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

(1)

**FAO No.5333 of 2014 (O&M)
Date of Decision: December 09, 2016.**

Baru Ram and another

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

VERSUS

Balraj and others

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

(2)

FAO No.5334 of 2014 (O&M)

Kanta and another

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

VERSUS

Balraj and others

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

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ram Kumar Saini, Advocate
for the appellant (s).

Mr. B.S. Taunque, Advocate
for respondent No.3.

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<u>SURINDER GUPTA, J.</u>

The appeals captioned above have been taken up together for disposal as both arise from common award dated 25.03.2014 passed by Motor Accident Claims Tribunal, Hisar (later referred to as 'the Tribunal') relating to death of Bhupender and Suresh in a motor vehicle accident, which took place on 09.03.2013 due to rash and negligent driving of Maruti Zen car bearing registration No.HR-70/1761 (later referred to as 'the offending vehicle') by its driver Balraj, respondent No.1.

As the only issue involved in both the appeals relates to seeking of enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

FAO-5333-2014

The Tribunal awarded a sum of ₹7,37,000/- on account of death of Suresh, which was calculated as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Suresh
(ii)	Age of the deceased	25 years
(iii)	Income of the deceased	₹4000 p.m. X 12 = ₹48000 per annum.
(iv)	50% addition towards future prospects	₹48000 + 24000 = ₹72000.
(v)	1/2 of (iv) deducted towards personal expenses	(₹72000-₹36000)= ₹36000.
(vi)	Annual amount of dependency after applying the multiplier of 17	(₹36000x17)= ₹612000
(vii)	Loss of love and affection and loss to estate to mother of the deceased	₹100000
(viii)	Funeral expenses	₹25000
	Total	**₹7,37,000/-**

FAO-5334-2014

The Tribunal awarded a sum of ₹10,43,000/- on account of death of Bhupender, which was calculated as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Bhupender
(ii)	Age of the deceased	25 years
(iii)	Income of the deceased	₹4000 p.m. X 12 = ₹48000 per annum.
(iv)	50% addition towards future prospects	₹48000 + 24000 = ₹72000.
(v)	1/4 of (iv) deducted towards personal expenses	(₹72000-₹18000)= ₹54000.
(vi)	Annual amount of dependency after applying the multiplier of 17	(₹54000x17)= ₹918000
(vii)	Loss of consortium to wife of the deceased	₹100000
(viii)	Funeral expenses	₹25000
	Total	**₹10,43,000/-**

Learned counsel for the appellants-claimants has argued that both the deceased were 25 years of age. While deceased Suresh was unmarried, Bhupender was married and left behind his wife, two minor children and parents. He sought enhancement of compensation for the death of Suresh and Bhupender on following grounds:-

(i) The Tribunal has assessed the income of the deceased as ₹4,000/- less than the minimum wages fixed by the Government of Haryana, which was ₹5,212.15p. per month for unskilled workers. He seeks enhancement of income of deceased Suresh and Bhupender, equivalent to minimum wages fixed by the Government of Haryana.

(ii) The Tribunal while calculating the amount of dependency, applied the multiplier of 17 instead of 18 as per the norms settled by Apex Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121***.

(iii) The Tribunal did not award any compensation to the minor children of deceased Bhupender towards loss of love and affection, care and guidance and to his parents towards loss of estate, love and affection.

Learned counsel for respondent No.3-insurance company has argued that it was case of head on collision, and involving contributory negligence on the part of driver of the motorcycle, which collided with the offending vehicle. In the absence of evidence that parents of deceased Suresh Kumar were dependent on him, compensation allowed by the Tribunal to them is quite reasonable and justified. He has, however, not disputed grant of compensation towards loss of love and affection, care and guidance for minor children of deceased Bhupender and loss of estate to his parents. He has further argued that the age of deceased Bhupender was taken by the Tribunal as 25 years despite the fact that he was having a child aged four years and his wife stated that her marriage with Bhupender was solemnised in the year 2004 i.e. 9 years prior to the accident. In the absence of any documentary evidence, his age could not be taken as 25 years.

