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

FAO No.5700 of 2013 (O&M)
Date of Decision: January 27, 2016.

Noorddin and another

..........APPELLANT(s).

VERSUS

Mohammad Haroon and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pulkit Dagar, Advocate for
Mr. Rajesh Lamba, Advocate
for the appellant (s).

Mr. Ashish Gupta, Advocate
for respondent No.1.

Service of respondent No.2 already dispensed with.

Respondent No.3 ex parte.

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SURINDER GUPTA, J.

The appellants-claimants have filed this appeal claiming enhancement of compensation allowed vide award dated 28.01.2013 by Motor Accident Claims Tribunal, Nuh (later referred to as 'the Tribunal') for the death of their son Jabir (later referred to as 'the deceased').

The case of the claimants, in brief, is that on 14.07.2011, the deceased was returning home on his motorcycle. When he was crossing Palwal T-point, a tractor bearing registration No.HR27-8811 (later referred to as 'the offending vehicle') hit the motorcycle of the deceased, who sustained serious multiple injuries, resulting in his death. The accident was caused due to rash and negligent driving of offending vehicle by its driver-respondent

No.1.

In written statement, respondents No.1 and 2 i.e. driver and owner of the offending vehicle denied the accident. Respondent No.3-insurance company also contested the claim petition.

On appraisal of evidence, the Tribunal recorded the finding that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1. The deceased was 21 years of age at the time of his death. The Tribunal assessed his monthly income as ₹4,000/-. The multiplier of '14' was applied as per the age of claimants, after deducting one half (1/2) of the income of deceased towards his personal expenses and on deducting a sum of ₹1 lac received by the claimants on account of death of their son under *Rajiv Gandhi Bima Yojna,* claimants were allowed compensation of ₹2,46,000/-.

Learned counsel for the appellants-claimants has argued that the Tribunal has committed grave error of law while deducting the insurance amount received by the claimants under *Rajiv Gandhi Bima Yojna.* Relying on the observations of Division Bench of this Court in ***Reliance General Insurance Company Ltd Vs. Purnima and others 2013(2) PLR 306***, he has argued that this amount could not be deducted from the amount of compensation. He has further argued that the Tribunal was required to apply the multiplier as per the age of the deceased and not as per the age of the claimants. No compensation was allowed to the claimants towards future prospects of the deceased and for loss of estate. An amount of ₹10,000/- awarded towards funeral expenses is also on lower side.

Learned counsel for respondent No.1 has argued that the vehicle was duly insured with respondent No.3 and under the award, the insurance company has to indemnify the owner of the offending vehicle, as such, no liability of respondent No.1, who was driver of the offending vehicle, to pay any compensation to the claimants, is attracted.

It is no more res integra that the amount of insurance, pension, service benefits etc. are not to be taken into account while assessing the quantum of compensation. Reference in this regard can be made to observations by Apex Court in case ***Vimal Kanwar and others Vs. Kishore Dan and others 2013(7) SCC 476***.

In the case of ***Reliance General Insurance Company Ltd. Vs. Purnima and others (supra),*** Division Bench of this Court relied on the observations contained in para 30 of case ***Oriental Insurance Company Ltd. Vs. Saroj Devi 2012(3) R.C.R. (Civil) 292***, which read as follows:-

> "30. In the line of reasoning adopted by the Hon'ble Supreme Court, this Court declares that the Insurance Companies cannot get their liability excused or reduced because the deceased's family is also entitled to financial assistance from an alternative source which is accruing only by reason of the death of the deceased and not because he died in a motor vehicle accident. Drawing an analogy from the aforesaid observation of the Hon'ble Apex Court, when liability of the Insurance Company arises from a specific type of contract i.e. contract of indemnity, how can they be permitted to take benefit of compassionate assistance which results from employer-employee relationship and which is a right accruing by virtue of a welfare legislation (subordinate legislation)."

In view of above settled proposition of law, the deduction of ₹1 lac from the amount of compensation awarded by the Tribunal is not justified.

In case of ***Munna Lal Jain and others Vs. Vipin Kumar Sharma***

and others 2015(3)RCR (Civil) 447, Hon'ble Apex Court has followed the view taken in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54*** regarding the addition in the income of the deceased towards future prospects for the privately or self employed persons. Hence, keeping in view of ratio of law laid down in above-referred cases and age of the deceased which was 21 years, a sum equal to 50% is to be added in the income of the deceased towards future prospects.

It is no more res integra that while calculating the amount of dependency, the multiplier is to be applied taking into account the age of the deceased and not the age of the claimants as has been held by a three Judges' Bench of Hon'ble Supreme Court in ***Reshma Kumari and Ors. v. Madan Mohan and Anr. (2013) 9 SCC 65*** and affirmed by another three Judges' Bench of Hon'ble Apex Court in ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others (supra).***

The appellants-claimants are also entitled to compensation of ₹1 lac towards loss of estate and ₹25,000/- towards funeral expenses.

In view of my discussion above, the amount of compensation to which the claimants are entitled, is tabulated as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹4000 per month
(ii)	50% of (i) above to be added as future prospects	(₹4000+ ₹2000)= (₹6000 per month)
(iii)	1/2 of (ii) deducted as personal expenses of the deceased	(₹6000-₹3000)= ₹3000 per month
(iv)	Compensation after multiplier of 18 is applied	(₹3000X12X18)= ₹648000
(v)	For loss of estate	₹100000
(vi)	Funeral expenses	₹25000
Total		₹7,73,000

The appeal is accepted. The award of the Tribunal is modified and compensation allowed to claimants is enhanced from ₹2,46,000/- to ₹7,73,000/- for death of Jabir. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation shall be shared by the claimants as per award of the Tribunal. Respondent No.3-insurance company will deposit the share of claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed at ₹20,000/-.

(SURINDER GUPTA)
JUDGE

January 27, 2016.
Sachin M.