

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

FAO No.8895 of 2014

Date of decision : 29.08.2016

Jasvir Kaur and others

.....Appellants

Versus

Hathi Ram Gurjar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Amit Jaiswal, Advocate for appellants.

Mr. Punit Jain, Advocate for respondent No.3-
Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 16.07.2014, passed by the learned Motor Accidents Claims Tribunal, Patiala (hereinafter called the “Tribunal”), whereby the appellant-claimant No.1 has been awarded compensation to the tune of ₹5,71,834/- and appellants No.2 and 3 have been awarded compensation to the tune of ₹50,000/- each on account of death of Kaka Singh in the motor vehicular accident which took place on 08.04.2013.

2. The present appeal has been preferred by the appellants-claimants for enhancement of amount of compensation.

3. I have heard learned counsel for the parties and have gone through the paper-book carefully.

4. Initiating the arguments, learned counsel for the appellants

contended that deceased Kaka Singh was a foreman of the harvester combine owned by Karam Singh and was earning ₹20,000/- per month, which is established from the statement of PW2 Karam Singh but the learned Tribunal has wrongly determined the income of the deceased to be ₹4000/- per month. He further contended that after the accident, the deceased was taken to Medicare Relief Society, District Hospital Shahpura, Rajasthan, then to Rajindra Hospital, Patiala and, thereafter to PGI, Chandigarh. He remained under treatment for about 12 days. The learned Tribunal has not awarded the proper amount towards treatment and transportation. Thus, he contended that the compensation awarded to the claimants is not just compensation.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that there was no documentary evidence to establish that deceased Kaka Singh was working as foreman on the combine owned by PW2 Karam Singh. There is also no evidence to show that he had any technical qualification. So the learned Tribunal has rightly taken the income of the deceased to be ₹4000/- per month. The just and appropriate compensation has been awarded under all other heads. Thus, the impugned award does not call for any interference.

6. I have duly considered the aforesaid contentions.

7. As per the case of the claimants, the deceased was working as a foreman on the harvester combine owned by PW2 Karam Singh. It was alleged that he was getting ₹20,000/- per month as salary. But admittedly, no documentary evidence has been brought on record by the appellants-

claimants to establish the salary of the deceased. However, even from the copy of the FIR and the statements of PW2 Karam Singh, it comes out that deceased Kaka Singh was working on his combine. In this way, he cannot be considered to be an unskilled person. However, there is no denial to the fact that the claimants have not led any evidence about the technical qualification of the deceased. But in view of the fact that the deceased was working as foreman on harvester combine, he can safely to be considered to be semi-skilled worker and his income can be taken to be ₹6000/- per month *i.e.* ₹72,000/- per annum.

8. The learned Tribunal has determined the age of the deceased to be 49 years and has awarded 30% of the future prospects to the income of the deceased. After adding 30% future prospects to the income of the deceased, his total income comes to ₹93,600/- (72000 + 21600). 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to ₹62,400/-. In view of the age of the deceased, multiplier of 13 shall be applicable. The loss of dependency comes to ₹8,11,200/-. The learned Tribunal has already awarded ₹1,00,000/- as loss of consortium to appellant-claimant No.1. The learned Tribunal has awarded ₹10,000/- towards funeral expenses, which is enhanced to ₹25,000/-.

9. This accident has taken place on 08.04.2013. Kaka Singh succumbed to the injuries on 20.04.2013. He remained under treatment for 12 days after suffering the injuries in this accident. First of all he was taken to Medicare Relief Society, District Hospital Shahpura, Rajasthan, then to

Rajindera Hosptial, Patiala and from there to PGI, Chandigarh. So, the claimants have also spent sufficient amount on transportation. The learned Tribunal has awarded ₹20,982/- towards medical expenses. This amount is enhanced to ₹30,000/- towards medical and transportation expenses. Thus, the total amount of compensation payable to the appellants-claimants comes to ₹ 9,66,200/-.

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The total amount of compensation payable to appellants-claimants is enhanced to ₹9,66,200/- from the amount of compensation awarded by the Tribunal. The appellants-claimants shall also be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount of compensation and apportionment amongst the claimants shall remain as determined by the learned Tribunal in the main award.

11. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Vs. Pushpa, (2015) 9 SCC 166***, in order to safeguard the interest of respondent No.3-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the claimants against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court, wherein the claimants will undertake that if the Hon'ble Apex Court adjudicates that the casual labourers/persons not holding the permanent jobs will not be

entitled to the future prospects, then they will be bound to refund the amount of future prospects received by them on moving the requisite application by the respondent-Insurance Company and the learned Tribunal will be competent to take the steps without making any reference to this Court.

29.08.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No