IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1981 of 2006 (O&M)
Date of Decision : 23.02.2016

Krishna Devi and others ....Appellants

Versus

Pawan Kumar and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ajay Jain, Advocate
for the appellants.

Mr. D.P. Gupta, Advocate
For respondent no. 3-Insurance Company.

Surinder Gupta, J.

Appellants Krishna Devi and others have filed this appeal seeking enhancement of compensation allowed by the Motor Accident Claims Tribunal, Narnaul (later referred to as 'the Tribunal') for death of Hari Om, husband of claimant-appellant no. 5, father of claimants-appellants no. 2 to 4 and son of claimant-appellant no. 1, in a motor vehicle accident with truck/dumper No. HR-55-B-6015 (later referred to as 'the offending vehicle').

2. As the appellants are seeking enhancement of compensation, detailed facts relating to accident are being skipped for the sake of brevity.

3. The Tribunal assessed income of the deceased as ₹3000/- per month. By applying the unit formula deduction of 7/9 was made from income of the deceased towards his personal expenses and on applying the multiplier of 16, amount of dependency was calculated as ₹4,48,000/- to which ₹5000/- were added as funeral expenses and ₹5000/- as loss of consortium for

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claimant-appellant no. 5 and a total compensation of ₹4,58,000/- was allowed.

4. Learned counsel for the appellants has argued that while assessing income of the deceased, the Tribunal has ignored vital evidence on record. Chander Kanta wife of the deceased while appearing as PW-5 has stated that the deceased was carrying a sweet shop in New Market Anaj Mandi, Narnaul and was having annual income of ₹1,50,000/-. Though, she could not produce account books but gave the detail of expenses which the deceased was incurring on the family. She has stated that he was spending ₹2000/- on the education of his three children. Krishna Devi mother of the deceased was suffering from paralysis and he was spending ₹1500/- per month on her treatment. He had been depositing ₹40,000/- annually in the saving schemes. To prove her contention, she placed on record photocopies of *Kisan Vikas Patras* and FDRs (Ex. PW-5/1 to PW-5/20). From his savings, the deceased had purchased a plot on 08.01.2003 vide sale deed No. 2642 (Ex. PW-5/21) for a consideration of ₹64,000/- and constructed a house over the plot in the year 2004 by spending ₹1,50,000/-. Site plans of the house were placed on record as Ex. PW-5/23 and Ex. PW-5/24. The deceased had also purchased another plot vide sale deed No. 2295 dated 16.12.2003 (Ex. PW-5/26) from Dauri Lal son of Munshi Ram. Learned counsel for the appellants has argued that this shows that the deceased was having enough income and a person who is spending on the education of his children, family expenses, treatment of his mother, purchasing the property etc. is presumed to be keeping

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his family quite comfortable and by no stretch of imagination could have income of ₹3000/- per month in the year 2005, when the cost of living was quite high and even a daily wager was earning more than ₹4000/- per month. He has further argued that as per observations in the case of ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54** and ***Munna Lal Jain and others* vs. *Vipin Kumar Sharma and others*, 2015 (3) RCR (Civil) 447**, claimants are entitled to addition in income of the deceased towards future prospects and a sum of ₹1 lac as compensation for the loss of love and affection, care and guidance for minor children, ₹1 lac for the loss of consortium for wife, ₹1 lac towards loss of estate, love and affectation for the mother of the deceased besides ₹25,000/- towards funeral expenses.

5. Learned counsel for respondent no. 3-Insurance Company has argued that there was no documentary evidence to prove income of the deceased and that he was running a sweet shop. In case the deceased was having income of ₹1,50,000/- per month, he must have been maintaining account books, which have not come on record. Purchase of property, investing money in saving schemes, is no proof of income of the deceased and has been rightly discarded by the Tribunal. The compensation allowed by the Tribunal was just and reasonable at the relevant point of time, as such, calls for no further enhancement.

6. Claimants have not been able to produce documentary evidence to prove monthly or annual income of the deceased. However, the documents produced on record like purchase of plots, *Kisan Vikas Patras*, deposit of money in fixed deposits with

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the bank etc. by the deceased during a short span before his death show that he was having enough income and after meeting his family expenses, he was in a position to save for the future as well. Though, these documents cannot be taken as yardstick for assessing monthly income of the deceased but in view of facts and circumstances of the case income of ₹3000/- per month as assessed by the Tribunal is highly inequitable and is on lower side. The evidence on record shows that the deceased was a man of means having sufficient income not only to look after his family but also to construct a house and take care of their future. In the case of ***Minu Rout and another*** ***vs.*** ***Satya Pradyumna Mohapatra and others*****, 2013 (10) SCC 695** the accident had taken place on 08.11.2004 and the Apex Court held income of the deceased, who was a driver, as ₹6000/- per month, considering the job of a driver as skilled job. The evidence on record shows that status of the deceased was not less than a skilled worker, as such, I assess his monthly income as ₹6000/-. As per observations in the case of ***Rajesh (supra)*** and ***Munna Lal Jain (supra)***, claimants are also entitled to addition of 50% in income of the deceased towards future prospects. Claimants are also entitled to compensation of ₹1 lac towards loss of love and affection, care and guidance for the minor children, ₹1 lac towards loss of consortium for the wife, ₹1 lac towards loss of estate, love and affection for the mother besides ₹25,000/- towards funeral expenses. As per law settled by the Apex Court in the case of ***Sarla Verma and ors.*** ***vs.*** ***Delhi Transport Corporation and another*****, (2009) 6 SCC 121**, deduction of 1/4th of income of the deceased is to be made towards

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his personal expenses.

7. In view of my above discussion, the compensation to which claimants are entitled is tabulated as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Hari Om	₹6000 per month
(ii)	50% of (i) above to be added as future prospects	₹6000 + ₹3000 = ₹9000 per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	₹9000 - ₹2250 = ₹6750 per month
(iv)	Compensation after multiplier of 16 is applied	(₹6750X12X16) = ₹1296000
(v)	Loss of love and affection, care and guidance for children	₹100000
(vi)	Loss of consortium	₹100000
(vii)	Loss of estate, love and affection for mother	₹100000
(viii)	Funeral expenses	₹25000
Total		₹1621000

8. In view of above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Hari Om is enhanced from ₹4,58,000/- to ₹16,21,000/-. The amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization. The amount of compensation shall be shared equally by the claimants. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. The share of appellants No. 2 to 4, who, as per their age given at the time of filing of the petition, are still minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made

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clear that the bank may take the documents regarding the age of the minor, as required, at the time of deposit of the amount and the minor shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of their attaining majority. The above direction has been issued to save the claimants 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 @ ₹20,000/-.

February 23, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? *Yes/No*

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