

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

FAO-4164-2005 (O&M)
Date of decision: 17.2.2020

Smt. Swaranjit Kaur and others

... Appellants

Versus

Phuljit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Inderjit Sharma, Advocate,
for the appellant(s).

Mr. Neeraj Khanna, Advocate,
for respondents No.1 and 2.

Mr. R.K.Bashamboo, Advocate,
for respondent No.3-insurance company.

KARAMJIT SINGH, J.

The claimants-appellants have filed this appeal against the award dated 7.6.2005 passed by MACT, Ludhiana whereby compensation of ₹9,33,000/- was awarded in equal shares to all the appellants under Section 166 of the Motor Vehicles Act.

Brief facts of the case are that claimant-appellant No.1-Sawaranjit Kaur is widow, appellants No.2 to 4 are daughters and appellant No.5 is son of Kesar Singh. On 8.10.2003, Kesar Singh was sitting as a pillion rider on Bajaj Chetak Scooter bearing registration No.HR-01-J-4669 which was driven in a rash and negligent manner by respondent No.1-Phuljit Singh. At about 4:45 p.m., when they reached in the area of village Rampur, Tehsil Payal, District Ludhiana, there were pot holes in the road.

struck against the pot hole and went out of control and fell in the pit which was there on the left hand side of the road. Due to the said accident, head of Kesar Singh struck against the tree and he sustained multiple injuries. He was firstly taken to Sidhu Hospital, Doraha from where he was referred to CMC Hospital, Ludhiana where he died on 13.10.2003. Even respondent No.1 also sustained injuries in the aforesaid accident which took place due to his own negligence. The said accident was witnessed by Gurmit Singh resident of village Rampur. A DDR in regard to the said accident was registered in the concerned police station. The offending scooter was owned by respondent No.2-Rajesh Kumar and was insured with respondent No.3-insurance company.

As per the appellants, the deceased was 48 years of age and was working as a Supervisor in Tubewell Corporation Limited and his monthly income was ₹ 12,500/-. The claimants made prayer for grant of compensation worth ₹ 30 lakhs on account of death of Kesar Singh in the aforesaid accident.

The claim petition was contested by the respondents. Respondents No.1 and 2 filed joint written statement in which it was denied that the accident in question took place due to the rash and negligent driving of the scooter by respondent No.1. It was prayed that the claim petition be dismissed.

Separate written statement was filed on behalf of respondent No.3-insurance company, in which, preliminary objection was taken that the driver of the scooter in question was not having valid and effective driving licence at the time of the alleged accident. On merits, it was denied that any

No.HR01-J-4669. It was pleaded that the claim petition be dismissed.

On the pleadings of the parties, following issues were framed :

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1. Whether Kesar Singh died in a motor vehicular accident due to rash and negligent driving of scooter No.HR01-J-4669 by respondent No.1 Phuljit Singh? OPP.
2. Whether respondent No.1 was not having a valid driving licence at the time of accident, if so, its effect? OPR-3.
3. To what amount and from whom, the claimants are entitled to receive compensation? OPP.
4. Relief.

Counsel for the claimants-appellants examined PW1 Sawaranjit Kaur widow of Kesar Singh, PW2 Gurmit Singh deposed regarding the accident in question which took place on 8.10.2003 in his presence, PW3 Dr. Pradipta Tripathy of CMC Hospital, Ludhiana proved the injury report of Kesar Singh Ex.PW3/A. He also deposed that Kesar Singh was admitted in their hospital on 8.10.2003 and he died on 13.10.2003 while undergoing treatment in the hospital and total medical charges on his treatment were ₹ 45,470/-. He proved the medial bill Ex.PW3/B in regard to the said medical charges. PW4 Paramjit Singh employee of Punjab State Tubewell Corporation produced salary record of the deceased and he proved salary certificate Ex.PW4/A, as per which, gross salary of the deceased was ₹ 12,554/- per month. As per service record, date of birth of the deceased was 15.3.1955. Copy of the DDR Ex.PA and copy of post mortem report Ex.PB

No evidence was led by respondents No.1 and 2 while counsel for respondent No.3 tendered insurance policy Ex.R1.

