

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

FAO-3195 of 2008

DATE OF DECISION : 11.02.2020

Raj Kumari Sood and others

...Appellants

Versus

Rajinder and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Swarn Sandhir, Advocate,
for the appellants.

Mr. Rahul Vats, Advocate,
for respondent No.1.

Mr. Arvind Bansal, Advocate,
for respondent No.2.

Mr. R.C.Gupta, Advocate,
for respondent No.3-Insurance Company.

KARAMJIT SINGH, J.

The appellants-claimants have filed this appeal against the award of Rs.4,27,000/- dated 09.06.2008 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as, 'the Tribunal').

The case of the appellants-claimants is that Raj Kumari Sood is widow while Saurabh Sood and Gaurav Sood are sons of deceased Subhash Sood, who was working as Junior Assistant in Municipal Corporation, Patiala. His total monthly earning was Rs.15,762/- and he was 57 years of age at the time of his death. On 17.08.2006 at about 5:15 p.m., Subhash Sood was coming back to his house in Urban Estate from his office situated near Moti Mehal, on his Kinetic Honda Scooter. He was followed by his son Saurabh Sood on a separate motorcycle. When Subhash Sood reached near Modi

College crossing, one Mohindra Jeep bearing registration No.HR-64-0689, which was driven by respondent No.1-Rajinder, in a rash and negligent manner came from the side of Fountain Chowk and struck against the scooter of Subhash Sood, who was going on the correct side of the road. Due to said accident, Subhash Sood sustained multiple injuries and he was taken to Rajindra Hospital, Patiala, for his treatment by his son, Saurabh Sood. On reaching the said hospital, Subhash Sood was declared dead. FIR No.365 dated 17.08.2006 was registered in Police Station Kotwali, Patiala, regarding aforesaid accident against the driver of offending jeep, which was owned by respondent No.2-Jai Kishan and was insured with respondent No.3.

On notice, the claim petition was contested by the respondents. Respondent Nos.1 and 2 filed separate written statements, in which, they denied the factum of the accident in question and it was prayed that the claim petition be dismissed. The Insurance Company filed separate written statement taking preliminary objection that the driver of the offending jeep was not holding valid and effective driving licence at the time of the alleged accident. On merits, it was denied that Jeep bearing registration No.HR-64-0689 was involved in any accident as alleged by the appellants-claimants. It was pleaded that the claim petition be dismissed.

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

1. Whether Subhash Sood had died due to rash and negligent driving of Jeep bearing No.HR-64-0689 by its driver/respondent no.1 on 17.08.2006 as alleged? OPP
2. Whether respondent no.1 was not holding valid driving licence at the time of alleged accident? OPR
3. Whether the claimants are entitled to compensation, if so, to

what amount and from whom? OPP

4. Relief.

In support of their case, the claimants examined Usha Garg, Junior Assistant, Municipal Corporation, Patiala as PW1, who proved salary certificate (Exhibit C1) of the deceased along with CSR (Exhibit C2). Claimant No.1-Raj Kumari Sood and Claimant No.2-Saurabh Sood appeared in the witness box as CW2 and CW3, respectively. The copy of FIR (Exhibit C3) and that of post mortem report (Exhibit C4) were also tendered along with copy of 8th Class certificate of Gaurav Sood (Exhibit C5).

On the other hand, respondent Nos.1 and 2, examined RW1- Mahesh Kumar, Clerk, Municipal Corporation, Patiala, RW2- Kamlesh Bansal, Junior Assistant, Municipal Corporation, Patiala, RW3-Jasdeep Singh, Junior Assistant, Municipal Corporation, Patiala. Respondent No.1-Rajinder Singh appeared in the witness box as RW4. Learned counsel for the Insurance Company tendered into evidence insurance policy (Exhibit R3).

The Tribunal while deciding all the issues in favour of the appellants-claimants granted compensation worth Rs.4,27,000/- along with interest @ 9% per annum in favour of the appellants-claimants and against all the three respondents. Aggrieved by the said award dated 09.06.2008, the present appeal has been filed by the appellants/claimants seeking enhancement of the amount of compensation.

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

The findings given by the Tribunal regarding Issue No.1 are not assailed in this appeal by the respondents. So, the negligence of the driver of the offending jeep stands proved. It is not disputed that at the time of the

accident, driver of the offending jeep was holding valid and effective driving licence.

The award has been challenged by the appellants/claimants on the ground that the compensation awarded by the Tribunal is on the lower side and it requires to be enhanced. It is not disputed that the gross salary of the deceased, who was working as a Junior Assistant in the Municipal Corporation, Patiala, was Rs.15,762/- per month. His net salary was Rs.12,262/- per month, as amount of Rs.3,000/- was deducted as G.P.F and Rs.500/- was deducted as Income Tax from his gross salary. The Income Tax of Rs.500/- per month is to be excluded from his monthly income. However, G.P.F worth Rs.3,000/- per month is to be included, while calculating his monthly income. So, the total monthly income of the deceased comes out to be Rs.15,262/-. By deducting 1/3rd amount, which the deceased may have been spending upon himself, the monthly dependency of the appellants-claimants on the deceased comes out to be Rs.10,175/-. The deceased being permanent employee of the Municipal Corporation, Patiala, the claimants are also entitled to get compensation on account of future prospects. As per the law laid down by Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) R.C.R. (Civil) 1009**, as the deceased was 57 years of age, 15% is to be added on account of future prospects, which comes out to be Rs.1526/- per month. Thus, the total monthly dependency of the appellants-claimants on the deceased comes out to be Rs.11,701/-. The annual dependency of the appellants-claimants on the deceased comes out to be Rs.1,40,412/-. In this case, multiplier of 9 is applicable. The Tribunal fell in error by splitting the multiplier, by taking into consideration the fact that the deceased was going to

retire on attaining the age of 58 years.

So, the total dependency of the claimants on the deceased comes out to be Rs.12,63,708/-. The appellants-claimants are also entitled to get Rs.70,000/-, in total, under the conventional heads, namely, loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs.15,000/-). The total amount of compensation in this case comes out to be Rs.13,33,708/-. The appellants-claimants have already received Rs.4,27,000/- from respondent No.3 on the basis of impugned award.

In the light of the above discussion, this appeal is allowed and award passed by the Tribunal is modified and it is held that the appellants-claimants are entitled to receive enhanced compensation of Rs.9,06,708/- (Rs.13,33,708 – Rs.4,27,000) from the respondents, whose liability is joint as well as several. The enhanced compensation is to be disbursed to the appellants-claimants, in equal shares. The appellants-claimants are also entitled to get interest at the rate of 6% per annum on the amount of enhanced compensation from the date of filing of appeal till its realization.

(KARAMJIT SINGH)
JUDGE

11.02.2020

adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No