

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

FAO No.1442 of 2011.

Date of Decision: 30.03.2016.

Jasbir Kaur and others

....Appellants.

VERSUS

Ramesh Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Satbir Gill, Advocate for the appellants.

Mr. Rakesh Nagpal, Advocate for respondents No.1 and 2.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellants-Jasbir Kaur and others seek enhancement of compensation awarded to them by Motor Accident Claims Tribunal, Sirsa (for short, "the Tribunal") vide the award dated 23.10.2010 passed in MACT Case No.32 of 2008 on account of death of Jaswant Singh (husband of appellant No.1, father of appellants No.2 to 4 and son of appellants No.5 and 6), who lost his life in a vehicular accident.

The submissions made by Mr. Satbir Gill, learned counsel for the appellants, Mr. Rakesh Nagpal, learned counsel for respondents No.1 and 2 and Mr. Rajneesh Malhtora, learned counsel for respondent No.3 have been heard and record perused.

At the very outset, learned counsel for the appellants pointed out that during the accident in question that took place on 15.09.2008 besides Jaswant Singh, one Madan Lal alias Mithu Ram had also lost his life. FAO No.2990 of 2011 was filed by legal representatives of deceased Madan Lal. The said FAO was decided by this Court on 08.01.2014. In that case, considering the deceased as an unskilled labourer, his notional income was assessed as Rs.3600/- per month by learned Tribunal. However, this Court finding that the deceased was working as a driver took his salary as Rs.4500/- per month being the minimum wage of a skilled workman at the relevant time.

On the other hand, learned counsel for the respondents argued that the accident had taken place in the year 2008 and in the relevant year the minimum wage of an unskilled worker was not more than Rs.3600/- and learned Tribunal rightly assessed the income of the deceased.

The case of the appellants was that deceased Jaswant Singh was working as a driver and was a skilled worker, but learned Tribunal taking him as an unskilled labourer assessed his notional income as Rs.3600/- per month. The record shows that the appellants examined PW12 Savinder Singh who deposed that deceased Jaswant Singh was employed as driver with him. Appellant No.1-Jasbir Kaur, stepped into the witness box as PW4 and deposed that her husband used to earn Rs.8000/- per month as salary and in addition to the same used to get Rs.100/- daily for outstation visits. However, there being no substantive and reliable document i.e. income tax return or account books etc. to support the testimony of PW12

Savinder Singh and PW4 Jasbir Kaur, the salary stated by them could not be accepted as correct. Any how, there is no reason to disbelieve the fact that the deceased was employed as a driver and as held in FAO No.2990 of 2011, the salary of the deceased is assessed as Rs.4500/- per month which was the minimum wage of a skilled workman at the relevant time.

As per law laid down by Hon'ble Apex Court in **Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54** in a case where the deceased was either on fixed salary or was self employed, the future prospects would have to be computed. In the case in hand, the age of the deceased as per postmortem report Ex.P4 was 41 years. Accordingly 30% is to be added to the actual income of the deceased on account of future prospects. The deceased is survived by widow, three minor children and parents. As such, in the considered opinion of this Court, the deduction of 1/4th from the income of the deceased towards his personal and living expenses is not required to be disturbed. The multiplier of '14' applied to the amount of loss of dependency by learned Tribunal is appropriate. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income of the deceased (in Rupees)	Rs.4500/-
2.	Actual age of the deceased	41 years
3.	Increase in future income as per Rajesh and others' case (supra)	Rs.1350/-
4.	Annual dependency	3/4 of Rs.5850 x 12 = Rs.52650/-
5.	Multiplier	14
6.	Total	Rs.7,37,100/-

In addition to the amount of Rs.7,37,100/- calculated towards dependency, the amount of Rs.5,000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/- and the amount of Rs.5,000/- allowed as loss of consortium to appellant No.1 is enhanced to Rs.1,00,000/-. In view of the law laid down by Hon'ble Apex Court in **Vimal Kanwar and others vs. Kishore Dan and others, 2013(7) SCC 476**, a further amount of Rs.1,00,000/- is awarded to the appellants-claimants No.2 to 4 and Rs.50,000/- to claimants No.5 and 6 for loss of love and affection subject to their furnishing live certificate. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 23.10.2010 passed by learned Tribunal is modified. The enhanced compensation of Rs.5,48,500/- shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of this order till realization. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

30.03.2016.
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