

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

FAO No. 657 of 2010

Date of Decision: November 06 , 2020.

Rohtash and others

..... APPELLANT (s)

Versus

Manjit Kumar and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashit Malik, Advocate
for the appellants.

Mr. Mayank Mathur, Advocate
for respondent No.3– Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Karnal (for short, the 'Tribunal') vide impugned award dated 21.08.2009 on account of death of Sumitra Devi in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that the claimants, who are the sons of the deceased-Sumitra Devi, filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Sumitra Devi, who lost her life in a motor vehicle accident which took place on 01.05.2004. It is pleaded in the claim petition, that Sumitra Devi alongwith one of her sons, was travelling to village Parwala, District Karnal

on 01.05.2004. When they reached GT road, Taroari and were standing on the unmetalled (Kacha) portion of the road, the offending car bearing registration No.HR02-K-0609 driven by respondent No.1-Manjit Kumar in a rash and negligent manner, dashed against Sumitra Devi. She received multiple injuries and was taken to Government Hospital, Karnal, but she succumbed to her injuries on the way. FIR No.74 dated 02.05.2004, under Sections 279/337/304A IPC, Police Station Taroari was registered against respondent No.1-driver. Sumitra Devi was claimed to be 50 years old at the time of the accident. It is pleaded that she was a housewife involved in dairy farming, earning a sum of Rs.5,000/- per month. Claimants were living together with their mother and accordingly, they claimed compensation on account of Sumitra Devi's death.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal on the basis of pleadings of the parties:-

1. Whether the accident in question took place due to rash and negligent driving of car bearing registration No.HR-02K-0609 by respondent No.1? OPP
2. Whether the claimants are entitled to compensation, if so how much amount and from whom? OPPs
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident, if so its effect? OPR
4. Relief.

Learned Tribunal on considering the evidence on record, concluded that the accident in question took place due to the rash and negligent driving of car bearing registration No.HR02-K-0609, by respondent-Manjit Kumar. It is further concluded that Manjit Kumar was holding a valid and effective driving license at the time of the accident and the offending vehicle was insured with

respondent No.3-Oriental Insurance Company.

Learned Tribunal while accepting the claimants to be the legal heirs of the deceased-Sumitra Devi, held that as they are major, the claimants cannot be said to be dependant upon the deceased. Therefore, a sum of Rs.50,000/- was awarded by observing as under:-

“XX XX XX XX

The amount of compensation is Rs.50,000/- in case of death under section 140(2) of the Act. Thus, in the given circumstances, the claimants are entitled to Rs.50,000/- (Rs. Fifty thousand only) under no fault liability in terms of Section 140 of the Act.”

Learned Tribunal, thus, awarded a sum of Rs.50,000/- with interest at the rate of 6% per annum from the date of filing of the petition till realization to be apportioned amongst the three claimants. Aggrieved therefrom, present appeal has been preferred by the claimants.

Learned counsel for the appellants vehemently argues that the learned Tribunal has grossly erred in awarding a lump sum amount of Rs.50,000/- as above, with reference to Section 140 of the Act. All the claimants, it is submitted, were living together and to deny compensation merely because the appellants are major, is unjustified. The learned Tribunal, it is submitted, should have applied the multiplier method and awarded just compensation, due to the claimants. The deceased, it is submitted, was a housewife and she was looking after the home. Services rendered by the deceased, it is submitted were invaluable but if to be assessed in monetary terms, her contribution cannot be considered to be less than Rs.5,000/- per month. It is thus prayed that this appeal be allowed and just compensation be awarded to the claimants.

Learned counsel for respondent No.3-Insurance company has vehemently argued that though the claimants-appellants being legal heirs of the deceased are entitled to file the claim petition, they are not entitled to anything over and above the amount of compensation already awarded by the learned Tribunal. It is submitted that once the claimants are major, learned Tribunal has rightly held that they were not dependant upon the deceased and awarded Rs. 50,000/-. It is thus prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the photocopy of the record as supplied by learned counsel for the parties. (It is to be noted that the file of this case was burnt in the fire which took place on the High Court premises on 30.01.2011 and the file was reconstructed).

