

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

FAO-2196-2002(O&M)

Reserved on:-17.4.2023

Date of Pronouncement:-21.4.2023

Mrs. Usha Sharma and others

...Appellants

Versus

Ishwar Chand and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Suresh Kumar Kaushik, Advocate for
Mr.Dharamvir Sharma, Advocate
for the appellants.

Mr.Karan Jindal, AAG, Haryana.

Mr.D.P. Gupta, Advocate with
Mr.Shubham Gupta, Advocate
for the insurance company.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on 13.7.1999 deceased Harish Chand Sharma alias Harish Chand was driving motorcycle going to Karnal from village Jundla; Mangat Ram was pillion riding the said motorcycle; one Nishan Singh son of Kartar Singh, resident of village Jundla was also going to Karnal from village Jundla on a separate motorcycle with one Jagdish pillion riding the same; the motorcycle of deceased Harish Chand Sharma alias Harish Chand was going ahead of motorcycle of Nishan Singh; at about 12:30 p.m., when the motorcycle were near K.J. Rice Mill on Kaithal – Karnal road, the

motorcycle were being driven on left side of the road at moderate speed, then a Haryana Roadways bus bearing registration No.HR-45-2191 (hereinafter referred to as the offending bus) being driven at a very high speed without blowing horn in a rash and negligent manner by respondent No.1 – Ishwar Chand came from Kaithal side and motorcycle being driven by Nishan Singh escaped being hit very narrowly, however, the motorcycle of the deceased Harish Chand Sharma alias Harish Chand was hit from behind by said bus; resultantly, the deceased was run over by the left front wheel of the bus; Mangat Ram also received injuries; after the accident, respondent No.1 Ishwar Chand parked the offending bus at some distance from the place of accident and then slipped away; Mangat Ram injured was firstly taken to General Hospital, Karnal from where he was referred to PGI, Chandigarh keeping in view his serious condition, though his relatives had taken him to St.Stephen Hospital, Delhi, where he remained admitted for quite some time.

2. The legal representatives of Harish Chand Sharma alias Harish Chand, namely his wife – Usha Sharma, minor son – Master Tarun Kumar Sharma, minor daughter – Kirti Rani had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Ishwar Chand – driver, State of Haryana through Secretary, Department of Transport, Chandigarh, General Manager, Haryana Roadways, Kaithal and Collector, Karnal – owners of offending bus and its insurance company i.e. Oriental Insurance Company Ltd. Karnal before Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the Tribunal).

Mangat Ram, who had suffered injuries in that very accident had also filed a separate claim petition, which was tagged with the claim petition brought by Usha Sharma and others.

3. As per the case of claimants Usha Sharma and others, deceased Harish Chand Sharma alias Harish Chand was aged about 43 ½ years at the time of accident and he was practising as an Ayurvedic doctor at Jundla having monthly income of Rs.10,000/-.

4. On being given notice, the respondents put in appearance and offered a contest. Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, vide award dated 14.1.2002, the Tribunal gave issue-wise findings and by allowing the claim petition awarded compensation of Rs.3,80,000/- to claimants Usha Sharma and others with interest @ 9% per annum from the date of filing of the claim petition till realization. The liability to pay this amount was held to be joint and several of respondents No.1 to 5.

6. Feeling that the compensation awarded to them was on lower side, the claimants Usha Sharma and others, who are legal representatives of Harish Chand Sharma alias Harish Chand, have approached this Court by filing the present appeal seeking enhancement of the compensation awarded to them.

7. Notice of the appeal was issued to the respondents, who have put in appearance through counsel.

8. I have heard learned counsel for the parties besides going

through the record.

9. The Tribunal on analysis of the evidence brought on record by the parties and considering the other facts and circumstances has returned a clear finding that the accident in which Harish Chand Sharma alias Harish Chand had expired and Mangat Ram had suffered injuries had taken place on account of rash and negligent driving of the offending bus by Ishwar Chand, in that way, the driver, owners and insurance company of the offending bus were found liable to pay compensation to the claimants, who happened to be legal representatives of deceased Harish Chand Sharma alias Harish Chand.

10. With regard to the quantum of compensation, the Tribunal had taken the age of deceased to be 44-45 years. It had been observed that though the claimants had contended that deceased was practising as Ayurvedic and Unani doctor having degree of Vaidya Visharad, earning Rs.10,000/- per month. However, those contentions were not accepted on account of absence of clear cogent and convincing evidence brought on record by the claimants. However, it was observed that status of deceased was much better than that of an ordinary labourer, who could earn Rs.1,800/- to Rs.2,000/- per month. The deceased was maintaining a telephone at his residence and he was presumed to be well settled and financially sound, therefore, his income was taken to be Rs.3,600/- per month.

11. In my considered view, the income so taken deserves to be increased to some extent. Therefore, the same is taken to be Rs.4,000/- per month.

12. The Tribunal has not awarded any amount towards future prospects. The Tribunal has considered the age of deceased to be 44-45 years. In terms of the judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased was between aged group of 40-50 years, addition of 25% is to be made on the established income towards future prospects. Doing that the monthly income of the deceased Harish Chand Sharma alias Harish Chand comes out to Rs.5,000/-(4000 + 1000).

13. Keeping in view the number of dependent family members of the deceased, deduction to the extent of $1/3^{\text{rd}}$ is to be made from the income of the deceased as personal expenses. Doing that, the monthly dependency of the claimants comes out to Rs.3334 (5000 – 1666) and annual dependency comes out to Rs. 3334 x 12 = Rs.40,008/-.

14. The Tribunal has used multiplier of 13. However, keeping in view the judgment **Smt.Sarla Verma and others Versus Delhi Trans;port Corporation and another, 2009(3) RCR(Civil)77** of the Apex Court, when the age of deceased was 45 years, then multiplier of 14 ought to have been used. Doing that the compensation payable comes out to Rs. 40,008 x 14 = 5,60,112/-

15. Under the conventional head i.e. funeral and last rites expenses, the Tribunal has awarded Rs.5,000/- to the claimants.

16. However, as per the latest judgment **Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]**, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of

consortium. The claimants are further entitled get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

Doing that the compensation comes out to be Rs.6,30,112/-
(5,60,112 + 40,000 + 15,000 + 15,000).

17. The Tribunal has awarded compensation of Rs.3,80,000/-

18. In this way, the enhanced amount comes out to Rs.2,50,112/-
(6,30,112 – 3,80,000).

19. The claimants would be entitled to get interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till actual realization of that amount. The enhanced amount shall be distributed amongst the claimants in the same proportion as has been done in the original award. The other terms and conditions given in the relief clause regarding disbursement of the compensation amount shall apply to the enhanced amount as well. It appears that minor claimants No.2 and 3, namely Tarun Kumar Sharma and Kirti Rani might have attained majority by now. As such on furnishing of proof of majority, their shares be released to them straightway instead of depositing those in the form of FDR in some nationalized bank.

20. With such modification, the appeal is allowed partly with costs.

21.4.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No