IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**FAO No. 326 of 2010 (O&M)**
**Date of Decision : 04.03.2016**

Charan Kaur ....Appellant

Versus

Harwinder Kumar @ Bika and others ....Respondents

**CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Sanjeev Pandit, Advocate and
Mr. Kanwaljyot Singh, Advocate
Amicus Curiae for the appellant.

Mr. Arun Takhi, Advocate
for respondent no. 1.

Mr. Jasraj Singh, Advocate
for respondent no. 2.

Mr. Amit Sharma, Advocate
for respondent no. 3-Insurance Company.

**Surinder Gupta, J.**

This is appeal filed by Charan Kaur seeking enhancement of compensation as allowed by Motor Accident Claims Tribunal, Hoshiarpur (later referred to as 'the Tribunal') for death of her husband Sarwan Singh in a motor vehicle accident with scooter bearing registration No. PB-07-L-2193 (later referred to as 'the offending vehicle').

2. Claim petition was originally filed by Surjit Kaur daughter of Sarwan Singh wherein appellant was not arrayed as party. However, at later stage she was impleaded as respondent. Deceased, 64 years of age, was a retired Forest Department official. The Tribunal assessed his income as ₹2400/- per month and on applying the multiplier of 5, amount of dependency was worked out as ₹96000/- to which ₹2000/- was added towards

expenses for last rites and a total compensation of ₹98,000/- was allowed, which was ordered to be shared by claimants Surjit Kaur and respondent no. 4 to 9 in equal shares.

3. As per claimants, accident had occurred on 17.04.2005, when respondent no. 1-Harwinder Kumar @ Bika, who was driving the offending vehicle in a rash and negligent manner, hit scooter of the deceased on which appellant was pillion rider. Respondents no. 1 and 2 admitted the accident but took the plea that it was not on account of rash and negligent driving of driver of the offending vehicle.

4. Respondent no. 3-Insurance Company also contested the claim petition and denied its liability to pay any amount of compensation.

5. Facts relating to accident are not required to be discussed in detail as the matter which requires consideration in this appeal is claim of appellant seeking enhancement of compensation.

6. Learned counsel for the appellant has argued that the deceased after retirement from service was carrying on general store in village Baghpur and was also doing the business of dairy farming and sale/purchase of buffaloes thereby earning ₹15,000/- per month. Though, claimants could not produce any evidence with regard to business and income of the deceased, besides his pension income of the deceased assessed by the Tribunal as ₹2400/- per month is on lower side. He has further argued that the Tribunal has applied cut of ₹900/- from income of the deceased towards his personal expenses without applying

any yardstick. The deceased was living with his wife. He was also having children, though, they were major and married. Still the Tribunal could reduce 1/5$^{th}$ income of the deceased towards his personal expenses. No compensation was allowed towards loss of consortium, loss of love and affection for the children and funeral expenses allowed by the Tribunal is not in accordance with law as laid down in the case of ***Rajesh and others vs. Rajbir and others, (2013) 9 SCC 54***. He has argued that as per observations in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, the Tribunal was required to apply multiplier of 7 instead of 5 while calculating the amount of dependency.

7. Learned counsel for respondent no. 3-Insurance Company has argued that the compensation allowed by the Tribunal is just, reasonable and fair. The deceased was 64 years of age. He was a pensioner. No evidence was produced to prove his income from any other business, as such, the Tribunal has rightly assessed income of the deceased as ₹2400/- per month.

8. Perusal of award shows that though claimants alleged that the deceased was carrying on business of general store, dairy farming and sale/purchase of buffaloes but they have failed to produce any evidence on record. The deceased was a retired Peon from Forest Department and was receiving pension. Keeping in view all these facts, the Tribunal has assessed monthly income of the deceased as ₹2400/-. A retired person keeps himself busy in certain households jobs and service rendered by him is always helpful for his spouse, children and

family members. Applying the above yardstick, I find no reason to differ with Tribunal assessing monthly income of the deceased as ₹2400/- per month and at this phase of life when the deceased was also getting pension 1/3rd of this income can be deducted towards his personal expenses by taking three units i.e. one unit for wife, one unit for children and third for himself. The multiplier applicable to this case is 7 as per observations in the case of ***Sarla Verma (supra)***. Claimants are also entitled to compensation of ₹1 lac towards for the loss of consortium for wife and ₹1 lac for loss of love and affection for the children besides ₹25,000/- towards funeral expenses.

9. 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 Sarwan Singh | ₹2400 per month |
| (iii) | 1/3rd of (i) deducted as personal expenses of the deceased | ₹2400 - ₹800 = ₹1600 per month |
| (iv) | Amount of dependency after applying multiplier of 7 | (₹1600X12X7) = ₹134400 |
| (vi) | Loss of consortium for wife | ₹100000 |
| (vii) | Loss of love and affection for children | ₹100000 |
| (viii) | Funeral expenses | ₹25000 |
| *Total* | | ₹359400 |

10. 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 Sarwan Singh is enhanced from ₹98,000/- to ₹3,59,400/-. The amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization.

11. While apportioning the amount of compensation I am of the opinion that at this phase of life it is wife who is in dire need of financial assistance. No doubt loss is also there for children of the deceased but they are married and well settled in their lives, as such, their share in the amount of compensation can be considered accordingly. Children have not come forward to seek enhancement of compensation as they appear to be satisfied with whatever they have received as per award. In view of above facts, the appellant is held entitled to 70% of the enhanced amount of compensation while remaining 30% will be shared equally by respondents no. 4 to 9.

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