

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

FAO No.3533 of 2013 (O&M)

Date of Decision: 20.01.2015

Kamlesh Kumari and others

....Appellants

Versus

Krishan and others

....Respondents

CORAM:HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Nitin Goyal, Advocate
for the appellants.

Mr. D.P. Gupta, Advocate for
Ms. Puneeta Sethi, Advocate
for respondent No.3.

MAHAVIR S. CHAUHAN, J. (ORAL)

This is claimants' appeal to seek modification of award dated 04.04.2013 whereby learned Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal') has awarded compensation amounting to Rs. 5,38,474/- in favour of the claimants/appellants on proof of the fact that the deceased namely Shamsher Singh, 35 years old labourer earning Rs.4016/- per month, died in motor vehicle accident caused on account of rash and negligent driving of a car bearing registration No.DL3CU-6814, by respondent-Krishan on 10.07.2012. The claim application brought by the appellants to seek compensation on account of loss of dependency was contested by the respondents. From the pleadings of the parties following issues were framed;

“(i) Whether the deceased Shamsher Singh died in road accident caused by rash and negligent driving of respondent No.2?OPP.

(ii) Whether the claimants are entitled to get compensation on account of death of Shamsher Singh, if so from whom

- and to what amount?OPP.*
- (iii) Whether the claim petition is not maintainable?OPR*
- (iv)Whether the claimant has no cause of action and locus standi to file the present claim petition?OPR.*
- (v) Whether the driver of car bearing registration no. DL-3CU-6814 was not having a valid and effective driving licence and route permit at the time of accident?OPR.*
- (vi)Relief.”*

Both the sides adduced evidence and were heard by the learned Tribunal to reach a conclusion that factum and manner of occurrence though were proved but the deceased was also responsible to the extent of 10% as regards the manner of occurrence.

There is no dispute with regard to the factum and manner of the occurrence, as also age of the deceased and loss of dependency. However, it is contended by learned counsel for the claimants/appellants that future prospects of the deceased have not been taken into consideration and nothing has been allowed on account of loss of love and affection and loss of estate while compensation awarded for loss of consortium and expenditure on last rites of the deceased is on the lower side.

Though, it is argued by learned counsel for the respondent-insurer that compensation awarded by the learned Tribunal is just and reasonable but it comes out that future prospects of the deceased have not been taken into account and while no compensation has been awarded for love and affection and for loss of estate, only Rs.10,000/- have been awarded for loss of consortium and Rs.5,000/- for expenditure on last rites of the deceased. This indisputably is unsustainable and the compensation has to be enhanced appropriately.

Learned Tribunal took status of the deceased as a daily wage earner and his income as Rs.4016/- per month. It has remained undisputed.

By deducting $1/4^{\text{th}}$ from the assessed income of the deceased as expenditure of the deceased upon himself number of his dependents being five, loss of dependency comes to Rs.3012/- per month. By multiplying it by 12 to find out loss of annual dependency and applying a multiplier of 16 in view of the age of deceased being 35 years, compensation payable on account of loss of dependency comes to Rs 5,78,304/-. To the assessed loss of dependency an amount of Rs.1,73,491/- has to be added as reflecting 30% of the assessed income of the deceased towards future prospectus, Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.25,000/- towards expenditure on last rites of the deceased. So calculated compensation comes to Rs.9,86,795/-. As the deceased was responsible for causing the accident to the extent of 10%, the compensation payable to the claimants/appellants has to be reduced by 10% and on being calculated, it comes to Rs.8,88,115.50. There is no reason in sight to deny this compensation to the claimants/appellants.

In view of the above, I allow this appeal, modify the award dated 04.04.2013 and award a compensation amounting to Rs.8,88,115.50 in favour of the claimants/appellants. This, however, shall be inclusive of the amount of compensation awarded by the learned Tribunal. Other terms of the impugned award shall remain unchanged.

The appeal is disposed of, in the aforesaid terms.

No costs.

20.01.2015
Pooja Saini

[MAHAVIR S. CHAUHAN]
JUDGE