

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

FAO No.4243 of 2016

Date of Decision: 09.03.2017

Smt. Brijesh and others

....Appellants

Versus

Amit and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Paurav Sharma, Advocate
for the appellants.

DAYA CHAUDHARY, J.

The present appeal has been filed by the appellants for modification of award dated 29.01.2016 passed by Motor Accident Claims Tribunal, Gurgaon (here-in-after called as 'the Tribunal') on the ground that the amount awarded by the Tribunal is inadequate and insufficient and the same is liable to be enhanced.

Briefly, the facts of the case, as made out in the claim petition, are that on 06.01.2014, Sandeep, Deepak (deceased) and Rajbir were coming to Gurgaon from their Village Shikarur, Delhi in a Santro Car bearing registration No.HR-26-BX-0877. Deepak was driving the car and they were going from Village Dharampur to Mohammadheri. When they reached near Ganda Nala, then a tractor bearing registration No.HR-13F-4845 (here-in-after called as 'the offending vehicle'), which was being

driven in a rash and negligent manner, came from Village Mohammadheri and struck against car after coming on wrong side of road. Deepak and Rajbir were taken to Chetanaya Hospital, Rajendra Park, Gurgaon, where Deepak died. It was mentioned in the claim petition that the accident occurred due to rash and negligent driving of the offending vehicle. FIR relating to that accident was registered on the basis of statement of Sandeep. The claim petition was contested by owner, driver and Insurance Company by filing their written statements. The claim petition filed by the claimants-widow, minor son, mother and father of the deceased was allowed by the Tribunal vide award dated 29.01.2016. Total compensation to the tune of ₹ 14,40,000/- was awarded to the claimants against different heads i.e compensation + funeral expenses + loss of consortium + love and affection + medical expenses.

Learned counsel for the appellants submits that the award passed by the Tribunal is not adequate as meagre income of ₹ 5000/- has been assessed, whereas, it was ₹ 9,350/- which was proved by Exhibit P-9. Learned counsel also submits that the amount of compensation under the heads of loss of estate and non-pecuniary damages as per settled principles of law in various judgments has not been awarded. The Tribunal has deducted 1/4th amount out of monthly income towards personal and living expenses of deceased while determining total annual income, whereas, the minimum deduction could have been made. Moreover, nothing has been paid towards pain and suffering, transportation, attendant charges etc. At the end, learned counsel for the appellant submits that the award passed by the Tribunal is without any application of judicious mind and the amount is liable to be enhanced.

Heard the arguments of learned counsel for the appellants and have also perused the impugned award and other documents available on the file.

Admittedly, the facts relating to accident, filing of claim petition, registration of FIR and passing of award by the Tribunal are not disputed. The amount of compensation has been sought to be enhanced by contending that less compensation has been awarded, income of the deceased has not been properly assessed and no amount has been granted towards different heads.

The following issues were framed by the Tribunal :-

- “1. Whether the accident had taken place on 6.1.2014 at about 4.45 p.m on account of rash and negligent driving of vehicle bearing No.HR-13F-4845 being driven by respondent No.1 resulting into death of Deepak, as alleged? OPP*
- 2. If issue no.1 is proved, then what amount of compensation the petitioners are entitled to and from whom? OPP*
- 3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident ? OPR(3)*
- 4. Whether the respondents No.1 and 2 have violated the terms and conditinos of the Insurance Policy ? OPR(3).*
- 5. Relief.”*

As per claim petition, the deceased was getting salary of more than ₹ 8,000/- p.m, in addition to bonus and other allowances. It is also mentioned that he was earning ₹ 5,000/- p.m to ₹ 7,000/- p.m by doing the dairy business and an amount of ₹ 50,000/- was spent on transportation and last rites of the deceased. Salary slip of the deceased (exhibit P-3), voter card of deceased (exhibit P-5), Aadhar card (exhibit P-6) and provisional

certificate of deceased (exhibit P-7) were on record, which were adduced by way of evidence. To prove the salary earned by deceased, the appellants examined Rohan, Executive HR, Jubilant Food Works, Noida. He has stated in his statement that deceased-Deepak was working in the firm as Team Member Platinum and his salary slip for the month of March 2012 was exhibited as P-9, which was to the tune of ₹ 9350/- p.m. He has also stated that deceased left the job on 01.09.2012. The accident took place on 06.01.2014 and at that time, he was not doing any job. No other evidence was produced by the claimants to prove the income of the deceased at the time of accident. By considering the age and capacity, his earning was assessed as ₹ 5,000/- p.m and it was also equated in same terms while calculating the amount of compensation. No other proof or document was produced to support the income from dairy and other heads. By considering the age of the deceased as 24 years, the multiplier of 18 was applied as per ratio of judgment in ***Sarla Verma and others vs Delhi Transport Corporation and another 2009(3) RCR(Civil) 77.***

By considering the ratio of judgment of Hon'ble the Apex Court in case ***Rajesh and others vs Rajbir Singh and others 2013(3) RCR (Civil) 170 (SC)***, the claimants were held entitled for compensation to the tune of ₹ 12,15,000/- (₹ 5,000/-+50% of 5000/- = 7500/- less ¼ towards personal expenses = (7500-1875 = 5625) 5625 x 12 x 18 = ₹ 12,15,000. The claimants were also held entitled to ₹ 25,000/- on account of funeral expenses and ₹ 1,00,000/- for consortium and ₹ 1,00,000/- for love and affection which comes to ₹ 14,40,000/-. It cannot be said that the compensation awarded to the claimants is inadequate as the same has been awarded in view of ***Sarla Verma's*** case (supra). Learned counsel for the

appellants has not been able to show as to how the amount of compensation is on the lesser side.

Accordingly, the appeal, being devoid of any merit, is hereby dismissed.

09.03.2017

gurpreet

Whether speaking/reasoned

Whether Reportable

(DAYA CHAUDHARY)
JUDGE

Yes

Yes