So far as the age of deceased Suresh is concerned, the same is not disputed. On perusal of the claim petitions made available by learned counsel for respondent No.3 from his record, I find that deceased Bhupender had left behind his wife, one daughter aged 2 years and one son aged 4 months (not four years as argued by learned counsel for respondent No.3). In the statement of Kanta wife of deceased Bhupender, it is recorded that her marriage took place in the year 2004. This may have been recorded due to typographical mistake or if she got married with Bhupender at the age when they both were minor, a conclusion cannot be drawn that age of deceased mentioned in the petition and also in the post mortem report is wrong. The Tribunal on the basis of evidence on record rightly reached the conclusion that the age of deceased Bhupender was 25 years at the time of accident.

As per the observations of Apex Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** the multiplier applicable in both the appeals is 18. In the absence of any evidence regarding income of the deceased, Tribunal assessed it as ₹4,000/- per month which is lower than the minimum wages prescribed by the Government of Haryana, which were revised w.e.f. 01.01.2013 as ₹5,212.15p per month for unskilled worker. I agree with the submission of the learned counsel for the appellants that in the absence of any evidence regarding income of both the deceased it cannot be taken as less than minimum wages prescribed for an unskilled worker. Therefore, the monthly income of both the deceased is taken as ₹5,200/-.

The minor children of deceased Bhupender are also entitled to compensation on account of loss of love and affection, care and guidance which is assessed as ₹1 lac and his parents are also allowed compensation of equal amount towards loss of love and affection and loss of estate.

The submission by learned counsel for respondent No.3 that it was a head on collision and there was contributory negligence of the driver of the motorcycle which collided with the offending vehicle and that parents of deceased Suresh were not dependent on him, have no merit and call for any finding in this appeal as Insurance Company has accepted the finding of the Tribunal in this regard and has not come up with any appeal.

As a consequence of my above discussion, compensation in both the appeals is re-assessed as follows:-

FAO-5333-2014

Sr.No.	***Heads***	***Calculation***
(i)	Income of the deceased	₹5200 p.m. X 12 = ₹62400 per annum.
(ii)	50% addition towards future prospects	₹62400 + 31200 = ₹93600.
(iii)	1/2 of (ii) deducted towards personal expenses	(₹93600-46800)= ₹46800.
(iv)	Annual amount of dependency after applying the multiplier of 18 as per ***Sarla Verma's case (supra)***	(₹46800x18)= ₹842400
(v)	Loss of love and affection and loss to estate to mother of the deceased	₹100000
(vi)	Funeral expenses	₹25000
	Total	**₹9,67,400/-**

This appeal has merits and is accepted. The award of the Tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹7,37,000/- to ₹09,67,400/- for the death of Suresh. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation shall be apportioned equally between the appellants-claimants. Respondent No.3-insurance company will deposit the share of appellants-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 ₹20,000/-.

FAO-5334-2014

Sr.No.	***Heads***	***Calculation***
(i)	Income of the deceased	₹5200 p.m. X 12 = ₹62400 per annum.
(ii)	50% addition towards future prospects	₹62400 + 31200 = ₹93600.
(iii)	1/4th of (ii) deducted towards personal expenses	(₹93600-23400)= ₹70200.
(iv)	Annual amount of dependency after applying the multiplier of 18 as per ***Sarla Verma's case (supra)***	(₹70200x18)= ₹1263600
(v)	Loss of consortium to wife of the deceased	₹100000
(vi)	Loss of love and affection and loss to estate to parents of the deceased	₹100000
(vii)	Loss of love and affection care and guidance for minor children of the deceased	₹100000
(viii)	Funeral expenses	₹25000
Total		**₹15,88,600/-**

This appeal also has merits and is accepted. The award of the Tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹10,43,000/- to ₹15,88,600/- for the death of Bhupender. The enhanced amount of compensation will carry interest @ 7%

per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

(i)	Appellant No.1-wife of the deceased	: 30%
(ii)	Appellants No.2 and 3-minor children	: 20% each,
(iii)	Appellants No.4 and 5-parents	: 15% each.

Respondent No.3-insurance company will deposit the share of appellants-claimants No.1, 4 and 5 in their bank accounts or pay the same through demand drafts. The share of minors-appellant Nos.4 and 5, who as per their age given at the time of filing of the petition are still minors, will be deposited in some nationalised bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minors as required at the time of deposit of the amount and the minor shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed ₹20,000/-.

(SURINDER GUPTA)
JUDGE

December 09, 2016.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***