IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2298 of 2012 (O&M)
Date of Decision: August 03, 2015

Anuradha and others

...Appellants

Versus

Patric Sunil and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.R.B.S.Jain, Advocate
for respondent No.3-Insurance Company

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INDERJIT SINGH, J.

Appellants-claimants Anuradha, Master Bhavuk Gupta, Master Harshit Gupta and Raj Rani have filed this appeal against respondents Patric Sunil, driver, Surjit Singh, owner and The New India Assurance Company Ltd., Insurer of Scorpio bearing registration No.CH-03Y-6524 (offending vehicle), challenging the impugned Award dated 02.12.2011 passed by learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal'), for enhancement of the compensation, which was awarded by the Tribunal, on account of death of Ashwani Kumar Gupta.

The brief facts of the case are that claimants-appellants Anuradha, Master Bhavuk Gupta, Master Harshit Gupta and Raj Rani filed the claim petition against respondents Patric Sunil, driver, Surjit Singh, owner and The New India Assurance Company Ltd., Insurer of offending vehicle, under Section 166 of the Motor Vehicles Act, 1988, on account of death of Ashwani Kumar Gupta in a motor vehicular accident. It is the case of the claimants that on 15.6.2009, Ashwani Kumar Gupta was going on road leading from Ambala to Lalru on his motorcycle bearing registration No.HR-01R-1467. Kanwaljit Singh Mehta was riding pillion on the motorcycle. One Harinder Dutt Sharma was following them on a separate scooter. When they reached in front of Baba Peer Mandir, Lalru, one Scorpio bearing registration No.CH-03Y-6524 (offending vehicle) came at fast speed from back and first hit the Kinetic Honda of Harinder Dutt Sharma and then hit the motorcycle of Ashwani Kumar Gupta. The offending vehicle was being driven in rash and negligent manner. Ashwani Kumar Gupta, Harinder Dutt Sharma and Kanwaljeet Singh Mehta received serious injuries and were removed to hospital. Ashwani Kumar Gupta died on the way to the hospital. It is stated in the claim petition that Ashwani Kumar Gupta was 40 years old working with State Bank of Patiala and was earning ₹30,000/- per month. FIR was got registered regarding the accident.

After framing of the issues and after going through the evidence on record, the Tribunal awarded ₹25,90,000/- to the claimants along with interest @ 6% per annum from the date of filing of the claim petition till realization.

Aggrieved from the above-said Award, present appeal has been filed by the claimants for enhancement of compensation.

Notice of motion was issued to respondent No.3-Insurance Company and learned counsel for respondent No.3 appeared and contested the appeal.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that the Tribunal after deducting the income tax, took the annual income of the deceased as ₹2,90,667/- and after applying deduction of 1/4th, the dependency came to ₹2,18,000/- per annum and after applying the multiplier of 15, the total compensation came to ₹32,70,000/-. The Tribunal deducted amount of ₹7,00,000/-, which was given to the claimants in lieu of compassionate appointment. So, the Tribunal reached to the conclusion that total compensation of ₹25,90,000/- was to be given.

First of all, I find that amount of ₹7,00,000/- which was given as compensation in lieu of compassionate appointment, cannot be deducted. At the most, it can be held as ex-gratia or pensionary benefit. Secondly, I find that no future prospects have been given. No compensation on ground of loss of consortium, loss of love and affection and funeral expenses have been given.

The claimants are entitled to 30% future prospects as the deceased was 40 years and not below 40 years, as has been held by the Hon'ble Supreme Court in ***Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77***. Further, the claimants are entitled to compensation on ground of loss of consortium, loss of love and affection and funeral expenses as has been held by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170***.

Further, it is in the evidence that the salary of the deceased has been revised from 01.01.2006, though after the accident, as per the Pay Commission report. Therefore, the income of the deceased is to be taken as per the record, which is revised from 01.01.2006.

Keeping in view the above discussion, the claimants-appellants are entitled to compensation as under:-

Annual income of the deceased (revised salary w.e.f 01.01.2006)	₹29,163/- x 12 = ₹3,49,956/-
30% future prospects	₹3,49,956 + ₹1,04,987 = ₹4,54,943/-
Income Tax	0-1,60,000=Nil 1,60,001 to 3 lacs @ 10% = 14,000 3,00,001 to 4,54,943 = 30,989 Total Tax liability = ₹44,989/-
Total income	₹4,54,943 - ₹44,989 = ₹4,09,954/-
Annual dependency by deducting 1/4th	₹4,09,954 - ₹1,02,489 = ₹3,07,465/-
Total amount of dependency after applying multiplier of 15	₹3,07,465/- x 15 = ₹46,11,975/-
Funeral expenses	₹25,000/-
Loss of consortium	₹1,00,000/-
Loss of love and affection to each minor	₹1,00,000/-x 2= ₹2,00,000/-
Loss of love and affection to mother	₹50,000/-
Total compensation	₹49,86,975/-

In view of above, the appellants-claimants are entitled to total compensation of ₹49,86,975/- along with the same interest on the enhanced amount as awarded by the learned Tribunal from the date of filing of the petition till realization. The enhanced amount be disbursed to the claimants proportionately as per Award passed by the Tribunal.

Therefore, finding merit in the present appeal, the same is allowed accordingly.

August 03, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**