

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

FAO 2243 of 2013 (O&M)

Date of Decision: May 04, 2022

Sukhmander Kaur and another ...Appellants

Versus

Mehal Singh and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Arshdeep Singh, Advocate
for the appellants.

Mr. Sunder Gaur, Advocate
for respondents No. 1 and 2.

Mr. Lalit Garg, Advocate
for respondent No.3.

Mr. U.K. Agnihotri, Advocate
for respondents No. 4 and 5.

FATEH DEEP SINGH, J. (Oral)

The appellants Sukhmander Kaur and her brother Kamaljit Singh has come in this appeal against an Award dated 07.09.2012 of the Court of learned Motor Accident Claims Tribunal, Sri Mukatsar Sahib whereby the Tribunal has awarded a sum of Rs.8,31,000/- only to mother claimant No. 1 Jasbir Kaur, wife respondent No.4-Shallu and minor son respondent

No.5 Tanvir Singh of the deceased Raja @ Charanjit Singh
alongwith interest @ 6% per annum.

Heard Mr. Arshdeep Singh, Advocate for the
appellants, Mr. Sunder Gaur, Advocate for respondents No. 1
and 2, Mr. Lalit Garg, Advocate for respondent No.3 and
Mr. U.K. Agnihotri, Advocate for respondents No. 4 and 5.

One Raja @ Charanjit Singh who was aged around
27 years husband of Shallu then respondent No.4 and father of
Tanvir Singh minor son respondent No.5 on 20.11.2010 was on
their motorcycle bearing registration No. PB-30F-1504 (in short,
the **'ill fated motorcycle'**) which met with an accident with the
bus bearing registration No. PB-30E-5378 (in short, **'the
offending bus'**) as a consequence of rash and negligent
driving of respondent No.1 Mehal Singh driver of offending bus
which was owned by respondent No.2 New Deep Bus Service
and insured with the National Insurance Company respondent
No.3. FIR No. 217 dated 21.11.2010 under Sections 304-A and
279 IPC (Ex.P1) was registered at Police Station City Sri
Muktsar Sahib. Post mortem (Ex.P5) was also performed.

The claim that the deceased was running a gym and was earning Rs.30,000/- per month and had passed 10+2 examination, upon whom, the claimants were dependents and on account of loss of bread earner sought compensation from the respondents, driver, owner and insurer of the offending bus.

Respondents No. 1 and 2 denied the accident in their response and claimed that they are not bound to pay compensation as the bus in question was insured with respondent No.3-National Insurance Company. The latter in their reply has taken plea of maintainability, the claimants being not dependants and that the driver of the bus was not holding legal, valid and effective driving licence which was without any valid route, permit and registration certificate.

The Tribunal framed the following issues:-

- 1. Whether Raja @ Charanjit Singh died in motor vehicle accident, which took place on 21.11.2010 at 9.30 p.m. in the area of police station City Sri Muktsar Sahib on account of rash and negligent driving of respondent No. 1*

Mehal Singh of bus No. PB-30E-5378? OP claimants.

2. Whether the claimants are entitled to compensation being legal representatives of Raja @ Charanjit Singh deceased? If so, how much and from whom? OPP.

3. Whether driver of the bus No. PB-30E-5378 was not holding the valid and effective driving licence at the time of alleged accident? OPR3.

4. Whether the bus No. PB-30E-5378 was not holding a valid route permit, registration and fitness certificate at the time of accident? OPR

5. Relief”.

The claimants examined PW1 Jasbir Kaur mother of the deceased and Shri Gurmeet Singh PW2 who deposed as to the earnings of the deceased and PW3 Anil Sood who also corroborated the earning of the deceased and respondent Shalu testified as RW1 giving eye witness account of the accident attributing act of rash and negligent driving of the bus in

question.

No other evidence was led by the opposite parties.

Appreciating the submissions, findings on Issue No. 1 have not at all displaced by the respondents, driver, owner and insurer of the offending bus. The testimony of the eye witness wife, the copy of the FIR Ex.P1, report under Section 173 Cr.P.C Ex.P4 and post mortem report Ex.P5 further corroborates that it was on account of accidental injuries received in a motor vehicular accident, the deceased had died and the findings on Issue No.1 needs to be upheld.

