

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

**FAO No.2185 of 2014 (O&M)
Date of Decision: August 31, 2016.**

Durga and others

.....APPELLANT(s).

VERSUS

Gulshan and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Narender Kajla, Advocate
for the appellant (s).

Mr. Rishi Pal, Advocate for
Mr. Sandeep Goyal, Advocate
for respondent No.1.

Mr. Vinod Gupta, Advocate
for respondent No.2-insurance company.

SURINDER GUPTA, J.

CM-14659-CII-2015

Application is for placing on record copy of minimum wages
fixed by Deputy Commissioner, Hisar as Annexure A-1.

2. The same is taken on record subject to all just exceptions.
3. Application stands dispose of accordingly.

FAO-2185-2014

4. This is appeal by claimants-appellants seeking enhancement of
compensation awarded vide award dated 23.01.2014 passed by Motor
Accident Claims Tribunal, Hisar (later referred to as 'the Tribunal') for
death of Ram Singh (later referred to as 'the deceased'), husband of
claimant-appellant no. 1 and father of claimants-appellants no. 2 to 4, in a

motor vehicle accident, which took place on 25.01.2013 due to rash and negligent driving of Car bearing registration No. HR-20V/3636 (later referred to as 'the offending vehicle').

5. As the only issue involved in this appeal relates to seeking of enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

6. Learned counsel for the appellants-claimants has sought enhancement of compensation on two counts; firstly the Tribunal has not allowed compensation for loss of love and affection, care and guidance for children of the deceased including minor children and secondly, the income of the deceased, who was a waiter, was assessed as ₹4000/- per month is on lower side.

7. Learned counsel for the appellants-claimants has argued that the deceased was a skilled worker and his income can be equated with a Class-IV employees at D.C. Rates circulated by Deputy Commissioner, Hisar for the year 2012-13 vide endorsement No.2105-2254/DN dated 19.03.2013 as ₹6,600/- per month.

8. Learned counsel for the respondent No.2 has argued that the Tribunal has taken the income of the deceased as ₹4,000/- in the absence of any evidence in this regard. Even if the same is to be enhanced, it could be enhanced up to the level of income fixed by labour Commissioner, Haryana which for Class-IV employees in the year 2013 was around ₹5500/- per month.

9. The Tribunal has assessed income of the deceased as ₹4,000/- without reaching any conclusion as to whether he was a skilled or unskilled

labourer. It was proved on record that deceased was working as waiter with Deluxe Restaurant, Hisar. In the FIR (Ex.P3), which was got recorded by son of the deceased, he has mentioned that on the fateful day, he had gone to his father at Deluxe Restaurant where he was working as waiter. After completing his job, his father started on bicycle and met with the accident.

10. While appearing as PW1, Shekhar son of deceased has reiterated his version as mentioned in the FIR. In the cross-examination also, he confirmed that on the fateful day, he had gone to his father at Deluxe Restaurant, Hisar. His statement to this effect is unrebutted. Durga Devi wife of the deceased has also stated that her husband was working as Waiter at Deluxe Restaurant, Hisar and her statement is also unrebutted. From the evidence on record, it is proved that the deceased was working as Waiter. Though the wife and son of the deceased had described the income of the deceased as ₹10000/- per month, but this fact can be taken note of that Waiter falls in the category of a skilled worker. The income of the skilled worker in the year 2012-13 can be very well presumed around ₹300/- per day. The submission of learned counsel for the appellant-claimant that salary of the deceased may be assessed as per D.C. rate prescribed by Deputy Commissioner, Hisar for the year 2012-13 as ₹6,600/- per month, can be accepted. The claimants are also entitled to compensation for love and affection, care and guidance for the children of the deceased which include two minor children, which is quantified as ₹1 lac.

11. As a sequel of my discussion above, the amount of compensation, which the claimants are entitled to is re-assessed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Salary	₹6600 per month
(ii)	30% of (i) above to be added as future prospects	(₹6600+ ₹1980)= (₹8580 per month)
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased	(₹8580-₹2145)= ₹6435 per month
(iv)	Compensation after multiplier of 14 is applied	(₹6435X12X14)= ₹1081080
(v)	Loss of consortium	₹100000
(vi)	Loss of care and guidance for children of the deceased including minor children	₹100000
(vii)	Funeral and transportation expenses	₹25000
<i>Total</i>		₹1306080

12. The appeal has merits and is accepted. The award of the Tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹7,80,200/- to ₹13,06,080/- for the death of Ram Singh. The enhanced amount of compensation will carry interest 7.5% per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation shall be apportioned between the claimants as per the award. Respondent No.3-insurance company will deposit the share of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed ₹10,000/-.

August 31, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***