

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

FAO-4675-2011

Date of decision: 05.09.2017

Sameriya Devi and others

.... Appellants

Versus

Madan Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Arvind Bansal, Advocate
for the appellants.

None for respondent No.1.

Mr.Suvir Dewan, Advocate
for respondent No.3.

Avneesh Jhingan, J.

Present appeal has been preferred by the claimants against the award dated 04.05.2011 passed by Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as the 'Tribunal'). The claim petition under Section 166 of the Motor Vehicle Act was filed by the widow and three minor sons of Bisheshar Paswan.

The Tribunal after considering the witnesses and evidence, awarded a sum of ₹5,24,000/- along with interest @ 7.5% per annum.

Aggrieved of the said award, the claimants have filed the present appeal for enhancement.

I have heard the learned counsel for the parties and have perused the paperbook with their able assistance.

The facts which have not been disputed by either of the parties. On 06.03.2010, Bisheshar Paswan (aged between 40 to 45 years) was standing on the left side of the road near Sessions House, Kaithal, he was hit by a car bearing registration No.PB-65D-9000. The Tribunal has recorded that the said car was being driven in a rash and negligent manner. As a result of the accident, Bisheshar Paswan suffered multiple injuries. He was shifted to Civil Hospital, Kaithal where from he was referred to PGI, Chandigarh. On his way to Chandigarh, he succumbed to injuries.

The claimants were not able to prove that the deceased was earning ₹12,000/- per month as claimed. The Tribunal took his notional income as ₹4,000/- per month and the age was taken as 42 years. A deduction of 1/4th of the annual income was made for self expenses. Keeping into consideration the age of the deceased, a multiplier of 14 was applied. Apart from that a sum of ₹20,000/- was awarded under the head of loss of consortium, loss of estate and funeral expenses.

The only issue pressed in the present appeal is that the amount of compensation awarded should be enhanced.

Learned counsel for the appellant has argued that the monthly income of ₹4,000/-per month has wrongly been taken by the Tribunal. It is less than even the minimum wages prescribed during the said period. Further, it was contended that ₹20,000/- awarded under the heads for loss of consortium, loss of estate and funeral expenses is too meager.

Learned counsel for the respondent supporting the award argued that as per the age of the deceased, right multiplier has been applied

and since the claimants had failed to prove the income of the deceased, so the Tribunal was justified in taking his monthly income as ₹4,000/-. He has further contended that ₹20,000/- awarded under the various heads is sufficient as the accident occurred in 2010.

In the absence of any proof with regard to the income of the deceased, the Tribunal should have taken the minimum salary of unskilled labourer. The salary of unskilled labourer at the relevant time was ₹4,348/- per month. In view of salary taken, the compensation is re-calculated as under :-

1	Monthly salary	₹4,348/-
2	Annual Salary	₹52,176/-
3	Less 1/4 th self expenses	₹13,044/-
4	Annual dependency	₹39,132/-
5	Multiplier of 14	₹5,47,848/-

As a result of this calculation, the amount of ₹5,24,000/- awarded is enhanced to ₹5,47,848/-.

The Hon'ble Apex Court in *Asha Verma and others vs. Maharaj Singh and others, 2015(2) R.C.R. (Civil) 520,* observed as under :-

17. Further, the High Court has erred in awarding only ₹5,000/- each towards loss of estate, funeral

*expenses and loss of consortium. We award ₹1,00,000/- towards loss of estate according to the principles laid down in the case of **Kalpanaraj & Ors. v . Tamil Nadu State Transport Corporation, 2014(2) R.C.R. (Civil) 876 : 2014(3) Recent Apex Judgments (R.A.J.) 112 : 2014 (5) SCALE 479,** ₹25,000/- towards funeral expenses and ₹1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170 : 2013(3) Recent Apex Judgments (R.A.J.) 659 : (2013) 9 SCC 54.***

*“18. Further, we award ₹1,00,000/- each to the appellant-children towards loss of love and affection due to the loss of their father(deceased) as per the decision of this Court in the case of **Juju Kuruvila & Ors. vs. Kunjamma Mohan & Ors., 2013(3) R.C.R. (Civil) 817 : 2013(4) Recent Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166.***

*Further, a sum of ₹50,000/- is awarded to each of the appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of **M Mansoor & Anr. vs. United India Insurance***

Co.Ltd., 2013(4) R.C.R.(Civil) 729 : 2013(5)

Recent Apex Judgments (R.A.J.) 516 : 2013 (12)

SCALE 324.

A perusal of the above decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the Heads-loss of estate, funeral expenses and loss of consortium and also awarded compensation under the head of loss of love, care and guidance of the minor children.

Further, Hon'ble the Apex Court in **Rajesh and others Versus Rajbir Singh and others, 2013 (9) SCC 54**, has held as under:

“The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of ₹ 2500/- to ₹ 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased.”

A perusal of the above decisions shows that the compensation under the heads mentioned therein is to be awarded and further need to be increased from time to time.

In view of the decisions of the Hon'ble Apex Court, the Tribunal should have awarded compensation under various heads. But the Tribunal has just awarded consolidated sum of ₹20,000/- under the various heads.

Taking in view the circumstances in totality, for the loss of consortium and for loss of estate ₹1 lakh is awarded. The deceased was survived three minor children and a sum of ₹1 lakh for loss of love and affection and ₹1 lakh is awarded for loss of guidance to the minor children. A sum of ₹30,000/- for funeral expenses and transportation of the dead body of the deceased.

The award dated 04.05.2011 is modified to this extent. That a sum of ₹5,24,000/- awarded is enhanced to ₹8,77,848/-. The claimants would be entitled to enhanced compensation along with 7.5% interest from the date of filing the claim petition till the realisation of the amount. The amount already awarded by the Tribunal shall be deducted from this amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

05.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes