

STATE OF HIMACHAL PRADESH

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v.

RAM PAL

(Criminal Appeal No. 393 of 2015)

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FEBRUARY 27, 2015

[T.S. THAKUR AND ADARSH KUMAR GOEL, JJ.]

*PENAL CODE, 1860: ss.279 and 304A – Fatal accident of 20 years old girl due to rash and negligent driving – Conviction u/ss.279 and 304-A – High Court noticed the post mortem report to the effect that “the cause of death of the deceased was crush injury of lumbo-sacral spine and pelvic bone leading to cardio respiratory arrest” – It was inferred that such injury could be possible only with rash and negligent driving – However, sentence of imprisonment was set aside and substituted by fine of Rs.40,000/- – On appeal, held: Sentence of fine of Rs.40,000 was inadequate – Insurance company had awarded Rs.360,000 as compensation to the heirs of the deceased – In the ends of justice, accused required to pay total compensation of Rs.1 lakh and the State to pay a sum of Rs.3 lakhs – Compensation – Code of Criminal Procedure, 1973 – s.357A.*

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**Disposing of the appeal, the Court**

**HELD: 1. The facts and circumstances of the case clearly show that the respondent did not call in question his conviction. The challenge was only to the inadequacy of the sentence in the instant appeal filed**

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A by the State. Moreover, in an appeal under Article 136 of the Constitution, this Court does not re-appreciate the evidence, in absence of perversity or patent legal error, merely because a different view was also possible. The correctness of conviction of the  
 B respondent is, therefore, not opened. As regards the sentencing, the sentence of mere fine of Rs.40,000/- imposed by the High Court was not adequate and proportionate to the offence. A sum of Rs.3,60,000/- has  
 C been awarded as compensation by the insurance company to the heirs of the deceased. Where the accused is unable to pay adequate compensation to the victim or his heir, the Court ought to have awarded compensation under Section 357A, Cr.P.C. against the  
 D State from the funds available under the Victim Compensation Scheme framed under the said section. The ends of justice would be served if the accused is required to pay total compensation of Rs.1 lakh and the State to pay a sum of Rs.3 lakhs. In case the respondent  
 E fails to pay any part of the compensation, that part of compensation will also be paid by the State so that the heirs of the victim get total sum of Rs. 4 lakhs towards compensation. [Paras 13, 14] [959-E-H; 960-A-C, E]

F *Suresh vs. State of Haryana* 2015 (2) SCC 227; *Manohar Singh vs. State of Rajasthan & Ors.* CrI. A. 99 of 2015 decided on 16.1.2015; *State of M.P. vs. Mehtaab CrI A 290 of 2015* decided on 13.2.2015 – relied on.

#### Case Law Reference

G 2015 (2) SCC 227 Relied on. Para 13

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No 393 of 2015.

H From the Judgment and Order dated 27.02.2013 of the High Court of Himachal Pradesh, Shimla in Criminal Appeal

No. 406 of 2011.

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Varinder Kumar Sharma, Sanjeev Kumar for the Appellant.

P. C. Sharma, Anchit Sharma, Sumit Kumar for the Respondent.

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The Judgment of the Court was delivered by

**ADARSH KUMAR GOEL, J. 1.** Leave granted.

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2. This appeal has been preferred against judgment and order dated 27<sup>th</sup> February, 2013 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No.406 of 2011.

3. Only question raised for consideration is whether the sentence imposed in the facts and circumstances is fair and just.

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4. On 20<sup>th</sup> August, 2009 at 5.35 P.M. FIR was lodged by PW 3 Chhering to the effect that he was a mason in the work of construction of road at Gulaba near Manali. At 2.30 P.M., a tanker driven by the respondent accused struck the deceased Sonam a 20 year old girl, which was on account of rash and negligence driving by the respondent. The injured was taken to Mission hospital, Manali where she was declared dead on arrival. After completing the investigation, the accused was sent up for trial.

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5. The prosecution examined six witnesses, namely, PW 1 Dr. Balbir Rawat, PW 2 Budhi Singh, PW 3 Chhering, PW 4 Smt. Seema, PW 5 Sange Sherpa and PW 6 SI Om Chand. The accused took up the plea that the deceased came under the rear tyre after a part of the vehicle had already crossed. The girl had come running and struck

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A against the vehicle and the appellant was not rash or negligent in driving.

