

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

FAO-4863-2013 (O&M)
Date of decision: 23.02.2016

Amarpreet Kaur and others

...Appellants

Versus

Karamjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjeev Goyal, Advocate for the appellants.

Mr. P. S. Bawa, Advocate for respondent No.2.

Mr. Nitin Goyal, Advocate for respondent No.3.

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JITENDRA CHAUHAN, J.

CM No.20802-CII of 2013

Despite availing sufficient opportunity, no reply has been filed to the delay application.

For the reasons contained in the application, same is allowed and delay of 112 days in filing the present appeal is condoned.

Main Case

This is claimants' appeal seeking enhancement of the amount of compensation awarded vide impugned award dated

30.01.2013, passed by the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal').

The learned counsel for the appellants states that the learned tribunal has wrongly assessed the average income at Rs.1,08,000/- per annum (Rs.9,000/- per month). He refers to Exs.P5 to P7 to assert that the deceased, Amrik Singh was an Income Tax Payee and his average annual income comes to Rs.1,56,000/-. Further, the learned counsel states that nothing has been awarded towards loss of love & affection, future prospects. Lastly, he asserted that the number of claimants being five, deduction should be made to the extent of 1/4 instead of 1/3.

The learned counsel for the respondents has not been able to controvert the arguments put forth by the learned counsel for the appellants.

I have heard the learned counsel for the parties and perused the record.

In Exs.P5 to P7, the average annual income has been noticed as Rs.1,34,333/-, therefore, the average income comes to Rs.1,34,333/- (rounded of Rs.1,34,500/-). The Income Tax Return filed much prior to the death deserved is a reliable evidence in favour of the appellants.

From the perusal of the award, it is noticed that the learned Tribunal did not award any compensation on account of

the future prospects. It is not in dispute that the deceased was 43 years of age at the time of his death. Therefore, keeping in view the law laid down in ***Rajesh Vs. Rajbir Singh (SC), 2013(3) R.C.R. (Civil), 170***, an addition of 30% is ordered in the actual income of the deceased towards future prospects.

Further, as per the law laid down in ***Sarla Verma v. DTC (2009) 6 SCC 121***, the deduction should be 1/4 instead of 1/3, as assessed by the learned Tribunal.

In this way, the amount of compensation under the head of 'loss of dependency' comes to Rs.11,209/- + 30% X 12 X 14 X $\frac{3}{4}$ = Rs.18,36,072/-, as against an amount of Rs.10,08,000/-, assessed by the learned Tribunal under this head.

Further, nothing has been awarded under the head 'loss of love and affection'. Accordingly, in view of the law laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others, (2013-3) PLR 776***, an amount of Rs.1,00,000/- is awarded to the children of the deceased, in equal share.

Furthermore, as per the law laid down in ***Rajesh's case (supra)*** amount of Rs.5,000/- awarded towards 'cremation and last rites' is enhanced to Rs.15,000/- and another Rs.90,000/- is awarded under the head 'loss of consortium'.

In view of the above, the claimant-appellants are held entitled to the enhanced compensation of Rs.10,28,072/-

[Rs.8,28,072/- (enhancement towards 'loss of dependency') + Rs.1,00,000/- (towards 'loss of love and affection', payable to the children of the deceased, in equal share) + Rs.90,000/- (enhancement towards the head 'loss of consortium' payable to the wife of the deceased only) + Rs.10,000/- (enhancement towards cremation and last rites)] as indicated above, in the manner prescribed in the impugned award, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal, till its realization.

With the aforesaid modification in the impugned award, the present appeal is partly allowed.

23.02.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**