

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5753 of 2013 (O&M)
Date of Decision: August 03, 2015

Smt.Sunita and others

...Appellants

Versus

Sumer Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sagar Aggarwal, Advocate
for the appellants.

Mr.Rajiv Kumar Saini, Advocate
for respondents No.1 and 2.

Mr.N.K.Manchanda, Advocate
for respondent No.3-Insurance Company.

INDERJIT SINGH, J.

Appellants-claimants Smt.Sunita, Vikram Singh, Vivek, Smt.Kasturi Devi and Birji have filed this appeal against respondents Sumer Singh, driver, Surinder Singh, owner and National Insurance Company Ltd., Insurer of truck bearing registration No.HR-46B-8656 (offending vehicle), challenging the impugned Award dated 27.05.2013 passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal'), for enhancement of the compensation, which was awarded by the Tribunal, on account of death of Suka Ram alias Sukha Ram.

The brief facts of the case are that claimants-appellants

Smt.Sunita, Vikram Singh, Vivek, Smt.Kasturi Devi and Birji filed claim petition against respondents Sumer Singh, driver, Surinder Singh, owner and National Insurance Company Ltd., Insurer of offending vehicle, under Section 166 of the Motor Vehicles Act, 1988, on account of death of Suka Ram alias Sukha Ram in a motor vehicular accident. It is the case of the claimants that on 13.07.2010, Suka Ram alias Sukha Ram was going from Punjab to Faridabad by driving Chassis of Swaraj Mazda at a moderate speed on left side of the road. When he reached within the revenue estate of police station, Gharaunda, a truck bearing registration No.HR-46B-8656 was parked by its driver on the road without any signal, indicator etc. and Chassis of Swaraj Mazda driven by Suka Ram alias Sukha Ram struck against the offending vehicle and he received injuries and died on the spot. FIR was also got registered on the same day. The deceased was 38 years of age and earning ₹8000/- per month.

Upon notice, respondents driver and owner stated that truck in question was not involved in the accident and a false case was registered. Respondent-Insurance Company contested the claim petition.

After framing of the issues and after going through the evidence on record, the Tribunal awarded ₹6,81,500/- to the claimants along with interest @ 7.5% 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 respondents and learned counsel for respondents appeared and contested the appeal.

At the time of arguments, learned counsel for the appellants argued that the age of the deceased has been wrongly taken as 38 years. No future prospects have been granted. He further argued that no compensation has been granted on account of loss of love and affection, loss of consortium. Funeral expenses are also not awarded as per law.

On the other hand, learned counsel for the respondents argued that compensation has been correctly awarded and does not require any interference from this Court.

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

The perusal of the evidence on record shows that as the deceased was driver by profession, therefore, the Tribunal has taken his income as ₹4900/- per month but no future prospects have been added. As per the law laid down by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170***, the claimants-appellants are entitled to ₹25,000/- as funeral expenses, ₹1 lac for loss of consortium and further 50% should be added as future prospects. The Three Judges' Bench of Hon'ble Supreme Court in the latest judgment in Civil Appeal No.4497 of 2015 (arising out of SLP(C) No.8362 of 2013 decided on 15.05.2015, granted 50% addition to the actual income of the deceased, while computing future prospects, who was below than 40

years of age. Therefore, the claimants-appellants are entitled to 50% future prospects, compensation on the ground of loss of love and affection, loss of consortium, loss of estate and funeral expenses. The minor claimants are also entitled to compensation of ₹1 lac each on ground of love and affection.

From the record, I find that in the claim petition itself, the age of the deceased has been mentioned as 38 years and in the inquest proceedings also, the age has been mentioned as 38 years. Therefore, the mere fact that in post mortem examination report, the age of the deceased has been written as 33 years, will not prove that deceased was 33 years of age at the time of accident, especially when it is the case of the claimants that deceased was 38 years old. Furthermore, there is no documentary evidence to prove the age of the deceased. Therefore, the age taken by the Tribunal is correct. The income of deceased as assessed by the Tribunal @ ₹4900/- per month is also correct and as per law.

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

Income assessed of the deceased	₹4,900/- per month
50% future prospects	₹4,900/- + ₹2,450/- = ₹7,350/-
Dependency by deducting 1/4 th	₹5,512.50 rounded off to ₹5,510/-
Dependency after applying multiplier of 15	₹5,510/-x 12 x 15 = ₹9,91,800/-
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/-
Total compensation	₹13,16,800/-

In view of above, the appellants-claimants are entitled to total compensation of ₹13,16,800/- along with the same interest on the enhanced amount as awarded by the 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
Vgulati

(INDERJIT SINGH)
JUDGE