IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1882 of 2013 (O&M)
Date of Decision : 28.01.2016

Annpurna Devi and others ....Appellants

Versus

Surjit Singh and another ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arshdeep Bhullar, Advocate
for the appellants.

Mr. P.K. Kataria, Advocate
for respondent no. 2.

Surinder Gupta, J.

This is appeal by claimants Annupurna Devi and others against award dated 05.11.2012 passed by Motor Accident Claims Tribunal, Chandigarh (later referred to as 'the Tribunal') allowing compensation of ₹7,30,000/- for the death of Wakil Parshad, husband of claimant-appellant no.1 and father of claimants-appellants no. 2 to 4, in a motor vehicle accident with truck bearing registration no. PB-12-F-7624 (later referred to as 'the offending vehicle'). The deceased was 33 years of age.

2. Case of claimants, in brief, is that on 23.11.2009, the deceased was going on his Hero Honda Splendor motorcycle bearing registration no. CH-03-V-2251. At about 02.15 p.m., the offending vehicle came at a high speed and overtook Ranjit Sharma and Mukesh Sharma who were coming to Chandigarh on their motorcycle and then hit motorcycle of the deceased from behind who fell on the road and received injuries on vital organs of his body resulting in his death at the spot. The accident had taken

place due to rash and negligent driving of the offending vehicle by its driver i.e. respondent no. 1-Surjit Singh.

3. In the written statement filed by respondent no. 1, the accident was admitted but it was alleged that the same had taken place due to rash and negligent driving of his motorcycle by the deceased. When the offending vehicle had crossed the turn of Bansawali Octroi Post after the turn of Mundi Kharar, the deceased hit his motorcycle against rear side tyre of the conductor side of truck. On hearing the noise, respondent no. 1 stopped and parked the truck and came to know about the accident. He immediately rushed to the police and informed about the accident in order to help the injured. Police official did not allow him to move from the place and later on registered a false case against him.

4. In the separate written statement filed by respondent no. 2-Insurance Company, the claim petition was contested and controverted *inter alia* pleading that driver and owner of offending vehicle have violated the terms and conditions of insurance policy and the claim raised by claimants is exaggerated and excessive.

5. On appraisal of evidence, the Tribunal concluded that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver i.e. respondent no. 1. While computing the amount of compensation, the Tribunal took monthly income of the deceased as ₹5000/-. After deducting 1/4th of his income towards personal expenses, the amount of dependency was calculated on applying the multiplier of 16, as ₹7,20,000/- to which an amount of ₹5000/- was added towards

funeral expenses and another sum of ₹5000/- towards loss of consortium.

6. Learned counsel for the appellants has argued that the deceased was having three minor children. Claimants proved on record that deceased had taken two insurance policies and was paying premium of ₹28,227/- per annum vide receipts produced and proved on record. He had also examined the Principal of school where daughter of the deceased was studying and he was paying her tuition fee as ₹1000/- per month. He was living in a rented premises and was paying ₹2500/- per month as rent. Claimant-Annpurna Devi while appearing as PW-1 has stated that her husband was a carpenter and contractor and was earning ₹20,000/- per month. Learned counsel for the appellants has argued that the deceased was maintaining a motorcycle, his daughter was studying in school and he was paying ₹1000/- per month as her tuition fee. He was paying ₹2400/- (approx.) per month as premium of insurance policies. All this shows that he was earning more than this amount. His income, as assessed by the Tribunal is on lower side. He has further argued that the Tribunal has not made any addition in the income of the deceased towards future prospects and the amount of compensation allowed towards loss of consortium and funeral expenses are also on lower side. Nothing was awarded for the loss of love and affection care and guidance for the minor children.

7. Learned counsel for respondent no.2-Insurance Company has argued that the claimants were required to prove income of the deceased and not expenses. In case the deceased

was earning ₹20,000/- per month, he must have been filing income tax return which has not been produced on record. The Tribunal has rightly taken income of the deceased as ₹5000/- per month.

8. On perusal of evidence on record, I find that the claimants have tried to prove the expenses being incurred by the deceased on his family. They have proved the payment of tuition fee of ₹1000/- per month which the deceased was paying for his daughter. Receipts of insurance policies also prove that he was paying ₹28227/- per annum as premium. So far as payment of rent of ₹2500/- is concerned, no evidence in this regard was produced. The deceased was a carpenter, as such, a skilled worker. A person spending around ₹3500/- to pay tuition fee of daughter and insurance premium, is expected to have better income to run his household expenses as well. Income of the deceased, as such, is taken as ₹6000/- per month. As per observations in the cases of ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447*** and ***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54***, 50% of the income of deceased is to be added towards future prospects. The claimant-Annpurna Devi, wife of the deceased is entitled to compensation of ₹1 lac towards loss of consortium and claimants no. 2 to 4 who are minor children of the deceased, are also entitled to compensation of ₹1 lac towards loss of love and affection, care and guidance. Besides this, they are entitled to funeral expenses to the tune of ₹25,000/-.

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 Wakil Parshad Sharma	₹6000 per month
(ii)	50% of (i) above to be added as future prospects	₹6000 + ₹3000 = ₹9000 per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	₹9000 - ₹2250 = ₹6750 per month
(iv)	Compensation after multiplier of 16 is applied	(₹6750X12X16) = ₹1296000
(v)	Loss of consortium	₹100000
(vi)	Loss of love and affection	₹100000
(vii)	Funeral expenses	₹25000
	Total	**₹1521000**

10. In view of my discussion above, 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 Wakil Parshad Sharma is enhanced from ₹7,30,000/- to ₹15,21,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. The amount of enhanced compensation shall be shared equally by the claimants. Respondent No. 2 being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. The share of minor appellant No. 2 to 4, who, as per their age given at the time of filing of the claim petition, are still minor, will be deposited in a nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of minors as required at the time of deposit of the amount and 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 attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to the directions, the bank usually gives to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed at ₹20,000/-

January 28, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? Yes/No