

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-6408-2018
Date of Decision:-04.07.2023

RAM DEVI AND ANR

... Appellants

Versus

RAJESH KUMAR AND ORS

... Respondents

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Ms. Meenakshi Bali, Advocate for
Mr. G.C. Shahpuri, Advocate
for the appellants.

Mr. Paramjeet Phor, Advocate
for respondent No.2.

Ms. Geeta, Advocate
for respondent No.3.

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KARAMJIT SINGH, J. (Oral)

1. The claimants/appellants have filed this appeal against the Award dated 3.7.2018 passed by Motor Accident Claims Tribunal, Kurukshetra (for short 'MACT'), whereby compensation worth Rs.13,90,800/- has been granted to appellant No.1-Ram Devi, she being mother and dependent on his son Manoj Kumar (deceased).

2. Appellants who are husband and wife filed claim petition under Section 166 of Motor Vehicles Act (in short 'the Act') for grant of compensation on account of death of their son Manoj Kumar aged about 19 years in a motor vehicle accident.
3. As per the claimants Manoj Kumar met with an accident on 15.11.2016, while he was going on a motorcycle and in the meantime dumper No.HR-65-5739, which was driven in rash and negligent manner by respondent No.1 struck against motorcycle of Manoj Kumar as a result of which Manoj Kumar received multiple injuries and was taken to hospital at Kurukshetra from where he was referred to PGIMER, Chandigarh where he died on 16.11.2016. The offending dumper was owned by respondent No.2 and was insured with respondent No.3. FIR No.683 dated 16.11.2016 was also registered at Police Station Sadar Thanesar District Kurukshetra against the driver of offending vehicle for causing aforesaid accident.
4. The claim petition was contested by respondents No.1 to 3. In their joint written statement respondent No.1 and 2 denied the accident and took plea that false criminal case was lodged by the petitioners against respondent No.1.
5. Respondent No.3 insurance company in its written statement took preliminary objections regarding maintainability of the claim petition and validity of the driving license of the driver of the alleged offending vehicle. On merits, the factum of accident has been denied.

6. From the pleadings of the parties following issues were framed by the tribunal:

1. *Whether Manoj Kumar died in the accident which occurred on 15.11.2016 at about 5.15 p.m. in the area of Police Station Sadar Thanesar, District Kurukshetra, caused by rash and negligent driving of offending Dumper bearing registration No. HR-65-5739, being driven by respondent No.1 Rajesh Kumar and owned by respondent No.2 M/s Soma Enterprises and insured with respondent No.3? OPP*
2. *If issue No.1 is proved, whether the claimants are entitled to compensation, if so to what amount and from whom? OPP*
3. *Whether the respondent No.1 was not holding valid and effective driving license at the time of accident and was being driven in violation of the condition of the insurance policy? OPR*
4. *Relief.*

7. Petitioner No.1 Ram Devi appeared in witness box as PW-1 while Ashok Kumar eye-witness appeared as PW-2 and documents Ex.P1 to Ex.P6 relating to criminal case were also tendered into evidence, which also included copy of post-mortem report of Manoj Kumar.

8. The copy of the driving license of respondent No.1 (Ex. R-1) and that of registration certificate of offending vehicle (Ex.R-2), insurance policy (Ex.R-3), copy of fitness certificate of the offending vehicle (Ex.R-4), copy of permit of offending vehicle (Ex.R-5) and copy of road tax book (Ex.R-6) were tendered into evidence by counsel for respondents No.1 and 2. However, no evidence was adduced on behalf of respondent No.3.

9. The Tribunal after hearing counsel for the parties decided all the issues in favour of appellant No.1-Ram Devi and awarded compensation worth Rs.13,90,800/- to appellant No.1 along with interest @ 7.5% per

annum from the date of filing of petition till its realization. 25% of the awarded amount was directed to be released in her favour by transferring the same to her saving bank account while the remaining amount was ordered to be kept in FDR in a nationalized bank for a period of 10 years, the interest on the fixed deposit is to be paid to appellant No.1, monthly by automatic credit in her savings account.

10. Being not satisfied by the Award passed by MACT, the appellants have filed this appeal with prayer that the amount of compensation granted by the Tribunal should be enhanced.
11. I have heard the counsel for the parties.
12. The counsel for appellant No.1 contended that deceased was young boy and was working as a mechanic with Sathanu Service Center, Mohan Nagar, Kurukshetra and he used to repair air conditioners and CCTV cameras and his monthly income was Rs.20,000/-. It is further contended that the deceased was a skilled worker. It is further contended that however the Tribunal assessed the monthly income of the deceased as Rs.9,000/- by considering him as an unskilled worker. The counsel for appellant No.1 further contends that the monthly income of the deceased be considered as Rs.20,000/-. It is further submitted that while awarding the compensation, the tribunal has not awarded compensation under conventional head of loss of consortium worth Rs.40,000/- as per the law laid by the Hon'ble Supreme in **National Insurance Company Ltd. vs. Pranay Sethi Anr. 2017(4) RCR (Civil) 1009**. The learned counsel for appellant No.1 further prayed that the impugned award be modified accordingly.

13. On the other hand, counsel for respondent No.3-Insurance Company has contended that no reliable evidence was led by the appellants in order to show that the deceased was mechanic or was doing repair of air conditioners and CCTV cameras. The counsel has further contended that the Tribunal while passing the impugned order has clearly observed that the appellants have not produced any documentary evidence that the deceased was working as mechanic and was earning Rs.20,000/- per month and that in the given circumstances the Tribunal rightly assessed the monthly income of the deceased as Rs.9,000/- by treating him as unskilled labourer. However, the counsel for insurance company has not disputed the fact that no compensation has been granted to appellant No.1 under the conventional head of loss of consortium.
14. I have considered the submissions made by counsel for the parties.
15. In the instant case, no document was produced by the appellants with regard to educational qualification of the deceased including any certificate issued by ITI or any certificate of diploma in order to establish that the deceased was working as a mechanic and he used to repair air conditioners and CCTV cameras or that his monthly income was Rs.20,000/-. So the Tribunal while considering the deceased as unskilled labourer rightly assessed his monthly income as Rs.9,000/-.
16. Admittedly appellant No.1 is mother of the deceased and as such is entitled to get Rs.40,000/- under conventional head of loss of consortium as per the law laid down in **Pranay Sethi's** case (supra).

17. No other issue has been raised by the counsel for appellant No.1 during the arguments.
18. In the light of the above, the award passed by the Tribunal requires to be enhanced by Rs.40,000/-. Resultantly this appeal is partly allowed and it is held that appellant No.1 is entitled to get enhanced compensation worth Rs.40,000/- along with interest at the rate of Rs.6% per annum from the date of filing of the claim petition till its realization. Respondents No.1 to 3 are jointly and severally liable to pay the said enhanced amount of compensation to appellant No.1.
19. The appeal stands disposed of in the aforesaid terms.

04.07.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No