IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 439 of 2008 (O&M)
Date of Decision : 04.05.2016

Bindu Goyal and others .....Appellants

Versus

Kulwant Singh and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gaurav Singla, Advocate
for Mr. Sanjiv Gupta, Advocate
for appellants.

Mr. Sandeep Kotla, Advocate
For respondents no. 1 and 2.

Mr. Vinod Chaudhari, Advocate
for Mr. Rohit Goswami, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants-appellants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Karnal (later referred to as 'the Tribunal') for death of Deepak Goyal (deceased), husband of claimant-appellant no. 1 and father of claimants-appellants no. 2 and 3, and son of claimant-appellant no. 4 in a motor vehicle accident with tanker bearing registration no. HR-69-2529 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is enhancement of compensation sought by appellants, detailed facts of the case are being skipped for the sake of brevity.

3. Case of claimants, in brief, is that on 23.11.2005, the deceased was going to his residence at Jorian Kuan, Karnal on

his Bajaj Caliber Motorcycle bearing registration No. HR-05-M-9459, after performing his duties with rice mill situated at Kaithal road, when he was hit by the offending vehicle resulting in his death at the spot. The deceased was 37 years of age and was earning ₹20,000/- per month approximately.

4. In order to prove income of the deceased, claimants placed on record income tax return filed by him on 26.10.2005 i.e. about a month before the accident showing his income as ₹1,01,060/-. On this income, tax of ₹9200/- was paid. The Tribunal discarded income shown in this return on the ground that in the previous year i.e. for the year 2003-2004, the deceased had filed income tax return showing income as ₹49,500/- and there is no explanation about the jump of more than twofold in income of the deceased in the next year. The Tribunal assessed monthly income of the deceased as ₹5000/- per month.

5. Learned counsel for the appellants has argued that income tax return was filed about a month before the incident, as such, there was no reason to draw the conclusion that income shown in the return was wrong. Case of claimants is that the deceased was in the business of polishing rice of rice mills. He had shown his income as ₹49,500/- for the year 2003-2004. A man in such business keeps on gaining with passage of time. The mere fact that he had shown his income for the next year as ₹1,01,060/- calls for no explanation and there was no reason for the Tribunal to ignore income of the deceased as mentioned in the last income tax return.

6. Learned counsel for respondents have argued that the deceased was in the business of polishing of rice. Firstly, there was no reason for more than twofold increase in income of the deceased in one year; and secondly, no break-up of this income was given in the assessment order placed on file as Ex. P-3. The Tribunal has rightly chosen the middle path by assessing income of the deceased as ₹5000/- per month.

7. On giving careful thought to submissions of learned counsel for the parties, I find that the Tribunal has doubted the return for the year 2004-2005 showing income of the deceased only on the ground that income shown in this return was more than double of the previous year's income. This cannot be a ground to ignore income shown in the income tax return filed before the accident. The deceased was in the business of polishing the rice. It is quite possible that he may get better orders in one year and lesser orders in another year. To over come such a situation, the best way out in this case could be to take average of income of two years proved on record. The average of income of the years 2003-2004 and 2004-2005 after deducting tax liability comes to ₹70,500/- and taking it as a duly proved income of the deceased, his monthly income is worked out as ₹5875/- per month rounded off to ₹5900/-. As per observations of the Apex Court in cases 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 50% addition in income of the deceased towards his future prospects. Claimants

are also entitled to compensation for the loss of love and affection care and guidance for minor children of the deceased, loss of consortium for wife of the deceased and loss of estate, love and affection for mother of the deceased, which is quantified as per norms settled by now in a catena of judgments by the Apex Court as ₹1 lac on each count besides ₹25,000/- for funeral expenses.

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

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Deepak Goyal	₹5900 per month
(ii)	50% of (i) above to be added as future prospects	₹5900+₹2950= ₹8850 per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	₹8850-₹2212= ₹6638 per month
(iv)	Compensation after multiplier of 15 is applied	(₹6638X12X15) = ₹1194840
(v)	Loss of consortium for claimant no. 1-wife	₹100000
(vi)	Loss of love and affection care and guidance for claimants no. 2 and 3	₹100000
(vii)	Loss of estate, love and affection for claimant no. 4	₹100000
(vii)	Funeral & transport expenses	₹25000
	Total	₹1519840

10. As a sequel of my above discussion, the appeal is accepted. Award of the Tribunal is modified and compensation allowed to claimants is enhanced from ₹6,10,000/- to ₹15,19,840/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Respondent No. 3 being insurer of

the offending vehicle will deposit the share of claimants-appellants no. 1 and 4 in their bank accounts or pay the same through demand drafts. The share of claimants-appellants No. 2 and 3, 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 deposits till the period they attain majority. It is, however, made clear that the bank may take the documents regarding age of the minors as required at the time of deposit of the amount and the minors 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. Claimant no. 1, being mother and natural guardian of minor claimants shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of their brought up. Counsel fee is assessed at ₹ 20,000/-.

May 04, 2016 **(SURINDER GUPTA)**
jk **JUDGE**