

FAO-5639-2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5639-2011 (O&M)

Date of decision: March 28, 2023

Ranjit Kaur and others

....Appellants

versus

Harjit Singh @ Kaka @ Ranjit Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ramneek Vasudeva, Advocate for appellants.Mr. R.K. Bashamboo, Advocate
for respondent No.3-Insurance Company.

ARUN MONGA, J. (ORAL)

Appellants before this Court are claimants assailing the impugned award dated 01.04.2011 rendered by learned Motor Accident Claims Tribunal, Rupnagar (for brevity, "Tribunal") for enhancement of compensation.

2. Succinct facts, as noted by learned Tribunal, are as below:

"xx xx xx on 19.12.2009 at about 6.00 P.M. said Mohinder Singh along with his wife Ranjit Kaur and son Kamaljit Singh (claimants) were going on Scooter bearing registration No. PB-32-5581 to meet their relative. This Scooter was driven very carefully at slow speed by observing traffic rules. When this Scooter reached near Temple of Sri Baba Balak Nath Ji in area of village Barwa, then Maruti Car bearing registration No. PB-10-Y-3032 driven by respondent No. 1 in rash and negligent manner and at high speed came from opposite side and same without toot of horn struck against the Scooter of Mohinder Singh, due to which the same as dragged to the extent of 10/15 feet. Mohinder Singh along with his wife and minor son Kamaljit Singh fell on the metalled portion of the road and sustained injuries. Said Mohinder Singh along with his wife and minor son were shifted to Civil Hospital, Singhpur, but Mohinder Singh was declared dead there. Wife and son of Mohinder Singh were referred for treatment to Government Hospital, Sector 32, Chandigarh. Post mortem of dead body of Mohinder Singh conducted at Civil Hospital, Anandpur Sahib on 20.12.2009. FIR No. 109, dated 20.12.2009, under Sections 279, 337, 304-A and 427 IPC was registered at police station Nurpur Bedi."

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3. Upon notice, respondents No.1 and 2 filed joint written statement stating that claim petition was not maintainable. All other averments were denied averring that false allegations were leveled by claimants just for getting compensation. It was claimed that FIR was got registered on false facts. No accident in fact took place with the vehicle of respondents No.1 and 2. Further averred that said vehicle was insured with respondents No.3, but owned by respondent No.2. Amount claimed was excessive and imaginary. All other averments of claim petition denied one by one each.

3.1 Respondent No.3-Insurance Company averred that driver of the vehicles involved in accident were not holding valid and effective driving licenses and claim petition was bad due to non-joinder of necessary parties as owner and insurer of Scooter No.PB-32-5581 not impleaded as party. Claim petition was based on mis-stated facts due to which same was not maintainable. It was averred that if the accident in question took place, then same was on account of negligence of the driver of the Scooter himself. False FIR alleged to be got lodged in connivance with the police just for getting compensation in illegal way. All other averments of the claim petition were denied.

3.2 Respondent No.4 Raj Kumar Chhabra was impleaded as party on 15.1.2011 by learned Tribunal because he was alleged to be registered owner of the vehicle at the time of accident. He filed separate written statement stating that claim petition was not maintainable because FIR got lodged on false facts despite the fact that no accident in question took place. All other averments of the claim petition denied.

4. Learned Tribunal framed the following issues:

- “1. *Whether death of Mohinder Singh took place in a road accident on 19.12.09 at about 6 P.M. near village Barwa, Tehsil Anandpur Sahib, Distt. Ropar and whether said accident caused due to rash and negligent driving of Maruti Car bearing No. PB-10-Y-3032 by respondent No.1?OPP*

2. *If issue No. 1 is proved, whether claimants being legal heirs of deceased entitled to get compensation? If so, to what amount and from whom? OPP*
3. *Whether respondent No. 1 was not holding valid and effective driving license at the time of alleged accident? If so, its effect? OPR*
4. *Whether the petition bad for non-joinder and mis-joinder of necessary parties? OPR*
5. *Relief.”*

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 & 2 in favour of claimants. Issue No.3 was decided against respondents No.1, 3 and 4. Issue No.4 was decided against respondent No.3. Consequently, claimants were held entitled to compensation of Rs.7,35,000/- and respondents No.1, 3 and 4 were held liable to pay the same jointly and severally with interest @ 6% per annum.

6. Having heard arguments of learned counsel for both the parties, I am of the view that taking the highest figure of income out of three income tax returns on record to arrive at the monthly income of the deceased, as contended, would not be proper or justified. Keeping this in mind, I see no ground for interference *qua* the finding of learned Tribunal by assessing income of deceased as Rs.72,000/- per annum on the basis of average of his three income tax returns relied on by claimants produced as Exhibits P-3, P-4 & P-5 for the financial years 2004-05, 2005-06 and 2006-07 respectively.

6.1 As regards other objection of appellants that dependency of claimants has not been correctly computed and instead of 1/3rd of income deducted for personal expenses of the deceased, it ought to have been 1/4th as parents of deceased were also dependent upon him. I am afraid, said contention is also devoid of any merit. The findings rendered in this behalf by learned Tribunal are based on the pleadings and evidence on record. Perusal of the award reflects that neither there it was pleaded in the claim petition for compensation nor is any evidence adduced by the claimants to establish that parents were dependent on the deceased.

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Therefore, in the light of Apex Court judgment rendered in **Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, parents cannot be presumed to be dependent. In the premise, 1/3rd has been correctly deducted as personal expenses out of monthly income of the deceased.

7. However, applying the principles in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **National Insurance Co. Ltd. v. Pranay Sethi**, reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**, I am of the view that compensation for the death of Mohinder Singh deserves enhancement.

Keeping the aforesaid in mind, learned counsel for respondent No.3- Insurance Company has conceded to the following computations, in course of hearing.

8. In view of the above discussion, various computations of compensation *qua* each head are modified as below:

Deceased	Mohinder Singh
Date of accident/death	19.12.2009
Age	40 years
Marital Status	Married
Claimants	Wife, son, daughter, father and mother
Income of the deceased	Rs.72,000/- per annum
Future prospects	40% (Rs.72,000+28,800) = Rs.1,00,800/-
Deduction for personal expenses excluding dependency of parents	1/3 rd (1,00,800-33,600)=Rs.67,200/-
Total pecuniary loss of dependency with Multiplier of 15	Rs.10,08,000/-
Loss of consortium @ Rs.40,000/- for 5 claimants	Rs.2,00,000/-
Loss of estate & funeral expenses	Rs.15,000/- + Rs.15,000/- = Rs.30,000/-

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Total	Rs.12,38,000/- (10,08,000/- + 2,00,000/- + Rs.30,000/-)
Compensation awarded by the Tribunal	Rs.7,35,000/-
Enhanced amount of compensation to be paid	Rs.5,03,000/- (Rs.12,39,000-Rs.7,35,000/-)

9. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimants along with interest @ 7% per annum as awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimants by apportionment, as under:-

Ranjit Kaur (widow)	Rs.6,38,000/-
Malkiat Singh (father)	Rs.1,00,000/-
Shital Kaur (mother)	Rs.1,00,000/-
Kamaljit Singh (minor son)	Rs.2,00,000/-
Jasmin Kaur (minor daughter)	Rs.2,00,000/-

10. Appeal is disposed of in above terms.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 28, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No