

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

**FAO No.2629 of 2005 (O&M)
Date of decision : 02.02.2016**

Smt. Renu and others

.....Appellants

Versus

Anish and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Rajesh Arora, Advocate for appellants.

Ms. Sonam Dutta, Advocate for
Mr. V.M. Gupta, Advocate for respondent No.3.

DARSHAN SINGH, J.

Amended memo of parties filed by learned counsel for the appellants is taken on record.

2. The present appeal has been preferred by the appellants-claimants against the award dated 19.01.2005 passed by the learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter called the 'Tribunal'), vide which claimants have been awarded a compensation of Rs.3,99,000/- on account of death of Devender in the motor vehicular accident, which took place on 02.02.2001.

3. It was pleaded by the claimants that deceased Devender was 30 years of age at the time of his death. He was owner and driver of three-wheeler and was earning Rs.8000/- per months.

4. The claim petition filed by the appellants-claimants was contested by respondent No.1 driver, respondent No.2 owner and respondent No.3 United India Insurance Company Ltd. by filing separate written statements.

5. The present appeal has only been preferred for enhancement of the compensation.

6. I have heard Mr. Rajesh Arora, Advocate, learned counsel for the appellants, Ms. Sonam Dutta, Advocate for Mr. V.M. Gupta, Advocate, learned counsel for respondent No.3 and gone through the paper-book carefully.

7. Initiating the arguments, learned counsel for the appellants contended that the deceased was owner-cum-driver of a three-wheeler. He had taken loan for the purchase of the three-wheeler and was paying the regular installment of Rs.3000/- per month of the loan amount as per the copy of the account Ex.P5. He contended that income of the deceased was Rs.8000/- per month but the learned Tribunal has wrongly taken the income of the deceased to be Rs.3000/- per month. He further contended that no future prospects have been awarded towards the income of the deceased. The multiplier has also been applied wrongly. Only Rs.5000/- has been awarded towards loss of consortium and Rs.10,000/- towards transportation and funeral expenses.

8. On the other hand, learned counsel for the respondent-Insurance Company contended that there was no documentary evidence to establish the income of the deceased. So, the learned Tribunal has rightly taken the income of the deceased to be Rs.3000/- per month. He was not holding any permanent job having regular increments. So, no future prospects were required to be taken into consideration while computing the computation. She further contended that the adequate amount has been awarded under all the heads by the learned Tribunal. Thus, the compensation awarded by the learned Tribunal is just and appropriate.

9. I have duly considered the aforesaid contentions.

10. As per the case of the claimants, the deceased was owner-cum-driver of the three-wheeler and was earning Rs.8000/- per month. The claimants have examined PW6 Diwan Chand Yadav, Clerk, Oriental Bank of Commerce, Manesar to prove that deceased has taken a loan of Rs.1,34,460/- on 17.06.2000 for purchasing the three-wheeler bearing registration No.HR-55/6964 and was paying the monthly installment of Rs.3000/-. He proved the copy of the statement of account Ex.P5 with respect to the payment of installments. From the aforesaid evidence, it comes out that deceased was owner-cum-driver of the three-wheeler. In this way he could have easily earned Rs.5000/- per month. The learned Tribunal has taken the income of the deceased on the lower side. So, the income of the deceased shall be taken to be Rs.5000/- per month.

11. The deceased was self-employed being owner-cum-driver of the three-wheeler. As per the law laid down in cases ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54*** and ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, the claimants were certainly entitled for future prospects. At the time of the accident, the deceased was 30 years of age. So, 50% of the income of the deceased is to be added towards future prospects. Thus, the total income of the deceased comes to Rs.7500/- per month. The deceased had five dependants. Thus, 1/4th of his income is to be deducted towards his living and personal expenses. The remainder comes to Rs.5625/- (7500-1875).

12. As per the law laid down by the Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121***, as the deceased was 30 years of age at the time of his death, the multiplier of 17 shall be applicable. So, the multiplicand comes to Rs.11,47,500/- (5625 X 12 X 17). The learned Tribunal has awarded only Rs.5000/- towards loss of consortium to the claimant No.1. She will be entitled to be a sum of Rs.1,00,000/- towards loss of consortium. The learned Tribunal has awarded only Rs.10,000/- towards transportation and funeral expenses, which is enhanced to Rs.25,000/-. In this way the total amount of award comes to Rs.12,72,500/- (11,47,500 + 1,00,000 + 25,000). Thus, there will be a net increase of Rs.8,73,500/-.

13. Thus, keeping in view my aforesaid discussion the

present appeal is partly allowed. The award of compensation to the claimants on account of death of Devender is hereby increased to Rs.12,72,500/- from Rs.3,99,000/- as awarded by the learned Tribunal. The claimants shall be entitled to interest @ 7.5% per annum on the enhanced amount from the date of filing the petition till realisation. The mode of disbursement of the awarded amount and the liability shall remain as determined by the learned Tribunal.

02.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**