

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 6694 of 2012 (O&M)
Date of Decision : 12.07.2016

Mor Mukut and others

....Appellants

Versus

Sukhpal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Kumar Yadav, Advocate
for the appellants.

Mr. Mukesh Yadav, Advocate
for respondent no. 1

Mr. Rajneesh Malhotra, Advocate
for respondent no. 2.

Surinder Gupta, J.

This is appeal against award dated 05.10.2012 passed by Motor Accident Claims Tribunal, Narnaul (later referred to as 'the Tribunal') allowing compensation of ₹2,69,100/- for death of Bhogri Devi (deceased), wife of claimant-appellant no. 1, mother of claimants – appellants no. 2 and 3, mother-in-law of claimant-appellant no. 4 and grandmother of claimant-appellant no. 5.

2. Case of claimants, in brief, is that on 17.05.2011, Bhogri Devi was going from bus-stand, Narnaul to her village Surani in a tempo/three-wheeler bearing registration no. HR-66-8029 (later referred to as 'the offending vehicle'). Driver of three-wheeler was driving it at very high speed in a rash and negligent manner. He was asked by co-passenger Sant Lal to drive it at moderate speed but of no avail. When the said tempo/three-wheeler reached ahead of Neerpur *Chowk*, driver lost control

over the tempo which turned turtle resulting in grievous injuries to Bhogri Devi, who succumbed to her injuries on 27.05.2011.

3. Respondent no. 1-Sukhpal, driver and owner of the offending vehicle denied the involvement of offending vehicle in the accident while respondent no. 2-Insurance Company contested the claim petition with the averment that alleged accident took place due to sole negligence of the deceased, who was hanging outside the vehicle.

4. Tribunal held that the accident was caused due to rash and negligent driving of the offending vehicle by respondent no. 1 and assessed compensation as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Bhogri Devi
(ii)	Status	House-wife
(iii)	Age	51 years
(iv)	Income of the deceased	₹1500 per month
(v)	Compensation allowed after applying the multiplier of 11	(₹1500x11x12)= 198000
(vi)	Medical expenses	₹51020/- (rounded off to ₹51100/-
(vii)	Loss of consortium	₹10000
(viii)	Funeral expenses	₹10000
<i>Total</i>		₹269100

5. I have heard learned counsel for parties and perused the paper-book with their assistance.

6. Learned counsel for the appellants has argued that the deceased was 51 years of age. She remained in hospital for a period of about 10-11 days after the accident. Though, Tribunal has allowed medical

expenses but has not allowed any compensation under the conventional heads like transportation expenses, attendant charges, nutritious diet, pain and suffering etc. Income of deceased ₹1500/- as assessed by the Tribunal is on lower side. The deceased was rendering services to her husband and was also taking care of her sons, widowed daughter-in-law and grandson. Tribunal has also allowed ₹10,000/- towards loss of consortium and love and affection and ₹10,000/- for funeral expenses, which is highly inadequate.

7. Learned counsel for respondent no. 2-Insurance Company has argued that the accident had taken place in the year 2011. Tribunal has assessed income of the deceased keeping in view the price index prevailing at the relevant time. Bhogri Devi (deceased) was in her old age and notional income of ₹1500/- per month as assessed by Tribunal is quite reasonable. Tribunal has taken into account all the conventional heads while awarding compensation, which is just and reasonable.

8. Even if the deceased was housewife, the fact to be seen is that she was only 51 years of age at the time of her death which is not an old age. She was taking care of her husband, sons, widowed daughter-in-law and grandson. Award of notional income of ₹1500/- per month for the services rendered by her is highly inadequate. The price index in the year 2011 was quite high. Though, there cannot be any straight jacket formula to assess notional income of the deceased, however, keeping in view the facts discussed above, the same can be taken as ₹2500/- per month. In view of observation of Apex Court in **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**, claimant-appellant no. 1, for the loss of consortium, is entitled to compensation of ₹1 lac while other claimants-

appellants are entitled to ₹1 lac towards loss of love and affection. Amount of funeral expenses awarded by the Tribunal is also revised to ₹25,000/-. For the care of deceased for ten day after accident till her demise claimants are allowed compensation of ₹15000/- towards expenses of attendant and transport.

9. In view of my above discussion, amount of compensation awardable to claimants is reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased Bhogri Devi	₹2500 per month
(ii)	Compensation after applying multiplier of 11	(2500X11X12) = ₹330000
(iii)	Medical Expenses (as already awarded by the Tribunal)	₹51100
(iv)	Expenses of attendant and transport	₹15000
(v)	Loss of consortium for appellant no. 1	₹100000
(vi)	Loss of love and affection for other appellants	₹100000
(vii)	Funeral expenses	₹25000
<i>Total</i>		₹621100 (rounded off to ₹621000)

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 ₹2,69,100/- to ₹6,21,000/-. 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. 2 being insurer of the offending vehicle will deposit the share of claimants-appellants in their bank accounts or pay the same through demand drafts. The share of claimant-appellant No. 5, who as per his age is minor, will be deposited in some nationalized bank as fixed deposit till the period he attains majority. It

is, however, made clear that the bank may take the documents regarding age of the minor as required at the time of deposit of the amount and he shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in his name after the date of his attaining majority. The above direction has been issued to save the claimant 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. 4-Poonam, being mother and natural guardian of minor claimant 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/-.

July 12, 2016
jk

(SURINDER GUPTA)
JUDGE