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

FAO No.2106 of 2010 (O&M)

Date of Decision: December 22, 2015.

Smt. Pinki and others

..........APPELLANT(s).

VERSUS

Joginder Singh and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajesh Malik, Advocate
for the appellant (s).

Brig. B.S. Tounque, Advocate
for respondent No.3.

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SURINDER GUPTA, J.

Vide award dated 01.10.2007, Motor Accident Claims Tribunal, Sonipat (later referred to as the Tribunal) awarded a compensation of ₹4,10,000/- for the death of Siri Bhagwan (later referred to as the deceased) in a motor accident. This appeal has been filed by the claimants seeking enhancement of compensation.

The case of the claimants, in brief, is that on 13.03.2005 deceased who was posted as cleaner on truck No.HR-69-1150 was going from Delhi to Ahemdabad with Virender Singh, respondent No.4, who was driving the truck. At about 6.00 pm, the truck was stopped in front of Haryana Dhaba in the area of Kanwarpura, Police Station Kotputli (Rajasthan). Another truck bearing registration No.HR69-8068(later referred to as the offending vehicle) was standing near the Dhaba in front of truck of the deceased. The deceased was cleaning the front glass of the truck when the driver of offending vehicle put it in reverse gear and drove it in a rash and negligent manner. He hit the front side of the truck of deceased, who got sandwiched between the two trucks and died at the spot. The accident was witnessed by Virender and Santosh, first and second driver of truck No.HR-69-1150. The matter was reported to the police and FIR No.126 dated 13.03.2005 for the offences punishable under Sections 279 and 304-A of Indian Penal Code at Police Station Kotputli District Jaipur, was registered.

Respondents No.1 and 2 i.e. driver and owner of the offending vehicle denied that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1. They alleged that the accident had taken place due to negligence of the deceased and respondent No.4, who started truck No.HR-69-1150 when the offending vehicle of respondent No.1 was in reverse gear.

Respondent No.3 New India Assurance Company Limited contested the claim of claimants with the plea that the accident had taken place due to rash and negligent driving of truck No.HR69-1150 by respondent No.4.

On appraisal of evidence, the Tribunal concluded that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1. While calculating the amount of compensation, salary of deceased was taken as ₹3,000/- per month, out of which 1/3rd of his salary was deducted towards his personal expenses and by applying multiplier of 16, the amount of dependancy was calculated as ₹3,84,000/- to which a sum of ₹26,000/- was added towards transportation changes and funeral expenses.

Learned counsel for the appellants-claimants has argued that the Tribunal has wrongly applied deduction of 1/3rd of the income of deceased towards his personal expenses. As per the observations of the case in ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** when the number of dependants of the deceased are 4 to 6, 1/4th of his income is to be deducted towards his personal expenses. In view of the observations made in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54,*** the Tribunal has also not allowed compensation towards future prospects, loss of consortium for the wife and loss of love and affection care and guidance for minor children of the deceased. The amount of ₹26,000/- awarded towards transportation and funeral expenses is also on lower side.

Learned counsel for respondent No.3-insurance company has argued that the Tribunal has to work out just and reasonable compensation for the claimants and in this case, the Tribunal has rightly applied the multiplier of 16 by taking the monthly income of deceased as ₹3,000/-. 1/3rd of income of deceased was deducted towards his personal expenses as he used to remain on tours. The deduction made from his income towards personal expenses was just and reasonable. The deceased was not in permanent job, as such, claimants are not entitled to any addition in the income of the deceased towards future prospects.

On perusal of the award passed by the Tribunal, I find that the income of the deceased has been taken as ₹3,000/- per month. The age of the deceased was taken to be 33 years as per post-mortem report. As observed by Hon'ble Apex Court in case of ***Rajesh and others Vs. Rajbir singh and others (supra)*** which has been followed in case of ***Munna Lal Jain versus Vipin Kumar Sharma, (2015) 6 SCC, 347***, a sum equal to 50% is to be added in the income of the deceased towards future prospects. Keeping in view the number of dependants, 1/4th of income of deceased is to be deducted towards personal and living expenses of the deceased as has been held in ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra).***

The Tribunal has not allowed any compensation towards loss of consortium for claimant No.1-widow and towards loss of love and affection, care and guidance for minor children of the deceased. As per the observations in case of ***Rajesh and others Vs. Rajbir and others (supra)***, claimant No.1-widow is entitled to compensation of ₹1,00,000/- towards loss of consortium and claimants No.2 to 4 i.e. minor children of deceased are entitled to compensation of ₹1,00,000/- towards loss of love and affection, care and guidance. The claimants are entitled also entitled to ₹25,000/- towards funeral expenses and ₹15,000/- towards transportation of dead body from the place of accident to the village of deceased.

Taking this in view, the compensation to which claimants are entitled, works out as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹3000 per month
(ii)	50% of (i) above to be added as future prospects	(₹3000+ ₹1500)= (₹4500 per month)
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	(₹4500-₹1125= ₹3375 per month
(iv)	Compensation after multiplier of 14 is applied	(₹3375X12X16)= ₹648000
(v)	Loss of consortium	₹100000
(vi)	Loss of love and affection, care and guidance for minor children	₹100000
(vii)	Funeral expenses	₹25000
(viii)	Transportation charges	₹15000
Total		₹888000

In view of my above discussion, the appeal has merits and is accepted. The award of the Tribunal is modified and the appellants-claimants are allowed compensation of ₹8,88,000/- for the death of Siri Bhagwan. The enhanced amount of compensation will carry interest 7.5% per annum from the date of filing of the petition till actual realisation. The amount of enhanced compensation shall be shared by the claimants as per the impugned award. Respondent No.3-insurance company will deposit the share of appellant No.1 in her bank account or pay the same through demand draft. The share of minor appellants No.2 to 4, who as per their age given at the time of filing of the petition are still minor, will be deposited in some nationalised bank, as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minor appellants No.2 to 4 as required at the time of deposit of the amount and the minor appellants shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of attaining majority. The above direction has been issued to save the appellants-claimants from unnecessary harassment caused due to directions, the bank usually gives to bring the order of the Tribunal to get the payment even after attaining the age of majority. The appellants-claimants shall also be entitled to costs of this appeal. The counsel fee is assessed ₹15,000/-.

(SURINDER GUPTA)
December 22, 2015. **JUDGE**
Sachin M.