

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

FAO No.9250 of 2014.

Date of Decision: 29.03.2016.

Anju Kumari and others

....Appellants.

VERSUS

Dharmender and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Aditya Yadav, Advocate for the appellants.

Mr. Eklavya Kumar, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellants-Anju Kumar and others seek enhancement of compensation awarded to them by Motor Accident Claims Tribunal, Rewari (for short, “the Tribunal”) vide the award dated 21.07.2014 passed in MACT Case No.266 of 2012 on account of death of Omparkash (husband of appellant No.1 and father of appellants No.2 and 3), who lost his life in a vehicular accident.

The submissions made by Mr. Aditya Yadav, learned counsel for the appellants and Mr. Eklavya Kumar, learned counsel for respondent No.3-insurance company have been heard.

The claim petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by the

appellants pleading that on 12.08.2012 Om Parkash (since deceased) alongwith his cousin brother Ashok Sharma, was going to the factory on foot and was hit by a bus bearing registration No.RJ-32PA-0225 being driven rashly, negligently and in a high speed by Dharmender (respondent No.1). A First Information Report No.152 dated 12.08.2012 was registered under Sections 279/304-A of the Indian Penal Code at Police Station Bawal.

The owner and insurer (respondents No.2 and 3) of the offending bus contested the petition. Respondent No.1 (driver) did not appear to contest the petition despite due notice and he was proceeded against exparte. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus on them. Considering the evidence led by the parties and the submissions made on their behalf, learned Tribunal partly allowed the petition and awarded Rs.11,77,600/- as compensation to the appellants alongwith interest at the rate of 7% per annum from the date of filing the petition till realization.

Feeling unsatisfied with the award, the appellants preferred the instant appeal.

Learned counsel for the appellants argued that deceased Om Parkash was working in Musasi India Ltd., Bawal and was also owner of agricultural land and beside that he used to give tuition as he was MA in Sanskrit, therefore, he was earning Rs.15,000/- per month. Learned Tribunal erred in assessing his income as only Rs.5300/- per month. The amount awarded by learned Tribunal for loss of consortium, funeral

expenses, loss of estate etc. is on the lower side. No amount was awarded to the appellants on account of loss of love and affection.

No substantive or reliable evidence was led by the appellants to prove the income of the deceased. However, considering the deceased as a skilled labourer and keeping in view the minimum wages applicable to a skilled labourer in the year 2012, learned Tribunal rightly assessed the income of the deceased as Rs.5300/- per month and added 50% to the income of the deceased computing future prospects in the light of the ratio in **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170,** learned Tribunal held that the deceased must be getting Rs.7950/- per month.

The deceased is survived by widow-Anju Kumari and two daughters-Radhika and Deepanshu Sharma, 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 being 31 years, the multiplier of '16' was rightly chosen and the finding of learned Tribunal awarding an amount of Rs.10,17,600/- as loss of dependency is upheld. Also the amount of Rs.1,00,000/- awarded on account of loss of consortium; Rs.10,000/- for loss of estate; Rs.25,000/- as funeral expenses & transportation; and Rs.25,000/- towards loss of care and guidance for children needs no modification.

However, perusal of the award shows that no amount was awarded by learned Tribunal on account of loss of love and affection. Thus,

an amount of Rs.1,00,000/- is allowed to appellants-claimants No.2 and 3 on account loss of love and affection.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 21.07.2014 passed by learned Tribunal is modified. The enhanced compensation of Rs.1,00,000/- 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 filing the appeal 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

29.03.2016.
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