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

**FAO No.5343 of 2009 (O&M)
Date of Decision: December 01, 2016.**

Birmati and others

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

VERSUS

Samsu and others

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

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Atul Yadav, Advocate with
Mr. Rajesh Bhateja, Advocate for
Mr. Shiva Khurmi, Advocate, Amicus-Curiae
for the appellant (s).

Ms. Shamsher Kaur, Advocate
for respondent No.3.

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SURINDER GUPTA, J.

This is appeal by claimants-appellants seeking enhancement of compensation awarded vide award dated 03.12.2008 passed by Motor Accident Claims Tribunal, Gurgaon (later referred to as 'the Tribunal') for death of Ram Kishan (later referred to as 'the deceased'), husband of claimant-appellant no. 1 and father of claimants-appellants no. 2 to 5, in a motor vehicle accident, which took place on 10.03.2007 with trailer bearing registration No. RJ-32-GA-1118 (later referred to as 'the offending vehicle').

The Tribunal awarded total compensation of ₹2,98,000/-, which was calculated as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Ram Kishan
(ii)	Age of the deceased	52 years
(iii)	Income of the deceased	₹3600/- per month
(iv)	1/3rd of (iii) deducted towards personal expenses	(₹3600-₹1200)= ₹2400 per month
(v)	Annual amount of dependency after applying the multiplier of 10	(₹2400x12x10)= ₹288000
(vi)	Loss of consortium, loss to the estate, transportation and funeral expenses	₹10000
Total		**₹2,98,000/-**

As the only issue involved in this appeal relates to seeking of enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

Learned Amicus-curiae appointed in this case has argued that the deceased was a driver by profession. In the year 2007, the driver was earning around ₹8,000/- per month but the Tribunal has assessed his income as ₹3,600/- per month, which is on lower side. The deceased was 52 years old and the multiplier applicable as per the observations in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** is 11 but the Tribunal has applied the multiplier as 10. The deceased had left behind wife, three daughters and a son, as such, the deduction towards personal expenses of the deceased from his income as per the law settled by the Apex Court in the above referred case should be 1/4th but the Tribunal has made the deduction of 1/3rd from the income of the deceased. The compensation awarded by the Tribunal towards funeral, transportation, loss to the estate and consortium etc. is quite inadequate. The Tribunal has also not made addition in the income of the deceased towards future prospects as per the observations in case of ***Rajesh and***

others Vs. Rajbir and others (2013)9 SCC 54. The wife of the deceased is entitled to ₹1 lac towards loss of consortium. Children of the deceased are entitled to similar compensation towards loss of love and affection, care and guidance and the claimants to compensation of ₹25,000/- towards funeral and transportation expenses.

Learned counsel for the insurer has argued that the Tribunal has allowed adequate compensation keeping in view the price index prevailing at the relevant time. In the absence of any evidence regarding the income of the deceased, the Tribunal has rightly assessed his income as ₹3,600/- per month.

The deceased was driver by profession and the Tribunal has assessed his income as ₹3,600/- in the year 2007. The Apex Court in case of ***Minu Rout and another vs. Satya Pradyumna Mohapatra and others, 2013 (10) SCC 695*** has assessed income of a driver of a car as ₹6000/- per month in the year 2004. Applying the same principle to the present case, income of the deceased is taken as ₹6000/- per month.

As per the norms settled by the Apex Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra),*** multiplier attracted in this case is 11 and deduction towards personal expenses of the deceased is to be made as 1/4th instead of 1/3rd. The wife of the deceased is to be awarded ₹1 lac towards loss of consortium while the children of the deceased are entitled to similar amount of compensation towards loss of love and affection, care and guidance. The claimants are also entitled to ₹25,000/- towards transportation and funeral expenses. As per ratio of judgment in case of ***Rajesh and others Vs. Rajbir and others***

(supra), claimants are entitled to 15% addition in the income of the deceased towards future prospects.

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

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹6000 per month
(ii)	15% of (i) above to be added as future prospects	(₹6000+ ₹900)= (₹6900 per month)
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	(₹6900-₹1725)= ₹5175 per month
(iv)	Compensation after multiplier of 11 is applied	(₹5175X12X11)= ₹683100
(v)	Loss of consortium	₹100000
(vi)	Loss of care and guidance for minor children	₹100000
(vii)	Funeral and transportation expenses	₹25000
Total		₹9,08,100/-

The appeal has merits and is accepted. The award of the Tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹2,98,000/- to ₹9,08,100/- for death of Ram Kishan. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the petition till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

(i) Appellant No.1-Wife of the deceased : 40%

(ii) Appellants No.2 to 5-children of deceased : 15% each.

Respondent No.3-insurance company will deposit the shares of appellants-claimants, who are major, in their bank accounts or pay the same through demand drafts. The share of minor appellant(s), if any, will be deposited in some nationalised bank as fixed deposit till the time of their attaining 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 the minor(s) 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 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 minor claimant has attained age of majority. In case of demise of any of above claimant(s), his/her share of compensation shall be apportioned equally amongst other surviving claimants.

(SURINDER GUPTA)
December 01, 2016. **JUDGE**
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***