

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

FAO No.8879 of 2014.

Date of Decision: 22.03.2016.

Baljinder Kaur

....Appellant.

VERSUS

Kikkar Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. G.L. Bajaj, Advocate for the appellant.

Ms. Anju Bansal, Advocate for
Mr. Nakul Sharma, Advocate for respondent No.1.

Mrs. Swatantar Kapoor, Advocate for respondent No.2.

SNEH PRASHAR, J.

By way of this appeal, appellant-Baljinder Kaur seeks enhancement of compensation awarded to her by Motor Accident Claims Tribunal, Ferozepur (for short, "the Tribunal") vide the award dated 15.07.2014 passed in MACT Case No.32 of 17.09.2013 on account of death of her husband Pala Singh who lost his life in a vehicular accident.

The submissions made by Mr. G.L. Bajaj, learned counsel for the appellant, Ms. Anju Bansal, learned counsel for respondent No.1 and Mrs. Swatantar Kapoor, learned counsel for respondent No.2-insurance company have been heard and record perused.

The claim petition invoking the provisions of Sections 166/140 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by Baljinder Kaur-appellant submitting that on 24.05.2013 her husband Pala Singh (since deceased) was going from Basti Jia Bagha to village Sadiq on his motorcycle No.PB-22H-4382 (for short, “the motorcycle”) and one Balwant Singh (brother of appellant-claimant) was the pillion rider. At about 2:00 p.m., when they reached near Star Palace, an Ertiga Car bearing registration No.PB-22F-0035 (hereinafter referred to as the “offending car”) being driven rashly, negligently and in a high speed by Kikkar Singh (respondent No.1) came from the opposite direction and struck against the motorcycle. As a result of accident, Pala Singh sustained multiple injuries and died at the spot. On the statement of Balwant Singh, a First Information Report No.109 dated 07.09.2013 was registered under Sections 304-A/337/338 of the Indian Penal Code at Police Station Mamdot.

Learned counsel for the appellant argued that deceased Pala Singh was owner of agricultural land measuring 5-1/2 acres which he used to cultivate himself and earn approximately Rs.25,000/- per month. He used to keep buffalo and sell milk in order to multiply his income. Learned Tribunal erred in assessing his income as only Rs.5000/- per month. The appellant not only lost the bread earner of the family but also lost a partner and has become lonely. The amount of Rs.20,000/- awarded by learned Tribunal towards funeral expenses and Rs.10,000/- for loss of consortium is on the lower side.

On the other hand, learned counsel for respondent No.2-

insurance company submitted that the widow of the appellant was the only claimant. Since their children were married and well settled and only the appellant was the dependent of deceased Pala Singh, the deduction towards personal and living expenses of the deceased should have been half instead of 1/3rd as done by learned Tribunal.

Except for the oral evidence in the shape of deposition of AW1 Baljinder Kaur and AW2 Gurbachan Singh, father of deceased Pala Singh, no substantive and reliable evidence could be produced by the appellant to prove that the deceased owned 5-1/2 acres agricultural land or was earning Rs.25,000/- per month. It may be true as stated by AW1 and AW2 that the deceased was working in Cooperative Bank and was wrongly dismissed on 15.02.2000 and subsequently on 17.01.2011 he was reinstated in service with full back wages by order of the Industrial Tribunal, Bathinda but the fact remains that when he died as a result of injuries in the accident he was 65 years old and was no longer in service. Considering all said facts and circumstances, learned Tribunal rightly assessed the income of the deceased as Rs.5000/- per month which comes to Rs.60,000/- per annum and the said finding needs no modification. The age of the deceased being 65 years, the multiplier of '7' was rightly applied.

It had come in the statement of appellant Baljinder Kaur-AW1 that she has three children. None of them was impleaded as claimant, may be for the reason that they were major and married and were not dependents of the deceased. But it should not lose sight that in Indian society where joint family culture is followed, father carries on to discharge various social

obligations relating to children and grandchildren. As such, in the considered opinion of this Court, the deduction of 1/3rd from the income of the deceased towards his personal and living expenses is not required to be disturbed. Considering the age of the deceased, the multiplier of '7' was rightly chosen and the finding of learned Tribunal awarding Rs.2,80,000/- as loss of dependency is upheld.

However, the amount awarded towards funeral expenses and loss of consortium is on the lower side. The amount of Rs.20,000/- given as funeral expenses is enhanced to Rs.25,000/- and the amount of Rs.10,000/- allowed as loss of consortium is enhanced to Rs.1,00,000/-. Another amount of Rs.20,000/- is allowed towards loss of estate.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 15.07.2014 passed by learned Tribunal is modified. The enhanced compensation of Rs.1,15,000/- shall be deposited by respondent No.2-insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

22.03.2016.
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