6. The trial Court noted that the vehicle was coming uphill as admitted by PW 4 Seema. It was also admitted  
B that the girl was struck on the back side of the vehicle. The vehicle was going uphill on a road, condition of which was bad. Thus, the vehicle could not be at high speed.

7. On appeal, the view taken by the trial Court was  
C reversed. It was held that even if the vehicle was going at slow speed and uphill, the vehicle could have been stopped and its striking to the girl could have been prevented. Undoubtedly, the death was because of vehicle hitting the girl which in the circumstances was clear result of rash and  
D negligent act of driving. Accordingly, the appellate Court convicted the respondent under Section 279 and 304 A IPC and awarded sentence of imprisonment for six months and fine of Rs.1000, in default further imprisonment of one month under Section 304 A IPC and concurrent  
E imprisonment for three months and fine of Rs.500, in default further imprisonment of fifteen days under Section 279 IPC.

8. The respondent accused preferred appeal to the High Court. The High Court noticed the post mortem report  
F to the effect that "*the cause of death of the deceased was crush injury of lumbo-sacral spine and pelvic bone leading to cardio respiratory arrest*". It was inferred that such injury could be possible only with rash and negligent driving. However, sentence of imprisonment was set aside and  
G substituted by fine of Rs.40,000/-, in default of which sentence awarded by the trial Court was to revive.

9. We have heard learned counsel for the parties.

H 10. Learned counsel for the State pointed out that it

was the duty of the Court to award just and fair sentence. A  
If a liberal view was taken on sentence of imprisonment,  
reasonable amount of compensation was required to be  
awarded. On this text, the view taken by the High Court is  
not sustainable. The amount of Rs.40,000/- cannot be held  
to be adequate compensation when life of a young girl aged B  
20 years was lost.

11. Learned counsel for the respondent submitted that  
the accused was a poor man and a driver and could not  
pay more amount as compensation. He also submitted that C  
even though it was a case of driving in a difficult terrain  
where different parameters ought to be applied for  
determining negligence.

12. We have given our anxious consideration to the D  
rival submissions and perused the record.

13. It is evident from the facts and circumstances of  
the case that the respondent has not called in question his  
conviction. We have before us only challenge to the E  
inadequacy of the sentence in the present appeal filed by  
the State. Moreover, in an appeal under Article 136 of the  
Constitution, this Court does not re-appreciate the evidence,  
in absence of perversity or patent legal error, merely  
because a different view was also possible. We are thus, F  
not inclined to reopen the correctness of conviction of the  
respondent and proceed to consider the question of  
adequacy of the sentence. In our view, the sentence of mere  
fine of Rs.40,000/- imposed by the High Court is not  
adequate and proportionate to the offence. We have been G  
informed that a sum of Rs.3,60,000/- has been awarded as  
compensation by the insurance company to the heirs of the  
deceased. We are also of the view that where the accused  
is unable to pay adequate compensation to the victim or

A his heir, the Court ought to have awarded compensation under Section 357A against the State from the funds available under the Victim Compensation Scheme framed under the said section. This Court has dealt with the issue in **Suresh vs. State of Haryana<sup>1</sup>, Manohar Singh vs. State of Rajasthan & Ors. (Criminal Appeal No.99 of 2015 decided on 16.1.2015)** and **State of M.P. vs. Mehtaab (Criminal Appeal No.290 of 2015 decided on 13.2.2015)**.  
B Having regard to totality of circumstances of the present case, we feel that ends of justice will be served if the  
C accused is required to pay total compensation of Rs.1 lakh and the State to pay a sum of Rs.3 lakhs.

14. Accordingly, we modify the impugned order passed by the High Court and enhance the compensation to be paid  
D by the respondent accused to Rs.1 lakh to be paid within four months failing which the sentence awarded by the Court of Session shall stand revived. In addition, we direct the State of Himachal Pradesh to pay interim compensation  
E of Rs.3 lakhs. In case the respondent fails to pay any part of the compensation, that part of compensation will also be paid by the State so that the heirs of the victim get total sum of Rs. 4 lakhs towards compensation. The amount already paid may be adjusted.

F 15. The appeal is disposed of accordingly.

Devika Gujral

Appeal disposed of.

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