The onus to prove the issues No. 3 and 4 was upon the Insurance Company and the counsel Mr. Lalit Garg for the Insurance Company could not displace the evidence led on the record. Admittedly, the vehicle in question was fully insured. The driving licence of the driver has been proved on record as Ex.R1 which pertains to a heavy transport vehicle and was renewed at the time of the accident. The registration certificate Ex.R2 further illustrates and so the route permit Ex.R3. The insurance policy Ex.R-4 further illustrates this factum that the

driver was having legal, effective and valid licence and the vehicle was having registration certificate and valid route permit and therefore, issues No. 3 and 4 have been rightly decided by the Tribunal.

The most contentious issue is over the very quantum of compensation to which the claimants are entitled and as to whom of the claimants. Though the learned Tribunal has denied the compensation to the present appellants who happened to be the grown up sister and brother of the deceased who both are unmarried. Though much stress has been made by the counsel for the insurer Mr. Lalit Garg to argue that being major they are not entitled to any compensation, however, this Court seeks support from **National Insurance Company Limited Vs. Birender and others**, 2020(3) RLW 1982 the Hon'ble Apex Court has laid down the preposition of law that it is settled by now that the legal representative of the deceased have a right to apply for the compensation. Even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden

duty of the Tribunal to consider the application irrespective of the fact that the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only.

Thus, the present appellants are entitled to compensation amount and learned trial Court has fell into an error in dismissing their claim.

The deceased as has been stated on the records was earning Rs.30,000/- per month and was aged around 27 years and the factum of running a gymnasium certainly cannot be put to doubt as no evidence has been lead by the respondents answering to this claim.

Keeping in view and taking judicial notice of the earnings from such avocation in a city comprising district headquarters certainly Rs. 10,000/- per month is a reasonable earning keeping in view the than prevalent price index, therefore, monthly income of the deceased can be assessed to be Rs. 10,000/- per month, i.e. Rs. 1,20,000/- per year.

Keeping in view the age of the deceased 27 years,

therefore, it would be just and appropriate to allow the increase towards future prosecutes to the tune of 50% i.e. Rs.60,000/- and after adding the same, the amount of compensation would come out to be Rs.1,80,000/- (1,20,000+60,000).

The amount towards personal spending should be considered to the tune of $1/5^{\text{th}}$, i.e. Rs. 36,000/- and after deducting the said amount, the compensation amount would come out to be Rs.1,44,000/-. Keeping in view the age of the deceased, the multiplier of 17 can be applied and after applying the same, the amount would come out to be Rs. 24,48,000/- ($1,44,000 \times 17 = 24,48,000$).

Besides this, the deceased being young would have worked for a number of years and therefore, for loss of love and affection towards widow and minor kid, mother, sister and brother who must have gone some psychcchological crisis besides economic and had to spend money on the last rights and ceremonies of the deceased and under all these heads, loss of estate etc., this Court assess the loss to be Rs. 1,50,000/-. Besides, this the wife is also awarded a sum of

Rs.50,000/- towards loss of consortium. Thus, total compensation amount comes to Rs.26,48,000/-.

The apportionment of the aforesaid amount shall be given as 10% each to appellants No. 1 and 2, 15% to the mother of the deceased (respondent No.6) and the remaining 65% be given to respondents No. 4 and 5 (wife and son of the deceased, respectively, in equal proportions.

Since, the widow and minor son and their life expectancy, requirement are on the higher side, they are awarded 32.50% each whereas widow mother, brother and sister who are also major with the passage of time would get married and their dependency would also decrease.

The rate of interest awarded by the Tribunal i.e. 6% is on lower side, therefore, same needs to be increased to the tune of 9%. Rest of the stipulations need not be disturbed.

Disposed off accordingly.

May 04, 2022

amit rana

(FATEH DEEP SINGH)
JUDGE

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