

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

**FAO No.4129 of 2014 (O&M).
Date of Decision: 02.03.2016.**

Balwinder Singh and anotherAppellants.

VERSUS

Jaspal Singh Bhullar and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Naresh S. Rana, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for respondent No.2.

SNEH PRASHAR, J.

CM-12190-CII-2014

There being delay of 84 days in refiling the appeal an application under Section 5 of the Limitation Act for condonation of delay was filed by the appellants.

Considering the averments made in the application, the delay is condoned and the application is disposed of.

FAO-4129-2014

This appeal is for enhancement of compensation allowed vide award dated 17.07.2013 passed by Motor Accident Claims Tribunal, Chandigarh (for short, “the Tribunal”) in MACT Petition No.410 of 2009

filed by the appellants-claimants.

Precisely, the facts are that on the intervening night of 27/28.06.2009 the motorcycle being driven by Gagandeep Singh (since deceased) on which his friend Mandeep Singh was travelling as pillion rider was hit by Santro car no.CH-03W-2296 (hereinafter referred to as “the offending car”) because of its rash and negligent driving by its driver ASI Jaspal Singh Bhullar, (respondent No.1). As a result of accident, both Gagandeep and Mandeep suffered serious injuries. From the site of accident they were taken to General Hospital, Sector-16, Chandigarh from where the condition of Gagandeep being serious he was referred to P.G.I., Chandigarh but he succumbed to the injuries.

Appellants-parents of deceased Gagandeep Singh filed a petition invoking the provisions of Section 166 of the Act of 1988 claiming compensation from the driver, owner and insurer of the offending car. The petition was contested by the respondents on various grounds but after trial of the contentious issues it was held by learned Tribunal that the accident took place due to rash and negligent driving of respondent No.1. The petition was allowed and an amount of Rs.9,97,000/- was awarded as compensation to appellant-claimant No.2 Gurvinder Kaur, mother of the deceased. Respondents No.1 to 3 were held jointly and severally liable for payment of compensation amount alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization.

Feeling unsatisfied, the appellants preferred the instant appeal.

The submissions made by Mr. Naresh S. Rana, learned counsel

for the appellants and Mr. Rajneesh Malhotra, learned counsel for respondent No.2 have been heard and record perused.

Admittedly, deceased Gagandeep Singh was 21 years old when he died due to the injuries sustained in the accident. Learned counsel for the appellants contends that the deceased was the only son of the appellants who was preparing for the test required to be cleared for going abroad for further studies as he had done diploma in automobiles and plumber. Regarding educational qualification and other related matters documents Ex.P9 to Ex.P32 were placed on record by PW1 Balwinder Singh, father of the deceased. He also stated that his son had been offered job by Intelnet Global Services vide letter dated 24.04.2009 as Customer Services Associate at Mohali and had been offered salary of Rs.76,000/- per annum. Ignoring the said fact, learned Tribunal assessed the income of the deceased as Rs.6,000/- per month i.e. Rs.72,000/- per annum which is on the lower side. Also no amount was awarded for the irreparable loss of love and affection suffered by the appellants. The interest awarded at the rate of 7.5% per annum is on the lower side as it should have been awarded at the rate of 9% per annum in view of the law laid down by Hon'ble Supreme Court in **Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, (2011) 14 S.C.C. 481.**

The deceased was a young boy aged 21 years. He was well qualified and as per deposition of his father PW1 Balwinder Singh, he had been offered job on a salary of Rs.76,000/- per year. Learned Tribunal by guess work assessed the income of the deceased as Rs.72,000/- per annum.

When there was no rebuttal to the document i.e. letter dated 24.04.2009 of Customer Services Associate produced by the appellants to prove the offer of job received by the deceased, the same should have been taken as basis for assessing the income of the deceased i.e. Rs.76,000/- per annum. The age of deceased when he died in accident, was 21 years and the multiplier of '18' was rightly applied by the Tribunal. The deceased was a bachelor. Deducting 50% of his income towards his personal and living expenses, remaining 50% of his earnings was the amount spent for maintenance of the appellants-claimants. Addition of 50% to the actual income of the deceased on account of future prospects was rightly allowed by learned Tribunal in view of law laid down in **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170.** Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Annual income of the deceased (in Rupees)	Rs.76,000/-
2.	Actual age of the deceased	21 years
3.	Increase in future income	Rs.38,000/-
4.	Dependency	1/2 of Rs.1,14,000/- = Rs.57,000/-
5.	Multiplier	18
6.	Total	Rs.10,26,000/-

In addition to the amount of Rs.10,26,000/- calculated towards dependency, an amount of Rs.50,000/- is awarded to claimant No.2 towards loss of love and affection. The amount of Rs.25,000/- awarded towards funeral expenses is adequate. Also the findings of learned Tribunal regarding non granting of compensation to appellant-claimant No.1 calls for

no intervention. In the above premise, the appellant-claimant No.2 is held entitled to compensation of Rs.11,01,000/- as indicated above. The rate of interest allowed by the Tribunal needs no modification.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 17.07.2013 passed by the Tribunal is modified. The appellant-claimant No.2 is held entitled to enhanced compensation of Rs.1,04,000/- in addition to the amount of Rs.9,97,000/- awarded by the Tribunal. The enhanced amount of compensation shall be deposited by respondent No.2- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant No.2 shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum.

(SNEH PRASHAR)
JUDGE

02.03.2016.
jitender