

246

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

**CM-17239-CII-2018 in/and FAO 5180-2018 (O&M)
Date of decision: 18.01.2023**

SUMAN DEVI AND ORS

....Appellants

VS

PREM SINGH AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Raj K. Narang, Advocate,
For the appellants.

Mr. Anil Kumar Gahlawat, Advocate,
For respondent No.2-RSRTC.

Service of respondent No.1 dispensed with.

ARUN MONGA, J. (ORAL)

CM-17239-CII-2018

CM-17238-C-II-2018

These applications are for condonation of delay of 319 days in filing and 58 days in re-filing the appeal.

For the reasons stated in the applications and even otherwise as no reply despite ample opportunities has been filed, same are allowed. Delay stands condoned.

CM-17240-CII-2018

Application is allowed, as prayed for, subject to all just exceptions.

Main case

Aggrieved with Award dated 27.07.2016 rendered by MotorAccidents Claims Tribunal, Faridabad, claimants have preferred the instant appeal for enhancement of compensation.

2. Succinct facts as noted by the Tribunal are as below:

“The claim petition was filed by the petitioners, due to untimely death of Kripa Shankar son of Sh. Chander Bhushan Singh i.e. husband of petitioner No. 1 and father of petitioners No. 2 to 5, & son of petitioners no. 6 & 7, in road side accident. Petitioners alleged that on 27.1.2015 at about 1.00 pm Kripa Shankar Singh & Sh. Rajesh Singh were going to Mewla Maharajpur side. Kripa Shankar was on his scooty Activa No. UP-11-R- 5082 and Rajesh Singh was on his separate motorcycle. Meanwhile a Rajasthan Roadways Bus No. RJ-05-PA- 2228, came from Ballabgarh side, being driven by respondent No. 1, in rash & negligent manner, at a high speed, & directly hit Kripa Shankar Singh. After causing accident, the driver of offending vehicle fled away from the spot alongwith his bus towards Delhi side. The accident was witnessed by Sh. Rajesh Singh son of Sh.Parsuram, who is cousin brother of Kripa Shankar. Due to the said accident, Kripa Shankar succumbed to his injuries on the spot. On the complaint of Rajesh Singh i.e., cousin brother of deceased Kripa Shankar, the case was registered against respondent no. 1 vide FIR no. 56 dt. 27.1.2015, U/s 279/304A of IPC. Petitioners being dependents on deceased Kripa Shankar, claimed compensation of Rs.50,00,000/- lacs alongwith interest @ 18% per annum from the respondents No. 1 & 2, being driver & owner of the offending vehicle.”

3. On notice, respondents no. 1 & 2 filed separate written statement wherein they took a number of preliminary objections. Factum of accident was specifically denied on the ground that Bus No. RJ-05-PA-2228 was never involved in any accident.

4. From the pleadings of parties, following issues were framed by learned Tribunal:

- “1. Whether Kripa Shankar Singh son of Sh. Chandra Bhushan Singh had died in motor vehicular accident, which took place at about 1.00pm on 27.1.2015 at Slip Road from Mathura Delhi Highway to Neelam Flyover, NIT, Faridabad, within the jurisdiction of Police Station Sector 7, Faridabad, due to rash & negligent driving of Bus No. RJ-05-PA-2228 by respondent no. 1?OPP*
- 2. Whether the petitioner is entitled to compensation as claimed in his claim petitioner and from whom?OPP*
- 3. Whether the petitioner has got no locus standi to file the present petitioner? OPR*
- 4. Whether the petitioner has got no cause of action to file the present petition?OPR*

5. *Whether the petitioner is not maintainable in the present form? OPR*
6. *Whether the petitioner has not come to the court with clean hands and has suppressed the true and material facts from the court? OPR*
7. *Whether the respondent no. 1 was not holding an effective and valid driving licence at the time of accident, if so, to what effect? OPR*
8. *Whether the respondent no. 2 has contravened, violated, infringed and breached the terms & conditions of the Insurance Policy and if so its effect? OPR*
9. *Relief."*

5. On appraisal of evidence, learned Tribunal decided Issue No.1 in favour of the petitioners and against the respondents. On issue No.2, it was held that petitioners were entitled to total compensation of Rs.20,60,000/- along with interest @ 8% per annum from the date of filing of petition, till realization of amount. The said amount after realization was ordered to be disbursed amongst petitioners No.1 to 7 in the ratio of 25%, 15%, 15%, 15%, 15%, 5%, 10% respectively. Hence, issue No.2 was decided accordingly. Issues No.3 to 8 were disposed of being not pressed.

6. Learned counsel for the appellants submits that learned Tribunal has not granted any amount for future prospects. It should be 50% of the salary as the deceased was drawing salary @ Rs.15,073/- p.m. He further submits that learned MACT deducted Rs.4000/- out of the salary of Rs.15,073/- of deceased as personal expenses, which should be 1/8th because seven people were dependent on him and he had to save money to take care of his four children, wife and parents. Further learned MACT did not give a single penny for loss of estate to the claimants. Therefore, compensation under the category of loss of estate and loss of consortium be also awarded along with other heads.

7. Learned counsel for respondent No.2-owner of the offending bus submits that learned MACT has rightly awarded Funeral and transportation expenses, loss of consortium and loss of love and affection.
8. At the request of learned counsel for appellants, service upon respondent No.1-driver is dispensed with.
9. I have heard learned counsel for the parties and perused the case file.
10. With regard to computations, I am of the view that same ought to have been calculated as below keeping in view the mandate of the Apex Court in case titled as “*National Insurance Company Vs. Pranay Sethi, 2017 (4) PLR 693, SC*”read with“*Magma GeneralInsurance Co. Ltd vs Nanu Ram Alias Chuhru Ram decided on18.09.2018.*”

<i>Deceased</i>	<i>Kripa Shankar</i>
<i>Date of accident/death</i>	<i>27.01.2015</i>
<i>Age</i>	<i>39 years</i>
<i>Income of the deceased</i>	<i>Rs. 15,000/- per month</i>
<i>Deduction in dependency</i>	<i>Rs.3,000/- (deduction 1/5th as the dependent of the deceased are more than 6)</i>
<i>Multiplier</i>	<i>15</i>
<i>Future Prospects</i>	<i>50% (12000/2=6000/-)</i>
<i>Annual</i>	<i>18000X12X15=32,40,000/-</i>
<i>Loss of Estate</i>	<i>Rs.15,000/-</i>
<i>Loss of Consortium and love and affection</i>	<i>Rs.40,000/- each dependent (7 dependents) 2,80,000/-</i>
<i>Funeral expenses</i>	<i>Rs.15,000/-</i>
<i>Total</i>	<i>32,40,000+2,80,000+30,000=35,50,000/-</i>
<i>Compensation awarded by the Tribunal</i>	<i>Rs. 20,60,000/- +interest @8%</i>
<i>Balance amount</i>	<i>35,50,000-20,60,000=14,90,000/- + interest @ 8%</i>

11. Accordingly, the award is modified in terms of the above computations. The amount awarded by learned Tribunal i.e.20,60,000/- is enhanced to Rs.35,50,000/-. Revised compensation shall be payable to the claimants along with interest as already imposed by the learned Tribunal, from the date of filing of the claim petition till the actual date of payment. The same shall be payable to the claimants within a period of 2 months of their approaching respondent No.2-Corporation along with web print of the instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of the claim petition. Revised compensation amount be disbursed to the claimants in terms of the apportionment, as already determined by the learned Tribunal.

12. Disposed of in above terms.

(ARUN MONGA)
JUDGE

18.01.2023
Vandana

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