

FAO-1547-2013 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1547-2013 (O&M)
Reserved on :- 16.11.2023
Pronounced on:- 08.12.2023

Nirmala Devi and others

...Appellants

Versus

Subhash and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sandeep Goyal, Advocate
for the appellants.

Ms. Manvi Verma, Advocate
for Mr. Rajneesh Malhotra, Advocate
for respondent No. 3 - Insurance Company.

AMARJOT BHATTI, J.

1. The appellants/claimants – Nirmala Devi, Ajayender Beniwal and Anamika Beniwal have filed the present appeal for enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Hisar vide impugned Award dated 18.08.2011 vide which the claimants have been awarded compensation to the tune of Rs. 4,94,664/- along with interest at the rate of 6% per annum from the date of filing of the petition till its realization along with Counsel fee, against the respondents No.1, 2 and 3 who were held liable jointly and severally, as detailed therein.

2. The facts of the case are that the appellants Nirmala Devi, Ajayender Beniwal and Anamika Beniwal had filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of Satpal Singh @ Satpal Beniwal in a motor vehicular accident. As per the facts of the case, on the fateful day of 30.03.2009,

Satpal Singh @ Satpal Beniwal was coming from Rajgarh to Hisar in his

vehicle i.e Maruti Alto bearing Registration No. HR-20K-7200 and was driving his car on National Highway No. 65. At about 08:30 pm, when he reached near Rohi Lasedi, in the meantime, one Pickup vehicle bearing Registration No. RJ13-GA-3241, which was being driven by respondent No. 1 in a very rash and negligent manner came from opposite side in a wrong lane and directly hit the Maruti Alto. Due to the impact, Satpal received grievous injuries and ultimately he died. The said accident was witnessed by Virender Singh son of Amar Singh resident of Rajgarh. It was further mentioned that the persons present in the offending vehicle also received injuries and they told the police about the negligence of Subhash respondent No. 1. Regarding this accident, FIR No. 100 dated 30.03.2009 was registered under Section 279, 337, 338 and 304-A of IPC and Section 134/181 of MV Act. It was alleged that the accident took place due to the negligence of respondent No. 1. The claimants alleged that Satpal Beniwal was 49 years of age at the time of alleged accident. He was a Junior Draftsman in the office of Senior Town Planner, Hisar Circle, Hisar and was getting salary of Rs. 25,398/- per month under pay scale Rs. 9300-34800+GP 3600. They have suffered great loss on account of his untimely death and claimed compensation of Rs. 35,00,000/- along with interest.

3. The respondent No. 4 Panmeshwari mother of the deceased was proceeded *exparte* vide order dated 04.01.2010 and the case was contested by respondents No. 1 to 3. The respondents No. 1 and 2 have filed joint written statement taking preliminary objections regarding maintainability; suppressing the material facts; estoppel; mis-joinder and non-joinder of necessary parties, locus standi; cause of action etc. On merits, it was submitted that no accident took place as alleged. The vehicle

bearing registration No. RJ-13GA-3241 was not involved in the alleged accident. The petitioner has filed the present claim petition just to get compensation from the answering respondents. The other facts mentioned in the claim application regarding accident as well as claim of compensation were also denied.

The respondent No. 3 had filed separate written statement wherein it was alleged that the petitioners have no locus standi and cause of action to file the present petition. The owner and insurer of the car involved in the accident have not been joined as party to the claim petition, therefore, the present petition is bad for mis-joinder and non-joinder of necessary parties. It was further alleged that at the time of accident, respondent No. 1 the driver of the offending vehicle was not holding a valid driving license. The driver and owner of the alleged offending vehicle have not given any information in writing to the answering respondent regarding the alleged accident, as such, the vehicle was being driven in contravention of the terms and conditions of insurance policy. The Mahindra Pick-up bearing registration No. RJ-13GA-3241 was not having the certificate of fitness at the time of alleged accident. It was further alleged that the petitioners No. 2 and 3 are major sons of the deceased and were not dependent on the income of the deceased, therefore, they are not entitled to any compensation. The profession of the deceased, his income and claim for compensation by the claimants was also denied. In case the claim petition is accepted and the petitioners are entitled to receive the amount of compensation, then the petitioners should not be granted interest more than 6% per annum.

