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

**CROSS OBJECTION-43-CII-2008 IN/AND
FAO-189-2008**
Date of decision:24.03.2017

KULWANT SINGH AND ANOTHER ... Appellants

versus

DALJIT KAUR AND OTHERS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Deepak Gupta, Advocate,
for the appellants.

Mr. R.S. Rangpuri, Advocate,
for respondents No.1 to 3-Cross objectors.

Mr. Pardeep Goyal, Advocate, and
Mr. Neeraj Khanna, Advocate,
for Ravinder Arora, Advocate,
for respondent No.4.

HARI PAL VERMA, J. *(Oral)*

The appellants-Kulwant Singh and Jagtar Singh, who are driver and owner respectively of the offending vehicle i.e. Maruti Car, have filed the present appeal against the award dated 08.09.2007 passed by Motor Accident Claims Tribunal, Mukatsar (for short, 'the Tribunal'), vide which, the claimants-Daljit Kaur, Gagandeep Singh & Jasvir Singh (widow and sons respectively of deceased Parminder Singh), who are respondents No.1 to 3 herein, were held entitled for compensation of ₹7,56,000/- on account of death of Parminder Singh, in a motor vehicular accident which took place on 09.06.2005.

Briefly stated, the claimants-respondents No.1 to 3 had filed a claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, for the death of Parminder Singh in a motor vehicular accident on 09.06.2005. The deceased was aged 44 years of age at the time of accident and was working as a Laboratory Assistant in Civil Veterinary Hospital, Malout. He was getting a sum of ₹8,105/- as salary and his carry home salary at the time of accident, as per Ex.P1, was ₹7,575/-. The Tribunal has applied deduction of 40% on the said salary and while applying the multiplier of 14, awarded compensation of ₹7,56,000/-.

Learned counsel for the appellants-driver and owner has argued that the vehicle, in question, was insured with the National Insurance Company (respondent No.4 herein) w.e.f. 30.06.2004 to 29.06.2005, which is duly proved by the insurance policy (Ex.PY). Thus, on the relevant date i.e. 09.06.2005 when the accident took place, the vehicle was fully insured. Therefore, the liability, if any, was to be fixed on the Insurance Company and not on the appellants, namely, driver and owner of the offending vehicle.

Learned counsel appearing on behalf of Insurance Company-respondent No.4 has not disputed that the vehicle was insured for the aforesaid period.

Since on the relevant date of accident the vehicle was insured, the Tribunal has wrongly fixed the liability on the appellants-owner and driver. Thus, the appeal filed by the appellants-owner and driver is allowed and the liability which has been fastened upon the appellants is shifted upon the Insurance Company as on the date of accident i.e. 09.06.2005, the vehicle was fully insured for which the appellants have repaid the required premium.

The claimants-respondents No.1 to 3 have also filed cross objection No.43-CII-2008 seeking enhancement in the compensation. Learned counsel appearing on behalf of claimants-respondents No.1 to 3-cross objectors has argued that the compensation awarded is on the lower side. The deduction of 40% was not required to be imposed and at the most, the Tribunal can impose a cut of 1/3rd of the total carry home salary of the deceased. Further, no compensation under the head of consortium, love and affection and funeral expenses have been awarded by the Tribunal. Thus, the award dated 08.09.2007 needs to be modified in view of the judgment of Hon'ble Supreme Court rendered in ***Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121***. He has argued that the claimant-Daljit Kaur, who is widow of the deceased-Parminder Singh, is entitled for consortium of ₹1 lakh and similarly, the other claimants, namely, Gagandeep Singh and Jasvir Singh, who are the sons of the deceased-Parminder Singh, and were minors at that time, were equally entitled for compensation under the head of love and affection. He has further argued that some amount towards funeral expenses is also required to be added in the award by the Tribunal.

On the other hand, learned counsel for the Insurance Company-respondent No.4 has argued that the Tribunal has already granted adequate compensation and, therefore, no enhancement is required to be made in any manner.

Since no amount of compensation has been awarded by the Tribunal under the head of love and affection, consortium and funeral expenses, this Court finds that the award dated 08.09.2007 passed by the Tribunal needs modification in view of judgment of ***Sarla Verma's case*** (supra).

Accordingly, the cross objection No.43-CII-2008 filed by the respondents No.1 to 3-claimants-cross objectors is allowed and the respondent-claimant No.1-Daljit Kaur is held entitled for consortium at ₹1 lakh, and similarly, Gagandeep Singh and Jasvir Singh-respondents-claimants No.2 and 3 are held entitled to ₹50,000/- each on account of love and affection. ₹25,000/- also deserves to be granted under the head of funeral expenses.

The cut of 40% in the carry home salary, which was imposed by the Tribunal, is not legally sustainable. At the most, a cut of 1/3rd can be imposed on the salary of the deceased. Therefore, the compensation which has been assessed at ₹4,500/- per month needs to be increased to ₹5,000/- per month. After making calculations, the dependency comes to ₹60,000/- per annum (i.e. ₹5,000/- x 12). The Tribunal has already adopted a reasonable multiplier of 14 as the deceased was 44 years of age and was due for superannuation after 58 years of age. Accordingly, the loss of dependency comes to ₹8,40,000/- (i.e. ₹60,000/- x 14). In this manner, the total increase in the compensation comes to ₹3,09,000/-. The claimants shall be entitled for interest @ 6% per annum from the date of filing of the cross objections i.e. May, 2008.

In view of above, the award dated 08.09.2007 passed by the Tribunal stands modified and the appeal and cross objections are allowed on the above terms.

As regards the statutory amount of ₹25,000/- which was deposited by the appellants at the time of filing the appeal before this Court, the Insurance Company is directed to refund that amount to the appellants-driver and owner, and for which, the appellants-driver and owner shall move an appropriate application before the Tribunal.

(HARI PAL VERMA)
JUDGE

24.03.2017
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No