

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 3988 of 2013

Date of Decision: September 14 , 2015.

Sulekh Chand and others

..... APPELLANT (s)

Versus

Chandigarh Transport Undertaking and another RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Navdeep Chhabra, Advocate
for the appellants.

Mr. P.S.Dhaliwal, Advocate and
Ms. Komal Bir Gill, Advocate
for respondent No.1.

Respondent No.2 proceeded against *ex parte*
vide order dated 05.05.2015.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Present appeal has been preferred for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as, the 'Tribunal') vide impugned award dated 02.05.2013 on account of the death of Santosh in a motor vehicular accident which took place on 07.10.2010. Appellant No.1 is the husband and appellants No.2 to 6 are children of the deceased.

Facts as revealed in claim petition are that, Santosh (since deceased) wife of appellant No.1 and mother of appellants No.2 to 6 alongwith her nephew Amit Kumar were travelling in bus No. CH01-GA-5016 coming from Ram Darbar to Sector 20, Chandigarh. When the bus stopped near the bus stop of Math Mandir, Sector 20 the deceased could not get down due to some confusion. However, when the bus reached near Rehri Market, Sector 20-D, the deceased requested respondent No.2 – Bhupinder Singh, driver of the bus, to stop the bus as she wanted to get down. Bus was accordingly halted. When Santosh was in the process of alighting from the bus, respondent No.2 – Bhupinder Singh in a sudden, abrupt and negligent manner started off the bus at a high speed. In the process, due to sudden jerks, Santosh fell down and sustained serious head injuries to which she later succumbed. FIR No.124 dated 10.07.2010 was registered at Police Station Sector 19, Chandigarh under Sections 279/337 IPC against respondent No.2 – Bhupinder Singh on the basis of statement made by Amit Kumar son of Satya Pal.

Claim petition was filed by the present appellants under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of ₹15 lacs on account of the death of Santosh, who was 35 years old at the time of accident. She was allegedly carrying on a tailoring work at her residence earning ₹12,000/- per month.

Claim was resisted by the respondents alleging that deceased herself jumped from the running bus in haste at a place where there was no bus stop resulting in injuries and her consequent death. Following issues were framed by the Tribunal:-

- “1. Whether Santosh w/o Sulekh Chand died in a road side accident alleged to be caused by Bhupinder Singh, respondent No.2 while driving bus No. CH01-GA-5016 in a rash and negligent manner? OPP
2. Whether the claimants are entitled to compensation as prayed for? OPP
3. Relief.”

Learned Tribunal on appreciation of the evidence on record concluded that deceased-Santosh suffered fatal injuries in the accident caused due to the rash and negligent driving of bus No. CH01-GA-5016 by its driver, Bhupinder Singh. Said finding of the Tribunal has attained finality.

Taking the age of deceased – Santosh to be 35 years, her annual income was assessed at ₹98,250/- on the basis of her Income Tax Return, Ex.P1 for assessment year 2009-2010. 30% addition was afforded on account of loss of future income of the deceased thereby, assessing her income to be ₹1,27,725/- (₹98,250+₹29,475). Deduction of 1/4th was effected thereby calculating loss of dependancy to be ₹95,793/- per annum. Multiplier of 16 was applied. Compensation amount was calculated as ₹15,32,688/- (₹95,793x16). ₹5,000/- each on account of funeral expenses and loss of consortium were awarded by the Tribunal, taking the total amount of compensation to be ₹15,42,688/-. However, as the claimants have sought compensation to the tune of ₹15 lacs, they were awarded sum of ₹15 lacs only by the learned Tribunal.

Learned counsel for the appellants vehemently argues that the Tribunal has grossly erred in restricting the compensation to a sum of ₹15 lacs only on account of the claim set-up by the appellants. Furthermore, claimants are entitled to enhancement of compensation on account of funeral expenses and loss of consortium. No amount has been awarded to the children on account of

loss of love and affection.

Learned counsel for respondent No.1 while refuting the said averments vehemently argues that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. Once the claim of the appellants themselves is for a sum of ₹15 lacs only, they are not entitled to any amount over and above the said figure.

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

It is an admitted position that the appellants in the claim petition prayed for compensation to the tune of ₹15 lacs however, it is not justified to restrict the compensation on the said amount once it is found that they are entitled to a higher amount. The Hon'ble Supreme Court in **Nagappa vs. Gurudayal Singh and others, (2003) 2 SCC 274** and various subsequent decisions has categorically held that it is the duty of the Tribunal/court to award just and fair compensation irrespective of the amount claimed by the claimants.

In **Nagappa's case** (supra) it has been observed that:-

"Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is – it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence."

In this situation, the Tribunal has erred in restricting the amount of

compensation to be disbursed to the claimants to ₹15 lacs only.

It has been held by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others, 2013(3) RCR(Civil)170(SC)** that a spouse is entitled to ₹1,00,000/- on account of loss of consortium. Funeral expenses to the tune of ₹25,000/- are required to be awarded. Keeping in view the fact that there are five children of the deceased, it is considered just and appropriate to award a sum of ₹25,000/- each on account of loss of love and affection.

There is however no evidence on record to indicate the deceased earning an amount higher than the one assessed by learned Tribunal. Assessment has been made on the basis of Ex.P1 i.e., the Income Tax Return for the assessment year 2009-2010. 30% addition on account of loss of future prospects has been rightly awarded by the Tribunal. Deduction of 1/4th on account of personal expenses as well as multiplier of 16 had been correctly applied. Appellants are thus entitled to enhanced compensation as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of Dependency	₹15,32,688/-
2.	Loss of consortium to the husband	₹1,00,000/-
3.	Loss of love and affection at the rate of ₹25,000/- to five children	₹1,25,000/-
4.	Funeral expenses	₹25,000/-
	Total =	₹17,82,688/-

The compensation already awarded to the claimants by the Tribunal shall stand deducted from the amount as reworked above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

With the above modification in the award dated 02.05.2013 passed

by learned Motor Accident Claims Tribunal, Chandigarh, present appeal is disposed of.

September 14 , 2015.
'om'

(LISA GILL)
JUDGE