4. From the pleadings of the parties, following issues were framed by the Tribunal on 24.05.2010 :-

(1) *Whether the accident in question resulting in death of Satpal Beniwal took place due to rash and negligent driving of offending vehicle bearing registration No. RJ-13GA-3241 driven by respondent No. 1 as alleged?* OPP

(2) *If issue No. 1 is proved, whether the petitioner is entitled to recover the compensation, if so to what amount and from whom?* OPP

(3) *Whether the claim petition has been filed in collusion between the petitioner and respondents No. 1 and 2?* OPR

(4) *Whether the respondent No. 1 was not holding a driving license, nor was under the employment of insured at the time of accident?* OPR3

(5) *Relief.*

5. In order to prove the claim petition, the petitioner/claimant No. 1 Nirmala Devi herself stepped into the witness box as PW1 and reiterated the averments mentioned in the claim application. The petitioners/claimants also examined Satyavir, Assistant in Senior Town Planner Office, Hisar as PW2 and Virender Singh eye witness as PW3. Thereafter, learned counsel for the petitioners tendered documentary evidence i.e, the certified copy of postmortem report Ex.P9, Note Book of deceased Ex.P10 and Ex.P11 and closed the evidence.

6. In order to rebut the case of the petitioners/claimants, no oral evidence was led by the respondents. However, learned counsel for respondents tendered Driving License, Registration Certificate, Fitness Certificate and Insurance Cover as Ex.R1 to Ex.R4 and closed the evidence.

7. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the petitioners/claimants was allowed by passing impugned Award dated 18.08.2011 and the claimants

were granted compensation of Rs. 4,94,664/- along with interest @ 6% per

annum from the date of claim application till realization along with counsel fee, against respondents No. 1 to 3. Feeling aggrieved of this Award, the present appeal has been filed by the appellants/claimants seeking enhancement of compensation.

8. I have heard the arguments advanced by learned counsel for the appellants/claimants and learned counsel for insurance company. The learned counsel representing the appellants/claimants firstly referred to the application under Section 5 of the Limitation Act for condonation of delay of 471 days in filing the present appeal. It is pointed out that the appellants/claimants are poor persons and are not having any means to engage a counsel. Even after getting the compensation amount, the claimants were not able to outcome from the situation of financial crunch and now after arranging money from some relatives, the claimants were able to engage the present counsel and to prefer an appeal. Therefore, the delay in filing the appeal may be condoned and it may be decided alongwith the appeal filed by the claimants.

The learned counsel for the appellants/claimants has argued the present appeal on the ground of quantum of compensation awarded in their favour, with the prayer to enhance the amount of compensation. It is pointed out that the learned Motor Accident Claims Tribunal, Hisar considered the income of late Satpal Beniwal to the tune of Rs. 26,583/- on the basis of salary record and after giving 30% increase in salary towards future prospects considered the monthly income as Rs. 34,557/- (Rs.26,583/- + 7974/-) and annual income as Rs. 4,14,684/-. The learned Motor Accident Claims Tribunal, Hisar wrongly deducted 1/3rd income towards personal expenditure, whereas late Satpal Beniwal left behind his widow, two children i.e. appellants/claimants and respondent No. 4 Smt.

Panmeshwari, his mother. Therefore, the deduction towards personal expenditure should have been to the extent of 1/4th income instead of 1/3rd income. Secondly, the learned Motor Accident Claims Tribunal, Hisar considered that the widow of deceased Satpal Beniwal will get salary benefits from the Government of Haryana to the extent of Rs. 31,19,264/- and deducted this amount from the amount of compensation calculated by the Tribunal i.e. Rs. 35,93,928/- and wrongly held that the claimants are entitled to the compensation of Rs. 4,74,664/- only. The learned counsel for the appellants has relied upon one copy of order dated 24.07.2009, according to which the monthly financial assistance granted in favour of Nirmala Devi, widow of Sat Pal Singh, Junior Draftsman, Office of Senior Town Planner, Hissar was assessed to the tune of Rs. 23,422/- per month and there is a specific term and condition that this monthly financial assistance will be admissible for 7 years w.e.f. 30.03.2009 under Rule 5(1) (b) of Exgratia Scheme 2006. Therefore, the learned Motor Accident Claims Tribunal, Hisar wrongly calculated the financial assistance to be received by Nirmala Devi for a period of 107 months and the monthly assistance is wrongly taken as Rs. 29,152/- instead of Rs. 23,422/- per month. It is prayed that the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Hisar is grossly inadequate and it requires recalculation. Even the rate of interest awarded by the learned Motor Accident Claims Tribunal, Hisar at the rate of 6% per annum is also towards the lower side. The quantum of compensation awarded under the conventional heads i.e. compensation on account of loss of consortium, funeral expenditure, loss to estate is also towards the lower side. It is submitted that the impugned Award dated 18.08.2011 passed by the learned Motor Accident Claims Tribunal, Hisar may kindly be modified

accordingly.

