

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

**FAO No.3582 of 2013 (O&M)
Decided on: 27.08.2016**

Jai Singh

....Appellant

Versus

Mahesh Kumar

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rahul Vats, Advocate
for the appellant.

None for the respondent.

REKHA MITTAL, J.

CM No.14600-CII of 2013

Prayer in this application is for condoning delay of 46 days
in filing the appeal.

Heard.

In view of averments made in the application supported by
an affidavit of Jai Singh, the applicant-appellant, the application is
allowed and delay of 46 days in filing the appeal stands condoned.

FAO No.3582 of 2013

The claimant is in appeal seeking enhancement of
compensation in regard to death of Phool Chand (his father) in a motor
vehicular accident on 04.10.2012.

The learned Tribunal did not accept plea of the claimant
that he was dependent upon earnings of the deceased but awarded
Rs.50,000/- by relying upon judgment of Hon'ble the Supreme Court

"Manjuri Bera vs Oriental Insurance Company Limited and another", 2007(2) PLR 611 (SC).

Counsel for the claimant has submitted that the learned Tribunal committed a gross error rather illegality by awarding claim only to the extent of Rs.50,000/- a predetermined sum available under no fault liability described under Section 140 of the Motor Vehicles Act, 1988 (for short 'the Act'). It is further submitted that compensation is liable to be assessed by adopting a multiplier method after assessing income of the deceased as a son being a legal heir is entitled to get compensation *qua* death of his father.

I have heard counsel for the appellant and perused the paperbook particularly the award passed by the Tribunal.

The Tribunal in para 15 of the award has held that Jai Singh, the only claimant is son of the deceased aged about 42 years. He is major and an able bodied person, therefore, cannot be said to be dependent upon the deceased.

Counsel for the appellant has not assailed factual findings that the claimant is an able bodied person aged about 42 years who has his own family consisting of his wife and children. Under these circumstances, the Tribunal has rightly refused to accept plea of the claimant that he was dependent upon earnings of the deceased. At the same time, the claimant cannot be altogether denied benefit of social legislation providing for compensation in case of death or injury. In the given facts and circumstances, the claimant shall be entitled to compensation *qua* loss of estate and expenses on funeral. The Tribunal has relied upon judgment ***Manjuri Bera's case (supra)*** to restrict the

claim to Rs.50,000/-. A similar question came up for consideration before this Court in “*Miss Nandini minor and others vs Amrik Singh and others*”, FAO No.450 of 1994 decided on 27.01.2011. In the said case, it was held that legal heirs of the deceased are entitled to compensation in regard to loss of estate and expenses on funeral and they were allowed benefit of 50% of earnings of the deceased by adopting a suitable multiplier.

In the case at hand, the deceased was in the age bracket of 65 to 70 years. It is stated that the deceased was earning Rs.15,000/- per month from agriculture and sale of vegetables, etc. There is no documentary evidence on record that either the deceased was owner of any land or he had taken any land on lease/*theka* for the purpose of cultivation. Similarly, no cogent and convincing evidence has been adduced to prove that deceased was doing any business of sale of vegetables. At the same time, there is nothing on record to suggest that the deceased was suffering from any ailment rendering him unable to work and earn his livelihood. Taking into consideration age of the deceased coupled with wage of an unskilled worker, I assess income of the deceased at Rs.3,000/- per month. As none of the family members was dependent upon the deceased, income to assess loss of estate would be taken to the tune of Rs.1,000/- per month. After applying a multiplier of 7, compensation *qua* loss of estate is calculated at **Rs.84,000/-** (Rs.1,000/- x 12 x 7). The claimant is awarded an amount of **Rs.25,000/-** for transportation and funeral expenses. The total compensation payable to the appellant comes to **Rs.1,09,000/-**. The enhanced compensation is **Rs.59,000/-** (Rs.1,09,000/- – Rs.50,000/-)

payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

27.08.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No