

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

FAO No.6959 of 2015 (O&M)

Date of decision: 08.02.2017

Smt. Sanjida and others

..Appellants

Versus

Sarfuddin and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Mr. Sanjeev Goyal, Advocate
for respondent No.3-Insurance Company.

Daya Chaudhary, J.

The appellants-claimants have filed the present appeal for modification of award dated 28.01.2015 passed by the Motor Accident Claims Tribunal, Mewat (hereinafter called as 'the Tribunal') on the ground that adequate compensation has not been granted and the same is on the lesser side.

Briefly, the facts of the case are that on 27.02.2014, the complainant along with deceased-Aslam was going to Ferozepur Jhirka in a TATA Magic bearing registration No. RJ-02TA-1527 for some personal work. At about 6.30 pm, the offending vehicle i.e., Tractor bearing registration No. HR-28D-2942 came from front side, which was being driven in a rash and negligent manner and got struck with the TATA Magic, due to which, TATA Magic turned down and the deceased-Aslam received serious and multiple injuries on head and became unconscious. Thereafter,

the complainant took him to Government Hospital, Mandikhera but the injured was referred to Trauma Centre, Delhi due to serious head injury. The deceased remained admitted in the hospital upto 02.03.2014 and ultimately he died during treatment at Jai Parkash Narayan Apex Trauma Centre, New Delhi. Post mortem of the dead body was conducted by the doctors of AIIMS, Delhi on 03.03.2014 and accordingly, FIR was registered by the Police regarding accident.

The appellants-claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the MV Act') seeking compensation of ₹30 lacs on account of death of Aslam, which was contested by the respondents. The claim petition was allowed vide award dated 28.01.2015 and the appellants were granted compensation to the tune of ₹9,17,400/- along with interest @ 7.5 % per annum from the date of filing of claim petition till its realization, which was to be paid by the respondents jointly and severally.

On finding the compensation inadequate, the appellants have filed the present appeal by raising various grounds.

Learned counsel for the appellants submits that the deceased was 25 years of age and multiplier of 18 has been applied. The claim petition was filed under Section 166 of the MV Act so, the multiplier of 25 should have been applied keeping in view the age of the deceased, the age of claimants and life span of the family of the deceased. Learned counsel further submits that the deceased was hale and hearty and he was the sole bread earner of his family. He used to earn ₹15,000/- per month whereas his income was considered on the lower side. An amount of ₹25,000/- has been

awarded towards funeral expenses whereas no amount has been awarded towards love and affection as well as loss of estate. Learned counsel also submits that no specific amount has been awarded on account of transportation whereas the deceased was shifted to the hospital whereby he died during the treatment and thereafter, his dead body was brought to his native village. An amount of ₹50,000/- has been awarded on account of loss of consortium, which is also on the lower side as also the interest. At the end, learned counsel for the appellants submits that the amount awarded by the Tribunal is liable to be increased.

Learned counsel for respondent No.3-Insurance Company has opposed the submissions made by learned counsel for the appellants and submits that the amount awarded by the Tribunal cannot be considered on lower side as an amount of ₹9,17,400/- has been awarded. The multiplier has been applied in view of judgment rendered by Hon'ble the Apex Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77.***

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

The facts of the case are not disputed.

It was mentioned in the claim petition that the deceased was earning ₹15,000/- per month but there was no documentary proof with regard to income of the deceased and by considering him as skilled labourer, his income was assessed at ₹5200/- per month as per minimum wages fixed by the Labour Commissioner, Haryana at the time of accident.

There were total six dependents and 1/4th income of the deceased was deducted towards personal living expenses and as such, the 1/4th of ₹5200/- comes to ₹1300/-. After deducting the personal living expenses from ₹5200 - ₹1300, it comes to ₹3900/- per month. The deceased was 25 years of age at the time of death as per death report Ex.P-9 and as such, in view of **Sarla Verma's case (supra)**, the multiplier of 18 was applied and amount of compensation comes to ₹3900 x 12 x 18 = ₹8,42,400/-. It has not been disputed that the multiplier has not been properly applied and salary and dependency has not been considered correctly. As far as amount towards loss of consortium is concerned, it appears to be on lower side as only an amount of ₹50,000/- has been awarded whereas an amount of ₹1 lac should have been awarded towards loss of consortium to the widow of deceased in view of legal principle laid down by Hon'ble the Apex Court in **Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54**.

Similarly, towards love and affection of the children, an amount of ₹1 lac should have been awarded. The interest @ 7.5 % per annum is also on lower side whereas it should have been 9% per annum from the date of filing of claim petition till its realization.

Keeping in view the facts as mentioned above, the amount of ₹50,000/- as awarded by the Tribunal towards loss of consortium is enhanced to ₹1,00,000/- and an amount of ₹1,00,000/- is awarded towards love and affection.

The chart mentioning the amount, which has been awarded and which requires to be enhanced is prepared as under: -

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount enhanced</i>
1	Loss of Income	₹3900/- x 12 x 18 ₹8,42,000/-	---
2	Loss of consortium	₹50,000/-	₹1,00,000/-
3	Funeral Expenses	₹25000/-	----
4	Love and affection	---	₹1,00,000/-
	Total	₹9,17,400/-	₹2,00,000/-

The amount, which has been granted towards loss of consortium comes to ₹50,000/- and as such, the appellants-claimants are entitled to enhanced compensation by deducting the amount of ₹50,000/- from the enhanced amount of ₹2,00,000/-, which comes to ₹1,50,000/-.

Accordingly, with the aforesaid modification in the award, the appeal is allowed. The claimants shall be entitled to total compensation of ₹9,17,400/- + ₹1,50,000/- as enhanced along with interest @ 9% per annum from the date of filing of claim petition till its realization. The respondent-Insurance Company is also directed to pay the amount awarded by the Tribunal as well as the enhanced compensation within a period of two months from the date of receipt of certified copy of this order, after deducting the amount, if any, already paid.

08.02.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No