

(2014) 07 P&H CK 0762

High Court Of Punjab And Haryana At Chandigarh**Case No:** F.A.O. No. 2900 of 2004

Krishna Devi

APPELLANT

Vs

Naresh

RESPONDENT

Date of Decision: July 14, 2014**Hon'ble Judges:** Fateh Deep Singh, J**Bench:** Single Bench**Advocate:** Rinku Bazian, Advocate for Vikram Punia, Advocate for the Appellant; B.S. Saroha and R.S. Sharma, Advocate for the Respondent**Final Decision:** Partly Allowed

Judgement

Fateh Deep Singh, J.

The claimants are the appellants before this Court whereby they have impugned award dated 10.10.2003 passed by learned Motor Accident Claims Tribunal, Sonapat. The Tribunal taking into consideration that on 2.5.2002 deceased Virender, a young boy aged around 16 years was going on a Buggi (horse cart) along with others when in the area of Bus Stand Kehri Damkan, Canter bearing registration No. HR-46-B-8141 came being driven rashly and negligently at a high speed by Naresh alias Neshi and struck against the cart resulting in the death of the deceased.

2. After hearing learned counsel Mr. Rinku Bazian, Mr. BS Saroha and Mr. RS Sharma, the mode of the accident has not at all been disputed and as has been the submissions of the contesting sides, none has challenged it and thus has attained finality. From the testimony of PW1 Krishana Devi and PW2 Rajbir and the documents Ex. P1 to Ex. P5 illustrates that the deceased was aged around 16 years, a student of 10th class. Keeping in view the fact that the family belongs to rural area, a working agriculturist class and therefore, in all likelihood the deceased must be contributing to the agriculture pursuits which is commonly seen in the rural areas. Though otherwise there is no hard and fast rule to adjudicate on the quantum of compensation in such cases where a young up-growing child who is school going, dies. However, keeping in view the welfare nature of the provisions of

the Act and that the claimants are the unfortunate mother, father and minor sister of the deceased who was the only male child in the family certainly impels this Court to take a more realistic sympathetic view towards the claim of the appellants. Seeking support from [Kishan Gopal and Another Vs. Lala and Others](#), whereby the Hon'ble Apex Court in a similar situation had allowed compensation to the tune of Rs. 5 lacs for the death of young boy aged around 10 years on the basis of notional income. Though the learned Tribunal had sought to evaluate in terms of the money, the likely contribution of the deceased and has come to conclusion that the claimants were entitled to Rs. 1,85,000/- as compensation which to the mind of this Court is certainly on the lower side in view of the evidence led on the record and with some amount of guess work and hypothetical calculations, keeping in view that the deceased would be contributing towards running of the household and agriculture pursuits and would have been a source of joy, love and affection, source of support as well as protection for the family. Keeping in view this and taking his notional income per annum as Rs. 24,000/- and upon usual deductions the annual dependency comes to Rs. 21,600/-. Taking into consideration that had the deceased been alive would have married and so his sister and there would be diminish in dependency and so applying multiplier of 11, the loss of dependency comes to Rs. 2,37,600/-. Taking into consideration expenses incurred on last rites and ceremonies, the amount of total compensation is rounded off to Rs. 2,50,000/-. Therefore, it would sub-serve the ends of justice, if lump sum amount of Rs. 2,50,000/- is awarded as compensation.

3. The driver Naresh @ Neshi, owner Balbir Singh and insurer-Oriental Insurance Company Limited are jointly and severally liable to pay this compensation in the light of the specific finding recorded on issue no. 4 by the Tribunal that the driving licence Ex. R1 produced by the driver does not permits him to drive a Canter vehicle and therefore, there is clear cut violation of the terms of the insurance policy Ex R2. Thus, in view of the law laid down in [New India Assurance Co. Ltd., Jodhpur Vs. Mst. Kamla and Others](#) the driver, owner and the insurer are jointly and severally liable to pay this compensation. However, the insurer reserves the rights of recovery to recover this amount of compensation from owner and driver of the offending vehicle jointly and severally. All the stipulations laid down by the Tribunal need not be disturbed including rate of interest. However, it is made clear that to prevent further harassment to the minor claimant, if the minor claimant by now has attained the age of majority, the compensation amount shall not be resorted to by way of Fixed Deposit Receipt. Interim compensation, if any, paid shall be adjusted. No other issue has been raised.

4. In view of the fore going findings, the impugned award is modified thereby accepting the appeal to that extent.