

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

**FAO No.389 OF 2015
DATE OF DECISION : 9TH MAY, 2016**

Smt. Premi & another

.... Appellants

Versus

Sunil Kumar & others

.... Respondents

FAO No.536 OF 2015 (O&M)

National Insurance Company Limited

.... Appellant

Versus

Premi & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

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Present : Mr. Ashish Gupta, Advocate
 for appellants in FAO No.389 of 2015 and
 for respondents No.1 and 2 in FAO No.536 of 2015.

Mr. Harsh Aggarwal, Advocate
for the appellants in FAO No.536 of 2015 and
for respondent No.3 in FAO No.389 of 2015.

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DARSHAN SINGH, J.

1. This judgment shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 30.09.2014 passed by learned Motor Accidents Claims Tribunal, Karnal (hereinafter called as 'the Tribunal') vide which the claimants-appellants of FAO No.389 of 2015 have been awarded compensation to the tune of ₹8,12,000/- on account of the

death of Parmod Kumar in the motor vehicular accident which took place on 28.01.2012.

2. FAO No.389 of 2015 has been preferred by the claimants for enhancement of the amount of compensation. FAO No.536 of 2015 has been preferred by the National Insurance Company (respondent No.3 in the claim petition) to assail the award.

3. I have heard learned counsel for the parties and perused the case file with their assistance.

4. Learned counsel for the claimants contended that the learned Tribunal has wrongly applied the multiplier of 15, keeping in view the age of the deceased. The deceased was only 17½ years of age and the multiplier of 18 should have been applied. He further contended that only ₹10,000/- has been awarded towards transportation and funeral expenses, which is also less and should have been awarded ₹25,000/-. Thus he contended that just compensation has not been awarded.

5. On the other hand, learned counsel for the Insurance Company contended that the deceased was a student of 10th Class. It is not possible that a student of 10th class will help his father in addition to his studies. There is also no evidence on record to show that the father of the deceased was an electrician. Thus he contended that the Tribunal has wrongly taken the income of the deceased to be ₹5,200/- per month. He further contended that only the notional income of the deceased should have been taken, treating him to be a non-earning person. He further contended that there is nothing wrong in applying the multiplier as per the age of the claimants/parents. Thus he contended that exorbitant amount of compensation, based on the wrong income, has been awarded.

6. I have duly considered the aforesaid contentions. Learned counsel for the Insurance Company has assailed the impugned award on the ground that the learned Tribunal has wrongly taken the income of the deceased @ ₹5,200/- per month as he was only a student and was not expected to help his father in his profession. There was also no evidence to show that his father was working as an electrician. Learned counsel for the claimants has contended that the income of the deceased has been taken only to be of a labourer which could not be stated to be on higher side.

7. As per the case of the claimants deceased was student of 10+1. He was studying in Government High School, Rajond. He was the only son of the claimants and used to help his father in his work of electrician. Smt. Premi Devi, mother of the deceased, has stepped into the witness box as PW-1. In her affidavit PW-1/A she has categorically mentioned that deceased Parmod Kumar was the only son of the claimants. He used to render help to his father in his work of electrician. Sunil Kumar PW-2, who is also resident of the same village Beer Bangran, has also categorically deposed in his affidavit Exhibit P-2/A that the deceased used to help his father in his work of electrician. Sunil Kumar PW-2 has fully corroborated the testimony of Smt. Premi Devi, the mother of the deceased, with respect to the profession of the father of the deceased and the fact that the deceased used to help him in his profession. This version of both these witnesses has virtually gone unchallenged in the cross-examination. It is settled principle of law that if the version of a witness is not changed in the cross-examination that part of his statement is deemed to have been admitted by the opposite party. So there is no escape from the conclusion that the father of the deceased was working as an electrician and the deceased used to

render help to his father in his profession. The work of electrician is a skilled and technical profession. In these circumstances, the income of the deceased, determined by the learned Tribunal @ ₹5,200/- per month, which even a labourer could have easily earned in the year 2012, cannot be stated to be on here side. Learned Tribunal has rightly taken the income of the deceased to be ₹7800/- per month after adding 50% future prospects. 50% of the income of the deceased shall be deducted towards his personal and living expenses. Remainder comes to ₹3900/- per month.

8. The learned Tribunal has applied the multiplier of 15, keeping in view the age of the claimants/parents. As per the law laid down by the Hon'ble Apex Court in the latest judgment titled as ***Munna Lal Jain and Ors. Vs. Vipin Kumar Sharma, (2015) 6 SCC 347***, the multiplier as per the age of deceased should have been applied. So, the multiplier of 18 should have been applied by the learned Tribunal. With this change of multiplier the loss of dependency will come to ₹8,42,400/- (3900 X 12 X 18) instead of ₹7,02,000/- determined by the learned Tribunal.

9. The learned Tribunal has awarded only ₹10,000/- towards transportation and funeral expenses which are enhanced to ₹25,000/-. With this increase the total amount of compensation comes to ₹9,67,400/-.

10. Thus, keeping in view my aforesaid discussion, FAO No.389 of 2015 titled as Premi & another versus Sunil Kumar and others is hereby partly allowed. The amount of compensation payable to the appellants-claimants is hereby enhanced to ₹9,67,400/- from ₹8,12,000/- awarded by the learned Tribunal. The claimants shall be further entitled to pendente lite and future interest at the rate determined by the learned Tribunal from the date of filing of the claim petition till realization. The liability to pay the

enhanced amount shall be as per the impugned award passed by the learned Tribunal.

11. However, FAO No.536 of 2015 filed by Insurance Company is without any merits and the same is hereby dismissed.

9th MAY, 2016
'raj'

(DARSHAN SINGH)
JUDGE