

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

FAO No.5798 of 2015 (O&M).

Date of Decision: 22.03.2017.

Kamla Devi and others

....Appellants.

VERSUS

Ramesh Chander and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sunit Sangwan, Advocate for the appellants.

Mr. Anindita Katyal, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-18107-CII-2015

Delay condoned.

FAO-5798-2015

By way of this appeal, appellants-Kamla Devi and others seek enhancement of compensation awarded to them by Motor Accident Claims Tribunal, Bhiwani (for short, “the Tribunal”) vide the award dated 03.04.2015 passed in MACT Petition No.101 of 2014 on account of death of Ram Avtar (husband of appellant No.1, father of appellants No.2 to 5 and son of appellant No.6), who lost his life in a vehicular accident.

The submissions made by Mr. Sumit Sangwan, learned counsel for the appellants and Mr. Anindita Katyal, 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 31.07.2014 at about 5:30 p.m., Ram Avtar (since deceased) was coming from village Fatehgarh to the fields of village Paintawas Khurd on his motorcycle No.HR-16-3327 and when he reached near bus stand of village Paintawas Khurd on Bhiwani-Dadri road, his motorcycle was hit by a dumper bearing registration No.HR-61A-8444 (hereinafter referred to as 'the offending dumper') being driven rashly, negligently and in a high speed by Ramesh Chander (respondent No.1). As a result of accident, Ram Avtar suffered multiple grievous injuries and died at the spot. A First Information Report No.429 dated 31.07.2014 was registered under Sections 279/304-A of the Indian Penal Code at Police Station Sadar, Dadri on the statement of Madan Singh who witnessed the accident.

The appellants-claimants sought compensation for the pecuniary and non pecuniary loss suffered by them due to untimely death of Ram Avtar. The driver, owner and insurer (respondents No.1 to 3) of the offending dumper contested the petition. 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.9,31,400/- as compensation to the appellants alongwith interest at the rate of 6% 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 Ram

Avtar was earning Rs.30,000/- per month from agriculture and dairy farming but learned Tribunal erred in assessing his income as only Rs.4800/- per month. The deduction of 1/4th has been wrongly made by learned Tribunal. No amount was awarded to the appellants on account of loss of love and affection. The amount awarded by learned Tribunal under loss of estate and funeral expenses etc. is also on the lower side.

No substantive or reliable evidence was led by the appellants to prove the income of the deceased. However, learned Tribunal assessed the income of the deceased as Rs.4800/- per month and added 30% to the income of the deceased computing future prospects in the light of the ratio in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., 2009 ACJ 1298.*

The deceased is survived by widow-Kamla Devi, two sons-Sushil Kumar and Ravinder Kumar, two daughters-Harita and Indu and mother-Shanti Devi, in the considered opinion of this Court, the deduction of 1/4th 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 43 years, the multiplier of '14' was rightly chosen and the finding of learned Tribunal awarding an amount of Rs.8,06,400/- as loss of dependency is upheld. Also the amount of Rs.1,00,000/- awarded on account of loss of consortium; Rs.25,000/- for loss of estate and funeral expenses needs no modification. The rate of interest allowed by learned Tribunal shall remain the same.

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/- to appellant-claimant No.1 and an amount of

Rs.50,000/- to appellant No.6 is allowed on account loss of love and affection.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 03.04.2015 passed by learned Tribunal is modified. The enhanced compensation of Rs.1,50,000/- shall be paid to the appellants 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

22.03.2017.
jitender sharma

Whether speaking/reasoned : Yes/ No

Whether Reportable : Yes/ No