

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

FAO No.4083 of 2014.

Date of Decision: 27.04.2016.

Gurmeet Kaur and others

....Appellants.

VERSUS

Mohinder Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Kulwant Singh Dhanora, Advocate for the appellants.

Respondents No.1, 2 and 4 were proceeded against exparte
vide order dated 22.03.2016.

Mr. Pardeep Kumar, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellants-Gurmeet Kaur and others seek enhancement of compensation awarded to them by learned Motor Accident Claims Tribunal, Kurukshetra (for short, “the Tribunal”) vide award dated 16.09.2013 passed in MACT Case No.60 of 2013 on account of death of Gagandeep Singh (husband of appellant No.1, father of appellants No.2 and 3 and son of appellants No.4 and 5), in a vehicular accident.

The facts are that on 07.03.2012 at about 9:30 p.m., when
Gagandeep Singh (since deceased) alongwith his brother Kanwaljit Singh

was coming to his house, on foot, from a chemist shop and had reached near Ladwa Chowk on Babain road, he was hit by a tractor-trolley bearing registration No.HR-07R-3360 (hereinafter referred as to “the offending tractor-trolley”) being driven rashly, negligently and in a high speed by Mohinder Singh (respondent No.1). As a result of accident, Gagandeep Singh sustained multiple grievous injuries. He was taken to LNJP Hospital, Kurukshetra where he was declared dead.

A First Information Report No.33 dated 08.03.2012 under Sections 279 and 304-A of the Indian Penal Code in respect of the accident was registered against respondent No.1-Mohinder Singh at Police Station Ladwa, District Kurukshetra.

The claimants-appellants filed a petition seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) on the ground that the accident occurred entirely due to rash and negligent driving of the offending tractor-trolley by respondent-Mohinder Singh.

The driver, owner and insurer (respondents No.1 to 3) of the offending tractor-trolley contested the petition denying the allegations levelled in the petition. Respondent No.3 pleaded that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident and the offending vehicle was being driven in violation of the terms and conditions of the insurance policy. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the

evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the petition and awarded compensation to the appellants to the tune of Rs.11,67,500/- alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization. Respondents No.1 to 3 were held jointly and severally liable to pay the amount of compensation to the appellants.

Feeling unsatisfied with the award dated 16.09.2013, the appellants preferred the instant appeal.

The submissions made by Mr. Kulwant Singh Dhanora, learned counsel for the appellants and Mr. Pardeep Kumar, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants-claimants argued that the deceased was running a shop of manufacturing television trolley and other accessories in the name and style of Gagan T.V. Stand and was also running a workshop of tractor repair in the name and style of New Kisan Tractor Workshop at Ladwa. He was earning Rs.15,000/- per month but learned Tribunal wrongly assessed his income as Rs.5000/- per month i.e. Rs.60,000/- per annum. Learned Tribunal also erred in adding less amount to the income of the deceased computing future prospects and also applied the multiplier of '17' which is inappropriate. Also the amount awarded by learned Tribunal on account of transportation, loss of estate, funeral expenses and loss of consortium etc. is on the lower side.

No substantive and reliable evidence was produced by the appellants to prove the occupation and income of the deceased. There is no

document worth in its name to prove that he was either owner of any shop or was proprietor or partner of any firm engaged in the business of manufacturing or sale of any product. In absence of required evidence, learned Tribunal rightly assessed the income of the deceased as Rs.5000/- per month considering him to be a casual labourer and that calls for no intervention. The deceased being 28 years aged when he died in the accident, 50% of the actual income of the deceased was rightly added by learned Tribunal computing future prospects and also the multiplier of '17' was rightly applied.

The deceased is survived by widow-appellant No.1, minor sons-appellants No.2 and 3 and parents-appellants No.4 and 5. The number of dependents being five, deduction of 1/4th towards personal and living expenses of the deceased made by learned Tribunal is appropriate and calls for no modification. However, considering all aspects of the case, the amount of Rs.5,000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/- and the amount of Rs.10,000/- awarded towards loss of consortium to appellant-claimant No.1 is enhanced to Rs.1,00,000/-. Another amount of Rs.1,00,000/- to appellants No.2 and 3 and Rs.50,000/- to appellant No.4 is awarded for loss of love and affection. The amount of Rs.5000/- awarded under loss of estate is just and adequate.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 16.09.2013 passed by learned Tribunal is modified. The enhanced compensation of Rs.2,60,000/- shall be deposited by the respondents within 45 days from the date of receipt of

certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the appeal till realization. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

27.04.2016.

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