

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3898 of 2014
Date of Decision : 29.02.2016

Manjit Kaur and others

....Appellants

Versus

Chander Mohan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Amandeep Kaur,
for Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Ram Avtar, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by Manjit Kaur and others seeking enhancement of compensation as awarded by the Motor Accident Claims Tribunal, SAS Nagar Mohali (later referred to as 'the Tribunal') for death of Nihal Singh in a motor vehicle accident with car bearing registration No. HR-41-B-3037 (later referred to as 'the offending vehicle').

2. Case of claimants, in brief, is that on 13.02.2012 at about 07.00 p.m., Nihal Singh (deceased) was going on his motorcycle with pillion rider Kamal Singh from Dera Bassi to Mubarikpur. In front of Batra Wine factory, Dera Bassi, the offending vehicle came from opposite direction, which was being driven by respondent no. 1-Chander Mohan, at a very fast speed in a rash and negligent manner. It came on wrong side of the road and hit the motorcycle of deceased as a result of which both occupants of motorcycle fell on the road and suffered serious injuries. They were taken to Civil Hospital, Dara Bassi, where

Kamal Singh was declared brought dead. Nihal Singh was referred to Government Medical College and Hospital (GMCH), Sector 32, Chandigarh, where he died on 20.02.2012 due to the injuries sustained by him in the accident.

3. The deceased was 36 years of age and was a truck driver by profession. Claimants are wife, minor children and aged mother of the deceased.

4. Respondents no. 1 and 2 i.e. driver and owner of the offending vehicle filed separate but identical written statement thereby denying the accident.

5. Respondent no. 3-insurer of the offending vehicle besides taking plea regarding its liability to indemnify the insured alleged that the accident had taken place due to negligent driving of motorcycle by the deceased. All the other averments in claim petition were contested, controverted and denied.

6. On appraisal of evidence, the Tribunal recorded the finding that accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1. While computing the amount of compensation, the Tribunal discarded the plea of claimants that the deceased was working as truck driver and was getting ₹15,000/- as salary. Income of the deceased was taken as ₹5000/- per month. After making 1/3rd deduction of income towards personal expenses of the deceased and adding 30% in income of the deceased towards future prospects and applying the multiplier of 15, the amount of dependency was calculated as ₹7,80,000/- to which ₹25,000/- towards funeral expenses, ₹25,000/- towards loss of consortium

and ₹25,000/- towards loss of estate, love and affection were added.

7. Learned counsel for the appellants has argued that the deceased was a truck driver. Statement of Manjit Kaur wife of the deceased to this effect is unrebutted. She has argued that the Tribunal committed grave error of law and fact while assessing income of the deceased as ₹5000/- per month. Referring to the judgment of Apex Court in the case of **Minu Rout and another vs. Satya Pradyumna Mohapatra and others, 2013 (10) SCC 695**, she has argued that in that case, the Apex Court has assessed income of a driver of a car as ₹6000/- in the year 2004. Taking the same parameters, income of the deceased, who was a truck driver, is to be taken as ₹15,000/- per month despite the fact that claimants have not been able to produce any evidence regarding salary of the deceased.

8. Learned counsel for respondent no. 3-Insurance Company has argued that claimants have not proved even this fact that the deceased was employed as a truck driver. They have not produced on record driving licence of the deceased or have not examined Puran Chand with whom he was allegedly employed. The Tribunal has rightly taken his income as that of an unskilled labourer and compensation in the facts and circumstances allowed by the Tribunal is just and reasonable.

9. Claimants have pleaded in the claim petition that the deceased was a truck driver and was earning ₹15,000/- per month. However, they could not produce any documentary evidence with regard to income of the deceased. About the

employment of the deceased as truck driver his wife Manjit Kaur while appearing as PW-1 has stated that the deceased was employed as truck driver and was working with Puran Chand, Truck Union, Dera Bassi. Said Puran Chand was also not examined. Plea of claimant-Manjit Kaur is substantiated from the death report (Ex. P-1) prepared in GMCH, Sector 32, Chandigarh, where profession of the deceased is mentioned as driver. The death report was prepared in due course and there could be no reason for mentioning wrong profession of the deceased in the report. This report gets corroboration with the testimony of claimant that the deceased was a truck driver by profession.

10. In the case of ***Minu Rout (supra)***, Apex Court has compared a driver with a skilled labourer and income of the deceased in that case was taken as ₹6000/- per month in the year 2004. Keeping in view the rise in price index and inflationary trends, during the period from 2004 to 2012, income of the deceased can be safely taken as ₹9000/- per month in the year 2012. As per observations in the case of ***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54*** and ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447***, addition of 50% in income of the deceased is to be made towards his future prospects. The Tribunal has allowed future prospects @ 30% which is required to be revised as per observations in the above referred cases to 50%. The deceased had left six dependents, who are his wife, minor children and old age mother. As per observations of the Apex Court in the case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and***

another, (2009) 6 SCC 121, deduction of 1/5th of income is to be made towards personal expenses of the deceased. Claimants are also entitled to compensation of ₹1 lac towards loss of consortium for the wife, ₹1 lac towards loss of love and affection, care and guidance for minor children and ₹1 lac towards loss of estate, love and affection for the mother.

11. 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 Nihal Singh	₹9000 per month
(ii)	50% of (i) above to be added as future prospects	₹9000 + ₹4500 = ₹13500 per month
(iii)	1 / 5 th of (ii) deducted as personal expenses of the deceased	₹13500 - ₹2700 = ₹10800 per month
(iv)	Compensation after multiplier of 15 is applied	(₹10800X12X15) = ₹1944000
(v)	Loss of consortium	₹100000
(vi)	Loss of love and affection, care and guidance for children	₹100000
(vii)	Loss of estate, love and affection	₹100000
(viii)	Funeral expenses (as allowed by the Tribunal)	₹25000
<i>Total</i>		₹2269000

12. In view of 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 Nihal Singh is enhanced from ₹8,55,000/- to ₹22,69,000/-. The amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization. The amount of compensation shall be shared equally by the claimants.

Respondent No. 3 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 appellants No. 3 to 5, who, as per their age given at the time of filing of the petition, are still minor, will be deposited in some 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 the minor as required at the time of deposit of the amount and the minor 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 their attaining majority. The above direction has been issued to save the claimants 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.

February 29, 2016

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**(SURINDER GUPTA)
JUDGE***Whether to be referred to the Reporters? Yes/No*