There is no dispute regarding death of Smt. Sumitra Devi in a motor vehicle accident which took place on 01.05.2004, due to the rash and negligent driving of the offending vehicle bearing registration No.HR02-K-0609 by respondent No.1-Manjit Kumar. There is no challenge to the said finding of the learned Tribunal. It is further not in dispute that the offending vehicle is duly insured with the respondent-Insurance company and driver of the offending vehicle had an effective and valid driving license at the time of the accident.

Learned Tribunal has rightly held the claimants to be entitled to prefer the claim petition under Section 166 of the Act, being the legal heirs of the deceased. There is no challenge to this finding, which in any case is well founded, especially keeping in view the judgment of the Hon'ble Supreme Court in **Montford Brothers of St.Gabriel and another v. United Indiance Insurance and another, 2014(1) RCR (Civil) 884**. Learned Tribunal has

however erred in awarding a lump sum amount of Rs.50,000/- only, with reference to Section 140 of the Act. It is duly proved on record that Sumitra Devi died in the motor vehicle accident, caused due to rash and negligent act of the respondent-driver. A coordinate Bench of this Court in **Ms. Nandini and others v. Amrik Singh and others, 2011(52) RCR Civil 882**, while dealing with a similar situation where the learned Tribunal had awarded compensation of only Rs.25,000/-, (while referring to quantum under no fault liability) to the major sons and a minor grand-daughter of the deceased, held, that while loss of estate may itself be a token or conventional figure when compensation is determined taking the dependence factor, it assumes significance in a case where no dependency is established. The legal heirs necessarily come by the benefit of accretions to the estate of the deceased if she/he had lived. Accordingly, the legal heirs are entitled to the entire compensation which necessarily has to be worked out in terms of the established parameters. Finding of the learned Tribunal, in the present case regarding entitlement of the claimants to compensation with reference to Section 140 of the Act is, thus, set aside.

The deceased-Sumitra Devi was admittedly about 50 years old at the time of death and was a housewife. There is no evidence to indicate the deceased to be engaged in dairy farming. Sumitra Devi's husband had passed away and she alongwith her sons were living together. It is a settled position that contribution of a house wife cannot be brushed away. Needless to say, services rendered by a housewife are multifarious. She renders invaluable services in her various facets/roles in a home. The deceased-Sumitra Devi was living together with all her sons, one of whom was unmarried as well. In such a situation, it cannot be

said that the deceased, who was about fifty (50) years old only, was not contributing towards the household in terms of services to the family. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in **Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others, 2015(1) RCR (Civil) 828.**

In the present case, the accident took place on 01.05.2004. There is no evidence to indicate the deceased to be engaged in dairy farming. Notional income of a housewife has been assessed as Rs.7,000/- per month in respect to an accident which took place in the year 2011 in FAO No.3395 of 2005. Keeping in view the facts and circumstances of the present case, it is considered just and expedient to assess notional income of the deceased as Rs.3,500/- per month.

The deceased in this case was admittedly 50 years old, thus, the claimants are held entitled to increase in income at the rate of 25% towards future prospects in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680.**

In view of the Division Bench judgment of this Court in **Paramjit Singh and another v. Dilbagh Singh @ Bagga and others, 2014(4) RCR (Civil) 895,** no deduction is to be effected in the compensation to be awarded in the case of death of a housewife. In terms of the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121,** multiplier of 13 is to be applied in this case, the deceased being 50 years. Claimants are entitled to Rs.40,000/- each on account of loss of parental consortium in terms of the judgment of the Hon'ble Supreme Court in **United India Insurance Co. Ltd. v. Satinder Kaur @**

Satwinder Kaur, 2020(3) RCR (Civil) 75. The claimants are entitled to Rs.15,000/- each on account of loss of estate and funeral expenses.

Appellants are, thus, entitled to compensation which is re-worked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	3500 per month i.e., 42,000 per annum
2.	Total income after addition at the rate of 25% on account of future prospects	42,000 + (42,000 x 25%) = 52,500
3.	Dependancy after applying a multiplier of 13	(52,500 x 13) = 6,82,500
4.	Loss of estate	15,000
5.	Funeral expenses	15,000
6.	Loss of parental consortium to the appellants @ Rs.40,000 each	1,20,000
Grand Total		Rs.8,32,500/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization on the enhanced amount. Ratio of apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal.

Appeal is accordingly disposed of.

November 06 , 2020.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No