deceased was between 50-55 years and, therefore, applied the multiplier as that of 11. The argument that has been raised that the deceased would be 50 years as that is the age reflected on the ration card cannot be accepted since the ration card reflecting his age was issued much prior to the date of the accident in question. Therefore, it could be inferred that at the time of the accident the age of the deceased would be more than 50 years which would also be in consonance with the PMR available on the record as Ex. P-2. The claimants would also be allowed the benefit in terms of *Vimla Devi* case (supra) as additional ₹ 1,00,000/-. Consequently, keeping in view the judgment of the Supreme Court in *Pranay Sethi and others* case (supra) and *Vimla Devi* case (supra), the compensation is re-worked and tabulated as under :-

Sr. No	Heads	Calculation
(i)	Name of the deceased	Wazir Singh
(ii)	Date of accident	25.12.2009
(iii)	Age of the deceased	50-55 years
(iv)	Monthly income of the deceased	₹ 7,000/-
(v)	10% of (iv) is to be added towards future prospects	(₹ 7,000 + ₹ 700) = ₹ 7,700/- per month
(vi)	1/4 rd of (v) above deducted towards personal expenses	(₹ 7,700 - ₹ 1,925) = ₹ 5775/- per month
(vii)	Compensation calculated after applying the multiplier of 11	₹ 5775/- x 12 x 11 = ₹ 7,62,300/-
(viii)	Composite consortium (conventional heads)	₹ 1,00,000/-
	Total	₹ 8,62,300 /-

11. In view of the above, the appeal is allowed and

consequently the compensation awarded is enhanced from ₹ 6,35,000/- to ₹ 8,62,300 /-.

12. The finding on issue No.1 by the Tribunal is upheld wherein it has been held that the deceased and respondent No.1 were equally responsible for causing the accident in question. Thus, the petitioners will be entitled only to get 50% of the aforesaid amount of ₹ 8,62,300 /- i.e. ₹ 4,31,150/- from respondents No.1 to 3 jointly and severally.

13. 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 the appeal till realization.

14. The appeal is allowed in the aforesaid terms.

04.07.2019

Satyawan

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)
JUDGE

Yes.

No.