

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

FAO-7305-2015 (O&M)

Date of decision: February 07, 2023

Prabhnoor Kaur and others

....Appellants

versus

KirpalSingh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sanjay Jain, Advocate for the appellants.

Service of respondent No.1 dispensed with
vide order dated 01.11.2019.

Mr. B.P.S. Virk, Advocate for respondent No.2.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

None for respondent No.4.

ARUN MONGA, J. (ORAL)

Aggrieved by Award dated 14.10.2014 rendered by learned Motor Accidents Claims Tribunal, Patiala (for brevity, Tribunal), appellant/claimants are before this Court by way of an appeal seeking enhancement of compensation.

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

“2. The case of the claimants, in brief, is that on 22.08.2012, deceased Gurpreet Singh alias Gurbhej Singh along with his friend Gurpreet Singh was going towards Bhawanigarh from Samana in Indica Car No. HR-09A/2747. When at about 11.15PM, they reached in the area of village Bhamna, Tehsil Samana, District Patiala on Samana to Bhawanigarh Road, in the meantime, a Truck No. PB-11AL/2935 (hereinafter referred to as the offending vehicle) came from the opposite side being driven by respondent no.1 in a rash and negligent manner and without giving any indication, struck against the car being driven by the deceased, as a result of which Gurpreet Singh alias Gurbhej Singh died at the spot and his friend Gurpreet Singh also suffered multiple injuries in

the accident. The injured Gurpreet Singh was got admitted in civil hospital, Samana. The dead body of deceased Gurpreet Singh was also taken to civil hospital, Samana and post mortem on the dead body was got conducted. It was alleged that the accident had occurred due to rash and negligent driving of the respondent no. 1 causing the death of the deceased. The matter was reported to the police by Paramjit Singh and an FIR No. 133 dated 23.08.2012 under sections 279/304A/337/427 IPC was registered at police station, Samana, District Patiala against respondent no.1.”

3. Upon notice, respondents No.1&2 filed a joint written statement stating that no such accident ever took place with the offending vehicle. A false FIR has been registered by the police at the instance of claimants to get an easy claim. The ownership of the offending vehicle with respondent No.2 was admitted and it was also admitted that offending vehicle was insured with respondent no.3. All other averments of the claim petition were denied and a prayer for dismissal of claim petition was made.

4. Respondent No.3/Insurer filed written statement raising preliminary objection *inter alia* that driver of offending vehicle was not holding a valid and effective driving license at the time of alleged accident. On merits, it was averred that no accident took place with offending vehicle. FIR was falsely registered. Offending vehicle had been falsely implicated only to get compensation from the insurance company. All other averments of the claim petition were denied and prayer for dismissal of the claim petition was made.

5. Learned Tribunal framed the following issues:

- “1. *Whether the deceased Gurpreet Singh alias Gurbhej Singh alias Bheja son of Dilbag Singh died in a road accident caused by rash and negligent driving by respondent no.1? OPP*
2. *Whether the claimants are entitled to claim, if so, to what amount and from whom? OPP*
3. *Whether the claim petition is not maintainable? OPR*
4. *Whether the claim petition is bad for non-joinder of necessary parties? OPR*

5. *Whether the driver of the truck No. PB11AL/2935 was not having a valid and effective driving license and route permit at the time of alleged accident? OPR*
6. *Whether the respondent no.3 had no contract with respondent no.2 to indemnify the risk of third party at the time of accident, if so its effect? OPR*
7. *Relief.”*

6. On appraisal of record/ evidence, learned Tribunal decided issues No.1, 5 & 6 in favour of claimants. Issues No.3 & 4 were not pressed by learned counsel for respondents and accordingly, were decided in favour of claimants. Consequently, the claim petition was partly allowed and claimants were awarded compensation to the tune of Rs.7,52,000/- with interest @ 7.5% p.a. from the date of filing of claim petition.

7. Learned counsel for the appellant/claimants contends that lesser amount on account of expenses for funeral, last rites and ceremonies has been awarded. Learned Tribunal wrongly applied the multiplier in the present case. Amount on account of loss of love and affection also needs to be enhanced.

8. On the other hand, learned counsels for respondents submit that claimants have failed to prove that accident in question took place due to rash/negligent driving of respondent No.1. However, an alternate submission is that the compensation awarded by learned Tribunal cannot be said to be on lower side.

9. I have heard learned counsel for the parties and perused the record.

10. Learned Tribunal decided issue No. 1 in favour of the claimants holding that Gurpreet Singh @ Gurbhej Singh alias Bheja died in a road accident caused by rash and negligent driving by respondent No. 1. Admittedly, the offending vehicle truck No.PB11AL/2935 was insured with respondent No. 3 (Iffco-Tokio General Insurance Company). No appeal or cross objections have been filed by either respondent No. 3 or by the owner and driver of the

offending vehicle against the impugned award. Finding rendered by the learned Tribunal in favour of the claimants is thus not assailed by them. This being the position, respondent No. 3 is precluded from contending herein that the claimants had failed to prove that the accident in question took place due to rash/negligent driving of respondent No. 1. The said contention of learned counsel for respondent No. 3 is, therefore, rejected.

11. Further, the Tribunal assessed the monthly income of Gurpreet Singh deceased at Rs.4500/-. Impugned award shows that he had five dependents- namely his widow, two minor children and his own aged parents. However, the learned Tribunal deducted 1/3rd of income for personal expenses of the deceased. In my opinion, the deduction of 1/4th instead of 1/3rd of income for personal expenses should have been made. A lump sum amount of Rs. 1 lac for loss of consortium to claimant No. 1 and Rs. 10,000/- each to claimants No. 2 to 4 for loss of love and affection and a sum of Rs. 10,000/- towards last rites expenses was awarded under the impugned award.

12. To my mind, the total compensation of Rs.7,52,000/- awarded by the learned Tribunal is on the lower side.

13. In the premise, applying the principles in the 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 opinion that amount of compensation needs to be recalculated as below:

Deceased	Gurpreet Singh alias Gurbhej Singh
Date of accident/death	22.08.2012

Age	27 years
Marital Status	Married
Claimants	Wife, daughter, mother and father
Income of the deceased	Rs.4,500/- per month
Future prospects	40% (Rs.4,500+1,800) = Rs.6,300/-
Deduction in dependency	3/4 th (6,300-1575)=Rs.4,725
Annual dependency	Rs.56,700/- (4,725 x 12)
Multiplier	17
Funeral exp. and loss of estate	Rs.33,000/- (16,500+16,500)
Consortium	Rs.1,76,000/- (Rs.44,000 x 4)
Total	Rs.11,72,900/- (56,700 x 17+33,000+1,76,000)
Compensation awarded by the Tribunal	Rs.7,52,000/-
Enhanced amount of compensation to be paid	Rs.4,20,900/- (Rs.11,72,900-Rs.7,52,000/-)

14. Accordingly, impugned award is modified in terms of above computations. Revised compensation shall be payable to claimants along with interest, as already 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 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. Revised compensation amount be disbursed to claimants in terms of the apportionment, as already determined by learned Tribunal.

15. Disposed of in above terms.

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

(ARUN MONGA)
JUDGE

February 07, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No