

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

FAO No.5398 of 2013 (O&M)

Date of decision : 09.02.2016

Gurjeet Kaur and others

.....Appellants

Versus

Manjeet Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. R.K. Shukla, Advocate for appellants.

Mr. Vinod Gupta, Advocate for respondent No.5.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 15.03.2013, passed by the learned Motor Accidents Claims Tribunal, Patiala (hereinafter called the 'Tribunal') vide which the claimants have been granted compensation to the tune of Rs.21,22,000/- along with interest @ 7.5% per annum from the date of filing the claim petition till realisation on account of death of Lance Naik Gurinder Singh in a motor vehicular accident who took place on 24.06.2011.

2. The present appeal has only been filed for enhancement of amount of compensation.

3. I have heard Mr. R.K. Shukla, Advocate, learned counsel for the appellants, Mr. Vinod Gupta, Advocate, learned counsel for respondent No.5 and gone through the paper-book carefully.

4. Learned counsel for the appellants contended that no future prospects have been granted towards the income of the deceased. The learned Tribunal has applied the wrong multiplier. The compensation on account of funeral expenses and loss of consortium has been granted less and no compensation has been granted for loss of love and affection.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the learned Tribunal has awarded the compensation under all the heads which is just and appropriate.

6. I have duly considered the aforesaid contentions.

7. In the instant case as per the salary certificate Ex.PW1/8 the deceased was getting the monthly salary of Rs.21,949/- i.e. Rs.21,900/- (*to make it a round figure*). The learned Tribunal has not added any future prospects towards the income of the deceased. The deceased was less than 27 years of age at the time of his death. He was serving in army. Certainly he had good prospects of getting promotion and enhancement in the salary. Thus, he was entitled for 50% future prospects towards his income. The total income comes to Rs.32,850/- per month i.e. Rs.3,94,200/- per annum. Out of that 10% has to be deducted towards income tax. The remainder comes to Rs.3,54,780/-. 1/3rd of the income of the deceased i.e. Rs.1,18,260/- is to be deducted towards his

personal and living expenses.

8. As per the law laid down in case ***Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77*** the multiplier of 17 shall be applicable as the age of the deceased was 26 years 7 months at the time of his death. The multiplicand comes to Rs.40,20,840/-. Claimant No.1 the widow of deceased Gurinder Singh shall be further entitled to a sum of Rs.1,00,000/- towards loss of consortium. The claimants will be further entitled to a sum of Rs.25,000/- towards funeral and transportation expenses. Claimant No.2 the minor son of the deceased shall be entitled to a sum of Rs.1,00,000/- on account of loss of love, care and guidance. Claimant No.3 the mother of the deceased shall also be entitled to a sum of Rs.50,000/- on account of loss of love and affection. The total amount of compensation comes to Rs.42,95,840/-.

9. There is no dispute with the proposition of law that the function of the Tribunal is to award just and fair compensation. If the amount of just and fair compensation exceeds the amount claimed in the claim petition, even that can be granted. The just and fair compensation cannot be confined to the amount of compensation claimed in the claim petition. The compensation is to be computed in accordance with the said principles of law. In the instant case, the amount of award has been computed strictly in view of the latest judicial precedents and the amount of award comes to Rs.42,95,840/-, though, in the claim petition the prayer has been made for grant of compensation to the tune of Rs.10,00,000/-.

10. A larger Bench of Hon'ble Apex Court in case ***Nagappa Versus Gurudayal Singh and others 2003 ACJ 12*** has laid down that

there is no restriction that compensation could be awarded only up to the amount claimed. The Tribunal is to award just compensation which is reasonable on the basis of evidence on record. A Division Bench of Hon'ble Madras High Court in case ***United India Insurance Company Limited Versus Veluchamy and another*** 2005 ACJ 1483 has also laid down that compensation more than claim can be awarded. A Division Bench of Hon'ble Calcutta High Court in case ***Debanti Debi Versus National Insurance Company Limited and another*** 2011 ACJ 758 has also laid down that the Court can award compensation more than claimed in order to provide just compensation without any application for amendment of the claim petition. In case ***Delhi Transport Corporation and others Versus Meena Kumari and another*** 2011 ACJ 1211 Hon'ble Delhi High Court has also laid down that the compensation more than claim can be awarded to the claimants being the just compensation. Again in case ***Tamil Nadu State Trans. Corpn. Ltd. Versus Pothumponnu and others*** 2011 ACJ 1375 the Hon'ble Madras High Court reiterated the aforesaid legal position and laid down that the award of compensation more than claimed can be passed to grant the just compensation. In case ***Anita Devi and others Versus Shamsher Singh and others*** 2012 ACJ 153 also the Hon'ble Delhi High Court laid down that the Court can award compensation more than claimed in order to provide just compensation. Finally, in case ***Laxman Versus Divisional Manager, Oriental Insurance Co. Ltd. and another*** 2012 ACJ 191 the Hon'ble Supreme Court laid down as under:-

“It is true that in the petition filed by him under Section 166 of the

*Act, appellant had claimed compensation of Rs.5,00,000 only, but as held in **Nagappa V. Gurudayal Singh 2003 ACJ 12 (SC)**, in the absence of any bar in the Act, the Tribunal and for that reason any competent court is entitled to award higher compensation to the victim of an accident.”*

11. Thus, in view of the consistent rule of law laid down in the cases noted above, it is the duty of the Tribunal to award the just compensation to the claimants on the basis of the evidence brought on file, even though, the same is more than the amount claimed in the claim petition. So, the claimants are entitled to a sum of Rs.42,95,840/- as compensation, though in the claim petition compensation has been claimed to the tune of Rs.10,00,000/-.

12. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced from Rs.21,22,000/- awarded by the learned Tribunal to Rs.42,95,840/-. The claimants shall also be entitled to interest at the rate determined by the learned Tribunal on the enhanced amount of compensation from the date of filing the claim petition till realisation. The liability to pay the enhanced amount of compensation and mode of payment shall be as per the award passed by learned Tribunal.

09.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**