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

FAO No.2062 of 2003 (O&M)
Date of Decision: January 15, 2016.

Prem Lata and others

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

VERSUS

Jasbir Singh and others

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

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Kharab, Advocate
for the appellant (s).

Mr. Pardeep Goyal, Advocate
for respondent No.3.

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SURINDER GUPTA, J.

This is appeal by appellants-claimants against the award dated 18.02.2003 passed by Motor Accident Claims Tribunal, Panipat (later referred to as the Tribunal) allowing compensation of ₹2,66,000/- for the death of Anil Kumar (later referred to as the deceased), husband of claimant No.1-Prem Lata and father of claimants No.2 to 4 in a motor accident with Truck bearing registration No.HR-05-A-4755 (later referred to as the offending vehicle).

2. Case of the claimants, in brief, is that on 25.01.1999, the deceased, aged 27 years, along with one Kuldeep Singh was going on motorcycle bearing registration No.HR-06E-4110 to meet his sister married

at Karnal. When they reached pucca bridge near Madhuban Chow, the offending vehicle loaded with bricks hit the motorcycle of the deceased from behind, as a result of which he fell down, suffered multiple injuries and died at the spot. Kuldeep Singh also suffered multiple injuries and was taken to Arpna Hospital, Panipat and then to Rajindra Hospital, Patiala. The claimants are wife and minor children of the deceased. They alleged that deceased was engaged in business of wine contract as an official of Bhagirath Lal and Co. Sonepat, A.K. And Company and used to earn ₹6,000/- to ₹7,000/- per month as his share of profit. He was an income tax payee in his individual capacity as well as member of 'HUF'.

3. Respondents No.1 and 2 contested the claim petition, inter-alia pleading that accident was caused due to rash and negligent driving of deceased himself. At the time of accident, offending vehicle was going at a moderate speed and applied brakes to avoid the accident.

4. Respondent No.3-insurance company also contested the claim petition, inter-alia pleading that it had taken place due to own fault of the deceased.

5. The Tribunal on the basis of evidence on record, concluded that the accident had taken place due to rash and negligent driving of offending vehicle by its driver Jasbir Singh, respondent No.1.

6. In order to prove income of the deceased, claimants examined Prem Lata, wife of the deceased, as PW2, who has stated that the deceased used to earn ₹8,000/- and contribute ₹6,000/- to ₹7,000/- per month to household expenses. Her three children are minor and were deprived of that earning. She has further stated that Anil Kumar was partner in firm M/s

Bhagirath Lal and Company, Panipat vide partnership deed Ex.PW8/A and placed on record income tax returns for the year 1999-2000 (Ex.P9). The deceased was also filing income tax return of firm 'Anil Kumar-HUF', which was placed on record as Ex.P10.

7. The Tribunal on the basis of income tax returns Ex.P8 and Ex.P9, took the monthly income of the deceased as ₹2,000/-. However, it ignored the income shown in income tax return (Ex.P10) with the observation that the same has not been justified being the income from HUF and the source of this income was not pleaded.

8. Learned counsel for the appellants has argued that the deceased was partner of two wine firms. He was also filing an 'HUF' return and there was no reason for the Tribunal to ignore the income of the deceased as shown in 'HUF' return. He has further argued that even a daily wage labourer was earning more than ₹100/- per day in the year 1999 and has pressed for treating monthly income of the deceased as ₹3,000/-. The Tribunal has also not allowed anything towards future prospects of the deceased and has wrongly applied multiplier of 16, which as per the law laid down in case ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** should be '17'. The Tribunal has allowed only ₹10,000/- lump sum towards funeral expenses, loss of consortium and estate, which also require upward revision. The Tribunal has not allowed any compensation towards loss of love and affection care and guidance for the minor children.

9. Learned counsel for the insurance company has argued that the Tribunal rightly calculated the income of the deceased from the income tax

returns. The deceased was partner in the wine firm, which was having a number of partners and the Tribunal has rightly taken the share of the deceased in the income of the wine firm while calculating the quantum of compensation. The income of the deceased from 'HUF' was rightly ignored as it was not effected due to demise of Anil Kumar.

10. Firstly, I take the question of multiplier used by the Tribunal while calculating quantum of compensation. As per the observations of Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra)***, the multiplier required to be applied as per the age of the deceased i.e. '17'. As per the observations in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54,*** the claimants are also entitled to addition of 50% in the income of the deceased towards future prospects. They are also entitled to compensation for the loss of consortium, loss of love and affection care and guidance, funeral expenses and transportation charges.

11. The Tribunal has taken the income of the deceased as ₹2,000/- per month. The deceased appeared to be an energetic entrepreneur and was partner in two firms and was also having 'HUF'. He was an income tax assessee. It is a matter of common knowledge that in the year 1999, even daily wage labourer was earning around ₹80/- to ₹100/- per day. Even if, these norms are taken, the income of the deceased, who was an entrepreneur, as assessed by the Tribunal @ ₹2,000/- per month is on lower side. Keeping in view the status of the deceased and the evidence on record, his monthly income is assessed as ₹3,000/-. Applying the norms fixed in case of ***Rajesh and others Vs. Rajbir and others (supra); Munna Lal Jain and others Vs.***

Vipin Kumar Sharma and others 2015(3)RCR (Civil) 447 and ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra),*** the amount of compensation to which claimants are entitled, is calculated 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)	1/3 of (ii) deducted as personal expenses of the deceased	(₹4500-1500)= ₹3000 per month
(iv)	Compensation after multiplier of 17 as per the case of ***Sarla Verma (supra)*** is applied	(₹3000X12X17)= ₹612000
(v)	For loss of consortium	₹50000
(vi)	For loss of love and affection care and guidance to the minor children	₹75000
(vii)	Funeral and transportation expenses	₹20000
Total		₹757000

12. The appeal is accepted. The award of the Tribunal is modified and the compensation allowed to the appellants is enhanced from ₹2,66,000/- to ₹7,57,000/- for death of Anil Kumar. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation shall be apportioned amongst the claimants as per the award. Respondent No.3-insurance company will deposit the share of major claimant(s) in their bank accounts or pay the same through demand drafts. The share of minor appellant(s)-claimant(s), who is/are still minor, will be deposited in some nationlized 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(s) as required at the time of deposit of the amount and minor(s) shall not be asked to bring the fresh order from the Tribunal to get the

payment of the amount deposited in her/their name after the date of attaining majority. The above direction has been issued to save the claimant(s) from unnecessary harassment caused due to directions, the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed at ₹20,000/-.

(SURINDER GUPTA)

January 15, 2016. **JUDGE**

Sachin M.