9. On the other hand, the learned counsel for insurance company pointed out that Smt. Panmeshwari the mother of late Satpal Singh @Satpal Beniwal was arrayed as respondent No. 4. Even before the learned Motor Accident Claims Tribunal, Hisar, she did not contest for her claim and was proceeded against *ex parte*. These facts indicate that she was not interested to pursue the present motor accident claim case filed by the claimants. In-fact, she was not dependent on her son and for this reason the salary was deducted towards personal expenditure to the extent of 1/3rd income instead of 1/4th income. The quantum of compensation and the rate of interest awarded by the learned Motor Accident Claims Tribunal, Hisar does not require any interference. It is prayed that the appeal preferred by the appellants/claimants may kindly be dismissed.

10. I have considered the arguments and have gone through the record carefully. Firstly I will deal with the application bearing CM No. 8531-CII of 2013 filed by the appellants/claimants under Section 5 of Limitation Act for condonation of delay of 471 days in filing the appeal. In this case, Smt. Nirmala Devi and her children had filed claim petition under Section 166 of Motor Vehicles Act which was allowed by the learned Motor Accident Claims Tribunal, Hisar by passing impugned Award dated 18.08.2011. Feeling aggrieved of this Award, the claimants filed the present appeal challenging the aforesaid Award on the ground that the accident took place due to rash and negligent driving of Subhash and the quantum of compensation awarded by the Tribunal was inadequate. The claimants Smt. Nirmala Devi and others took the stand that due to their poor financial background, they could not engage a counsel and now after arranging money from some relatives, they have

filed the present appeal. No reply is filed to this application. Considering the explanation given by the appellants and nature of the case, a lenient view is taken and the delay in filing the present appeal is condoned and CM-8531-CII-2013 is accordingly allowed.

11. The present appeal has been preferred regarding the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Hisar regarding which issue No. 2 was framed. Regarding the rest of the issues, no arguments are advanced. In the case in hand, Sh. Satpal Singh @ Satpal Beniwal lost his life in a motor vehicle accident who was serving as Junior Draftsman in the office of Senior Town Planner, Hisar Circle, Hisar with a salary of Rs. 26,583/- per month. At the time of accident, he was 49 years of age. The last pay certificate of Satpal Singh is proved on record by examining Satyavir, Assistant in Senior Town Planner, Hisar as PW-2. As per the last pay certificate Ex.P-8, his salary is mentioned as Rs. 26,583/- per month. The learned counsel for the appellants disputed the deduction of 1/3rd salary towards personal expenditure and it was claimed that 1/4th income should have been deducted towards personal expenditure. Otherwise, there is no dispute raised by the learned counsel for the appellants regarding the amount of compensation calculated by the learned Motor Accident Claims Tribunal, Hisar to the tune of Rs.35,93,928/-. It is conceded that 30% income towards future prospects was rightly considered and multiplier of 13 was rightly applied, considering the age of the deceased victim. The claim petition was filed by Nirmala Devi and her son and a daughter and the mother Smt. Panmeshwari was arrayed as respondent No. 4. The claimants are residents of Defence Colony, Hisar, whereas, Smt. Panmeshwari respondent No. 4 is shown to be resident of village Nehla, Tehsil Bhuna, District Fatehabad. The respondent No. 4 was

served but she did not contest the case and was proceeded against *exparte*. Therefore, the learned Motor Accident Claims Tribunal, Hisar rightly deducted 1/3rd income towards personal expenditure of the deceased instead of 1/4th income. The respondent No. 4 Smt. Panmeshwari did not contest or claimed any compensation for the reasons best known to her. Therefore, the stand taken by the appellants for deduction of salary to the extent of 1/4th income is not on sound footing. The compensation calculated by the learned Motor Accident Claims Tribunal, Hisar to the tune of Rs. 35,93,928/- does not require any interference.

