IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.8648 of 2014.
Date of Decision: 30.03.2016.

Krishna Devi and others ....Appellants.

VERSUS

Devender and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. M.S. Randhawa, Advocate for the appellants.

Mr. Sanjeev Kodan, Advocate for respondent No.3.

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SNEH PRASHAR, J.

A claim petition invoking the provisions of Section 166/140 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed by the appellants (widow-Krishna Devi, daughter-Pooja and minor son-Sandeep of deceased Subhash Chand) pleading that on 20.01.2013 at around 8:00 p.m. when Subhash Chand (since deceased) alongwith one Madan Lal was returning to village Gehli by means of three-wheeler bearing registration No.HR-66-8660 (for short, "the offending three-wheeler) being driven by Devender (respondent No.1), the three-wheeler turned turtle due to its rash and negligent driving. Subhash Chand came underneath the three wheeler and Madan Lal fell on a side. Madan Lal extricated Subhash with the help of two motorcyclist.

A First Information Report No.31 dated 21.01.2013 under Sections 279/336/304-A of the Indian Penal Code in respect of the accident was registered at Police Station Sadar, Narnaul against Devender-respondent No.1.

The claim petition was contested by the respondents (driver, owner and insurer of the offending three-wheeler). Respondents No.1 and 2 in their joint written statement denied the occurrence of accident. Respondent No.3-insurance company filed separate written statement raising all objections available to the insurer under the Act of 1988 and further submitted that respondent No.1 was not holding a valid and effective driving licence at the time of accident and there was violation of terms and conditions of the insurance policy. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the petition and awarded Rs.6,60,000/- as compensation to the claimants alongwith interest at the rate of 9% per annum from the date of filing the petition till realization. The respondents were held jointly and severally liable to pay compensation.

Feeling unsatisfied, the claimants-appellants preferred the instant appeal seeking enhancement of compensation.

The submissions made by Mr. M.S. Randhawa, learned counsel for the appellants and Mr. Sanjeev Kodan, learned counsel for respondent

No.3 have been heard and record perused.

Learned counsel for the appellants-claimants contends that at the time of accident the age of the deceased was 46 years. He was running a grossery shop and was earning Rs.15,000/- per month but learned Tribunal wrongly assessed his income as Rs.5000/- per month only. Considering the age of the deceased the appropriate multiplier to the amount determined as loss of dependency of the appellants was '13' whereas learned Tribunal applied the multiplier of '10'. As held in ***Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54,*** 30% notional increase should have been added to the actual income of the deceased computing future prospects but learned Tribunal failed to do so. The amount of Rs.20,000/- awarded towards last rites is also on the lower side. No amount was awarded to the claimants for loss of love and affection.

On the other hand, learned counsel for the respondent-insurance company argued that learned Tribunal wrongly deducted 1/10th of the income of the deceased towards his personal and living expenses whereas Hon'ble Apex Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77*** has held that where the deceased was married and the number of dependent family members is 2 to 3, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd).

No substantive and reliable evidence was produced by the appellants to prove that the deceased was running a grossery shop and was earning Rs.15,000/- per month. In absence of required evidence, learned

Tribunal rightly assessed the income of the deceased as Rs.5000/- per month and that calls for no intervention.

Following the law laid down in Rajesh and others' case (supra) on adding 30% notional increase on account of future prospects the income of the deceased would come to Rs.6500/- (5000 + 1500). As held in Sarla Verma and others' case (supra) there being three dependents, 1/3rd of the income is to be deducted towards personal and living expenses of the deceased. Learned Tribunal wrongly deducted only 1/10th of the income on that count which needs correction.

Indeed, the age of the deceased being 46 years, the appropriate multiplier should be '13'. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)		Rs.5000/-
2.	Actual age of the deceased		46 years
3.	Increase in future income as per Munna Lal Jain and another' case (supra)		Rs.1500/-
4.	Annual dependency		2/3rd of Rs.6500 x 12=Rs.52,000/-
5.	Multiplier		13
6.	Total		Rs.6,76,000/-

In addition to the amount of Rs.6,76,000/- calculated towards dependency, the amount of Rs.20,000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/-. A further amount of Rs.50,000/- each is awarded to the appellants-claimants No.2 and 3 for loss of love and affection. The amount of Rs.1,00,000/- towards loss of consortium has already been awarded by learned Tribunal to appellant-claimant No.1 and the same is affirmed. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 22.05.2014 passed by learned Tribunal is modified. The enhanced compensation of Rs.2,41,000/- shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of this order till realization. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

30.03.2016.
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