

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

FAO 9092 of 2014 (O&M)

Date of Decision: February 04, 2020

Ratni and another ...Appellants

Versus

Karambir and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Shashikant Gupta, Advocate
for the appellants.

Mr. D.K. Dogra, Advocate
for respondent No.3.

FATEH DEEP SINGH, J. (Oral)

The present appellant Smt. Ratna Devi and her son Raj Kumar initially filed a claim petition under Section 166/140 of the Motor Vehicle Act (in short, '**the Act**') against the present respondents seeking compensation on account of motor vehicular accidental death of deceased Attar Singh, who happens to be the son and brother, respectively, of the appellants.

The story in brief is that on 09th October, 2013 Attar Singh was driving his oil tanker bearing registration No.

HR-55H-8085 (hereinafter to be referred as '**the tanker**') and in the area of village Rajpura while the deceased had got down from the tanker to pick up water bottle, the offending car Tata Indica Vista bearing registration No. HR-21-H-4713 owned by respondent No.2 Parveen Kumar and being driven by respondent No.1 Karambir Singh came at a high speed rashly and negligently and hit against the deceased, who received injuries and as a consequence of which, he died. FIR No. 505 dated 10th October 2013 (Ex.P2) was registered under Sections 279, 337 and 304-A IPC, Police Station Narnaud, District Hisar. The aged widowed mother and young brother of the deceased filed the claim petition being legal hires/dependents of the deceased seeking compensation from the owner, driver as well as United India Insurance Company being insurer of the offending car. The Court of learned Motor Accident Claims Tribunal through the impugned award dated 14.07.2014 partly allowed the claim petition and awarded Rs.2,40,400/- to the widowed mother whereas dismissed the claim of the brother. The same has been challenged by the claimants in this appeal.

Heard Mr. Shashikant Gupta, Advocate for the appellants and Mr. D.K. Dogra, Advocate for respondent No.3 and perused the records.

The driver and owner of the offending car have not laid challenge to the findings in the award and nor the insurer has come up to do so. Counsel for the appellants had laid two pronged attack on the award under challenge, firstly, on the ground that Raj Kumar being brother and dependent is also entitled to compensation and that the quantum of compensation so awarded by the Tribunal was on the lower side. The same has sought to be displaced by the counsel for the respondent No.3/Insurance Company Mr. Dogra.

Going through the submissions of the two sides and upon perusal of the records. It is well reflected in the records that appellant/brother Raj Kumar at the time of the accident/filing the claim petition was aged above 30 years and it is not his case that he is either physically challenged or could not carry on any avocation and was totally dependent on the deceased. It has been rightly argued on behalf of the contesting

respondent that compensation is not a bounty and rather is a legal right of the dependents and which has to be adjudicated commensurate with evidence and position of the parties. Merely because, appellant/brother has filed claim petition does not *ipso facto* obliges the Court to award him compensation. There is nothing overwhelming evidence in favour of this appellant entitling him to any compensation. Legitimate reason has come about in the impugned award by the Tribunal and which could not be displaced by the counsel for the appellant. More so, it is a matter of common knowledge that people with the eye on hefty compensation usually come up with such stands for a motivated cause and Court needs to be weary of such machination. Thus, findings of the Tribunal qua denial of the compensation to appellant Raj Kumar needs to be upheld.

The Tribunal basing its conclusion on the evidence that the deceased was employed as a driver on the tanker of M/s Gupta Filling Station, Nasibpur and on the salary certificate has drawn conclusion that the deceased being a skilled labourer was earning Rs.4,800/-. Admittedly, in the line with the

arguments of the two sides, the deceased was unmarried aged between 40 to 44 years and keeping in view that he was a driver on a tanker, which falls within the category of skilled labourer and in the light of the same, minimum wages of the skilled labourer in the State of Haryana at the time of the accident, it can be safely concluded to be Rs.200/- per day and, therefore, per month earning comes to Rs.6,000/- and reliance can be placed on **National Insurance Co. Ltd Vs. Pranay Sethi and others,** SLP (Civil) No. 25590 of 2014.

Keeping in view the age of the deceased, the relevant age of the widowed mother and considering that the deceased out of this income must be spending for his upkeep and maintenance and would have certainly got married in the course of time and dependency of the mother would have diminished, it would be appropriate to apply the multiplier of 14 and after applying the same, the amount of compensation would come out to be Rs.10,08,000/-.

Further, if the deceased would have been alive, he would have spent of his own 1/3rd of above amount for his

upkeep and maintenance, and thus, deducting the same, the amount comes to Rs.6,72,000/- (10,08,000-3,36,000).

Besides this, the family must have spent money on the last rites and ceremonies at the time of his death and besides loss of estate, physical and mental agony and under these heads, a sum of Rs.15,000/- is assessed and, therefore, total compensation comes to Rs. 6,87,000/- (6,72,000+15000) and which the learned Tribunal has failed to consider.

Since, the Tribunal has already awarded an amount of Rs.2,40,000/-, therefore, the aforesaid amount has to be deducted and after deducting the same, the balance of enhanced amount of compensation would come out to be Rs.4,47,000/- (6,87,000-2,40,000/-)

The rate of interest at the rate of 9% has been rightly awarded and, therefore, claimant/appellant Ratni Devi is entitled to a sum of Rs. 4,47,000/- (enhanced amount) and the rate of interest of 9% from the date of filing of the petition till the realization and since the admitted stand that the offending vehicle was being driven by respondent No.1 and was owned by

respondent No. 2 and insured by respondent No. 3 and which has not been challenged by the insurer, respondents are jointly and severally liable to pay compensation.

It is made clear that in case of the policy terms, the insurer is well within its rights to claim recovery rights against owner and the driver.

The appeal is partly allowed. No costs.

February 04, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

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