IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.603 of 2006 (O&M)
Date of Decision: 29.05.2015

Manjit Kaur and others

......Appellants

Versus

Somnath and others

......Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. **Whether Reporters of local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest? Yes**

Present:- Mr. Ashwani Arora, Advocate,
for appellants.

Mr. Manmohan, Advocate for
Mr. Suman Jain, Advocate,
for respondent No.3.

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SHEKHER DHAWAN, J

Appellants have filed the present appeal against award dated 01.10.2005 by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation to the tune of ₹4,00,000/- on account of death of Harbans Singh.

2. Facts relevant for the purpose of decision of present appeal are that Harbans Singh (since deceased) was aged about 35, met with motor vehicle accident on 19.03.2003 as Scooter bearing registration No.CH-01W-5824 hit against Harbans Singh while coming at high speed. Harbans Singh who carrying business of milk vendor and earning ₹10,000/- per month as he was having six buffaloes.

3. Respondents contested the claim petition. 'The Tribunal' after

considering the material and evidence, passed the award. Present appeal has been filed by legal heirs of deceased Harbans Singh.

4. At the time of arguments Mr. Ashwani Arora, learned counsel for appellants took the plea that 'The Tribunal' has not awarded 'Just Compensation' because the income of deceased has not been taken correctly. More so there were five claimants who were dependent upon income of the deceased. 'The Tribunal' erroneously deducted 1/3rd on account of self-dependency whereas it should have been 1/4th. As per law laid down by Hon'ble Supreme Court, 'The Tribunal' has not awarded any amount on account of enhancement for future earnings. Even minimum amount on account of conventional heads i.e. loss of consortium, funeral expenses and loss of love and affection for the minor children was not awarded. So, the amount of compensation be enhanced suitably.

5. While arguing on this point Mr. Manmohan, learned counsel for respondent-Insurance Company took the plea that 'The Tribunal' has rightly assessed the amount of compensation. The income of deceased was not proved and as such his income was to be taken ₹3,000/- per month as the accident had taken place on 19.03.2003. The enhanced future earnings are not to be awarded in this case because deceased was not getting any fixed salary. More so, the matter regarding enhanced future earnings is pending before the Larger Bench of Hon'ble Supreme Court. So, the appeal is without any merit and same be dismissed.

6. Having considered the rival contentions raised by learned counsel for both the parties this Court is of the considered view that 'The Tribunal' has awarded compensation but the same is not as per law of the law laid down by Hon'ble Supreme Court. The income of deceased has been rightly

taken i.e. ₹3,000/- per month as there was no contrary evidence available on file. 'The Tribunal' has wrongly deducted 1/3rd on account of self-dependency whereas it should have been 1/4th as there were five dependents. Such a law was laid down by Hon'ble Supreme Court in case **Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77**. 'The Tribunal' has also not awarded any amount on account of enhanced future earnings as laid down by Hon'ble Supreme Court in case **Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra)**. The amount under conventional heads has also not been awarded. Accordingly the amount of compensation is being re-assessed as under:

Monthly income	₹3,000/-
Annual income	₹36,000/-
Less 1/4th	₹9,000/-
Total	₹27,000/-
Add 50%	₹13,500/-
Multiplier of 16 (₹40,500/- x 16)	₹6,48,000/-
Loss of consortium	₹1,00,000/-
Funeral expenses	₹25,000/-
Loss of love and affection for four minor children	₹4,00,000/-
Total compensation	₹11,73,000/-
Compensation already awarded	₹4,00,000/-
Total enhanced compensation	₹7,73,000/-

7. The appeal is allowed accordingly and the awarded amount is enhanced by ₹7,73,000/- and the said amount will be payable from the date of claim petition. Appellants shall be entitled to the interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition

till its realization as per law laid down by Hon'ble Supreme Court **K.S.Radhakrishnan, Dipak Misra Subulaxmi Vs. M.D., Tamil Nadu State Transport Corp. & Anr. 2012 Legal Eagle (SC) 570** and view of Division Bench this Court in **United India Insurance Company Ltd. Vs. Pinki Walia 2001 Legal Eagle (P&H) 619**. However, remaining conditions regarding apportionment and disbursal of amount shall remain unaltered.

8. Appeal partly accepted.

(SHEKHER DHAWAN)
JUDGE

May 29, 2015
msd