12. In the case in hand, Nirmala Devi is receiving financial assistance under the provisions of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. Satyavir PW2 in his cross-examination claimed that the widow of the deceased is getting salary of Rs. 29,152/- per month. This salary has been considered which she will receive for 107 months. The learned counsel for the appellants disputed the aforesaid fact by relying upon one copy of order dated 24.07.2009 passed by Director, Town & Country Planning, Haryana Chandigarh. The copy of this order was not placed on record before the learned Motor Accident Claims Tribunal, Hisar and this document has been relied upon by the learned counsel for appellants at the time of arguments advanced before this Court. The learned counsel for insurance company has not disputed this document during the course of arguments. This document is material for the final adjudication of the case. The learned Motor Accident Claims Tribunal, Hisar calculated the amount of financial assistance received by Nirmala Devi by taking her income as Rs. 29,152/- per month. As per the salary certificate, the monthly income of the deceased victim was Rs. 26,583/- and it cannot be believed that the

widow of deceased victim was receiving more financial assistance than the salary of her deceased husband. As per the copy of aforesaid order dated 24.07.2009, Nirmala Devi widow of Satpal Singh @ Satpal Beniwal, Junior Draftsman was granted financial assistance to the tune of Rs.23,422/- per month as per rule 5 of Haryana Compassionate Assistance to the dependents of deceased Government employee August, 2006 and as per this order clause 1, the financial assistance is admissible for seven years w.e.f. 30.03.2009 under Rule 5(1)(b) of Exgratia Scheme, 2006 which comes out to be 84 months. Therefore, the amount of financial assistance to be received by Nirmala Devi widow was wrongly calculated by the learned Motor Accident Claims Tribunal, Hisar. The learned Motor Accident Claims Tribunal, Hisar further failed to consider that in case she was not getting the aforesaid financial assistance she would have received family pension which is approximately 50% of the salary of her late husband. Therefore, the appellants/claimants are getting approximately 50% extra financial assistance under the aforesaid Haryana Compassionate Assistance Rules, 2006. Since, Nirmala Devi was to receive financial assistance of Rs. 23,422/- per month and for the period of 84 months, the financial assistance comes out to the tune of Rs.19,67,448/-. 1/2 of this amount is deducted as she would have received family pension in the absence of aforesaid scheme and she is getting only 50% extra which requires to be deducted from the quantum of compensation calculated in the present case. Therefore, a sum of Rs. 9,83,724/- is deducted from the quantum of compensation calculated in this case i.e. Rs. 35,93,928/- and the balance amount comes out to be Rs. 26,10,204/-.

The quantum of compensation awarded under the conventional heads is also towards the lower side and the same is

FAO-1547-2013 (O&M)

-11-

recalculated in terms of the guidelines in 2009 ACJ 1298 Supreme Court of India, case titled “*Smt. Sarla Verma and others Vs Delhi Transport Corporation and another*”. Therefore, Nirmala Devi widow is granted Rs. 48,400/- towards loss of consortium, whereas, the appellants/claimants No. 2 and 3 are granted Rs. 48,400/- each on account of loss of filial consortium. They are further granted Rs. 18,150/- towards loss to estate, another sum of Rs. 18,150/- towards funeral expenditure, transportation etc. and the total amount of compensation comes out to be Rs. 27,91,704/- which the appellants/claimants are entitled to receive from the respondents No. 1 to 3 who are liable jointly and severally, after deduction of Rs. 4,94,664/- (in case already deposited). The enhanced amount of compensation comes out to be Rs. 22,97,040/-. The rate of interest awarded by the learned Motor Accident Claims Tribunal, Hisar does not require any interference. The enhanced amount of compensation be disbursed in favour of appellants/claimants in terms of Award passed by the learned Motor Accident Claims Tribunal, Hisar.

With this observation, the appeal preferred by the appellants/claimants is accepted and the impugned Award dated 18.08.2011 passed by learned Motor Accident Claims Tribunal, Hisar stands modified.

Pending application(s), if any, shall stand(s) disposed of.

The photocopy of record received from the Tribunal be sent back to the concerned quarter.

08.12.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes/No