After hearing the counsel for the parties, impugned award worth ₹ 9,33,000/- was passed by the Tribunal in favour of the claimants-appellants and against all the three respondents whose liability was joint as well as several. The details of the award is given hereunder : -

Monthly income of the deceased	:	₹ 11,116/-
Deduction for personal expenses	:	1/3 rd
Multiplier	:	10
Loss of Dependency	:	₹ 8,88,000/-
Expenses on medical treatment	:	₹ 45,470/-
Compensation under conventional Head	:	Nil

The impugned award has been challenged by the claimants-appellants on the ground that sufficient compensation was not awarded by the learned Tribunal.

I have heard counsel for the parties and gone through the record of the learned Tribunal.

There is no challenge to the findings of the learned Tribunal regarding issues No.1 and 2. So it stands proved that the accident in question took place due to rash and negligent driving of Scooter No.HR01-J-4669 by respondent No.1-Phuljit Singh. It also stand proved that said scooter belonged to respondent No.2 and was insured with respondent No.3. It is also not disputed that at the time of the accident, respondent No.1 was holding a valid and effective driving licence.

Deceased Kesar Singh sustained injuries on account of the

aforesaid accident and firstly, he was taken to Sidhu Hospital, Doraha from where he was shifted to CMC Hospital, Ludhiana where he died on 13.10.2003. The record regarding medical treatment of Kesar Singh in CMC Hospital, Ludhiana was proved by PW3 Dr. Pradipta Tripathy who also proved the medical bill Ex.PW3/B worth ₹ 45,470/- regarding treatment of Kesar Singh.

As per service record which was produced by PW4, the deceased was working as Supervisor in Punjab State Tubewell Corporation and his date of birth was 15.3.1955. PW4 also proved his salary certificate Ex.PW4/A, as per which, the gross salary of the deceased was ₹ 12,554/- per month. As per said salary certificate, no income tax was deducted. However, EPF of ₹ 1378/- was deducted from his salary by the department. This Court is of the view that the said EPF is to be included in the monthly income of the deceased. However, washing allowance of ₹ 30/- and GSLI worth ₹ 60/- is to be deducted while counting his monthly income. So, the total monthly income of the deceased in this case comes out to be ₹ 12464/-.

The deceased died leaving behind his widow and four children as his legal heirs. The eldest child of the deceased was 21 years of age at the time of filing of the claim petition. All the children were unmarried. So, in this case, there were five dependent members and as per **Sarla Verma and others v. Delhi Transport Corporation and another**; 2009 (3) RCR (Civil) 77, deduction for personal expenses of the deceased should be 1/4th. The deceased was 48 years of age. So, the multiplier of 13 is applicable in this case. Deduction for personal expenses of the deceased and the multiplier applied by the learned Tribunal were not correct. The addition of

down by Hon'ble Apex Court in **National Insurance Company Limited v. Pranay Sethi and others**, 2017 (4) RCR (Civil) 1009, reason being the deceased had a permanent job and he was aged about 48 years. In this manner, loss of dependency comes out to be ₹ 18,95,774/- [₹ 14,58,288/- (₹ 9348 x 12 x 13) + ₹ 4,37,486/- (30% addition towards future prospects)].

Under conventional head, the claimants-appellants are entitled to get ₹ 70,000/- as detailed hereunder : -

Loss of Consortium	:	₹ 40,000/-
Funeral Expenses	:	₹ 15,000/-
Loss of Estate	:	₹ 15,000/-

The claimants-appellants are also entitled to get ₹ 45,470/- on the basis of medical bill Ex.PW3/B.

In view of the above, the total compensation comes out to be ₹ 20,11,244/-. The present appeal is allowed, accordingly and the claimants-appellants are entitled to get enhanced compensation of ₹ 10,78,244/- (₹ 20,11,244 - ₹ 9,33,000) in equal shares along with interest @ 6% per annum on the said amount from the date of filing the appeal till its realisation, from the respondents, whose liability is joint as well as several.

(KARAMJIT SINGH)
JUDGE

February 17, 2020

Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No