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

FAO No.3902 of 2005 (O&M)
Date of Decision: September 08, 2017

Tejinder Kaur and others ...Appellants
Versus
Megh Singh and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ranjan Dhawan, Advocate for
Mr.Sapan Dhir, Advocate for the appellants.

Mr.R.N.Singal, Advocate for insurer– respondent No.3.

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HARINDER SINGH SIDHU, J.

Widow and three minor children of Harjit Singh (deceased) and his mother were awarded compensation of Rs.5,70,000/- along with interest by Motor Accident Claims Tribunal, Bathinda (for short 'the Tribunal).

Brief facts of the case are that on 26.3.2002, Harjit Singh along with Nirmaljit Singh Sandhu and Sanjay was travelling in his Santro car bearing No.PB-05F-0555 from Faridkot to Bathinda. The car was being driven by Sanjay. When it reached in the area of village Jidaa, a trolla bearing Reg.No.RJ-01G-2482, being driven in a rash and negligent manner by Megh Singh – respondent No.1 hit the car. Due to the impact of the accident, the car was badly damaged and Harjit Singh and Nirmaljit Singh Sandhu died at the spot, whereas, Sanjay, driver sustained multiple injuries.

The appellants, being the legal representatives of deceased Harjit Singh filed claim petition under Section 166 of the Motor Vehicles Act, 1988. The mother of the deceased was impleaded as respondent. She is respondent in the present appeal as well.

The Tribunal assessed the income of the deceased at Rs.60,000/- per annum, deducted 1/3rd towards his personal living expenses and applied multiplier of 14 considering his age of 42 years at the time of the accident. The total dependency was assessed at Rs.40000x14= Rs.5,60,000/-. That apart, Rs.5000/- for the 'loss of consortium' and Rs.2500/-, each for 'funeral expenses' and 'loss of estate' were awarded. In all, compensation of Rs.5,70,000/- along with interest was awarded to the appellants – claimants.

Feeling dissatisfied with the quantum of compensation, the claimants have filed the instant appeal.

Ld. Counsel for the appellants has argued that the deceased was an MES Contractor. He was the sole proprietor of firm M/s Harjit Singh Bhola. He was also a partner in firm M/s M.H. Builders having a share of 25%. His share in yet another Firm M/s Modern Engineering and Contractors was to the extent of 35%. Though the income tax returns of the Firms were produced, the Ld. Tribunal wrongly did not consider them on the ground that the returns had been filed after the date of the accident.

He also argued that the Tribunal has further erred in assessing the income of the deceased at only Rs.60,000/- per annum relying only on the salary component in the statement Ex A-3, which is the Income Tax Return of M/s Harjit Singh Bhola for the assessment year 2002-2003. He argued that as per this return the income of the firm for the year 2001-02 was Rs.3,51,102/- which also should have been taken into account.

He further argued that it has come in the statement of AW1 Tejinder Kaur that all the three children of the deceased were studying in St. Joseph's Convent. This was possible only because the deceased had a good income from his business as the widow of the deceased was only a housewife and not independently earning anything. The deceased was maintaining a car, for which he had engaged a driver also. The driver of the deceased AW3 Sanjay had deposed that the deceased was working as an Army contractor and also owned a mixture plant. The driver was being paid a salary of Rs.2000/- per month.

Ld. Counsel for the claimants further argued that no increase in the income towards future prospects has been granted, nor any amount under the head of 'loss of love and affection' is awarded and even the amount awarded under other heads is also on the lower side in view of various decisions of Hon'ble the Supreme Court. As the deceased had five dependants, the deduction for personal expenses should have been $1/4^{th}$ instead of $1/3^{rd}$.

Having heard Ld. Counsel for the parties and going through the paper-book with their assistance, I find merit in the submissions made on behalf of the claimants/ appellants.

No doubt, the income tax returns relied on by the claimants have been filed after the death of the deceased. It is also true that income tax returns of only one assessment year namely 2002-03 have been proved. An income tax return of a single year, that too filed after the death of the deceased, may not, of itself, be taken to be determinative of the regular income of the deceased. The previous years returns, if proved, would have helped in correctly assessing the average regular income of the deceased.

However, in view of the record and the depositions, it is reasonable to infer that the deceased was an MES contractor and had good business. The deceased was the sole proprietor of the firm M/s Harjit Singh Bhola. Besides, he had a share in the income of two other firms M/s Modern Engineering and Contractors and M/s M.H. Builders to the extent of 35% and 25%, respectively, the income tax returns regarding which for the assessment year 2002-03 were also proved, though the same had been filed after the death of the deceased. Along with the income tax return for 2002-03 relating to M/s Harjit Singh Bhola (Ex. A-3), Form 16-A had been attached revealing the TDS (during his life time) from 4.8.2001 to 25.3.2002 amounting to Rs.33,874/- in respect of contract payment amounting to Rs.10,06,112/- to him.

The fact that he owned a car and had engaged a driver for the said purpose and that all his three children were studying in a Convent School also go to indicate that he had a substantial income.

In the light of the above, in my view, it would be reasonable to assess the income of the deceased at Rs.1,20,000/- per annum.

Futher, in view of the decisions of Hon'ble the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr**, *2009(6) SCC 121*, **Rajesh and others vs. Rajbir Singh and others**, *2013 ACJ 1403,* **Munna Lal Jain and another vs. Vipin Kumar Sharma and others,** *2015(6) SCC 347,* **National Insurance Company Ltd. Vs. Gurumallamma and another** *2009 (16) SCC 43,* **Asha Verman and others vs. Maharaj Singh and others,** *2015(11) SCC 389,* **Kalpanaraj and others vs. Tamil Nadu State Transport Corporation,** *2015(2) SCC 764* and **Kala Devi and others vs. Bhagwan Das Chauhan and others,** *2015(2) SCC 771* etc., the claimants are held entitled to the following compensation:-

Sr.No.	*Heads*	*Calculation*
(i)	*Income*	*Rs.1,20,000/- per annum*
(ii)	*30% of above (i) to be added as future prospects (deceased aged 42 yrs.)*	*Rs.120000+36000 = 156000/-*
(iii)	*1/4th of (ii) deducted as personal expenses of the deceased (five dependents)*	*Rs.156000-39000 = 117000/- per annum*
(iv)	*Compensation after multiplier of 14 is applied*	*Rs.117000 x 14 = 16,38,000/-*
(v)	*Loss of Consortium (exclusively for the widow)*	*Rs.1,00,000/-*
(vi)	*Loss of Love and affection (Rs.50,000/- to each child exclusively)*	*Rs.1,50,000/-*
(vii)	*Funeral Expenses*	*Rs.25,000/-*
	Total	***Rs.19,13,000/-***

Accordingly, the appeal is allowed and the Award of the Tribunal is modified to the extent that the appellants are held entitled to total compensation of Rs.19,13,000/-, that is, Rs.13,43,000/- (1913000-570000) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

The enhanced amount shall be payable to the appellants, in the same manner and proportion, as awarded by the Tribunal.

September 08, 2017

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No