

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

FAO No.7564 of 2016 (O&M)

Date of decision: 16.11.2017

Prity Srivastva and others

....Appellants

Versus

Jagdish and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gopal Sharma, Advocate,
for the appellants.

Mr. B.K. Bagri, Advocate,
for respondent Nos.1 and 2.

Mr. Gopal Mittal, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.25703-CII of 2016

For the reasons mentioned in the application, same is allowed
and delay of 808 days in filing of the appeal is condoned.

FAO No.7564 of 2016

This appeal has been filed by the claimants-appellants seeking
enhancement of compensation awarded by Motor Accident Claims Tribunal,
Rewari (hereinafter referred to as 'the Tribunal') vide award dated
18.02.2014, on account of death of Rajesh Srivastva in a motor vehicular
accident which took place on 28.12.2011. Appellant No. 1 is widow and
appellant Nos.2 & 3 are sons of deceased Rajesh Srivastva.

Brief facts of the case are that on 28.12.2011, at about
10:00/10:30A.M., Rajesh Srivastva (since deceased) along with Bhagwan

Pandey was going towards Ultra Tech Textures Pain Pvt. Limited at Bawal on a motorcycle bearing registration No. HR-36-K-6736. In themeantime, a truck bearing registration No. HR-47-7621 being driven by Jagdish-respondent No.1 in a rash and negligent manner, came from behind and hit their motorcycle, as a result of which, Rajesh Srivatva died on the spot, whereas, Bhagwan Pandey received multiple injuries on various parts of his body. The deceased was taken to CHC, Bawal. With regard to the accident, FIR No.244 under Sections 279/337/304-A IPC was registered against respondent No.1 at Police Station, Kasola. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of offending vehicle (truck) by respondent No.1 and thus, returned the finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Bhagwan Pandey (PW-2), who was an eye witness of the accident and whose statement, FIR, Ex.PW1/A was registered.

While assessing the income of deceased, the Tribunal has taken into consideration salary certificates for the months of October 2011 Ex.R6, September 2011, August 2011 Ex.R10, July 2011 Ex.R12, June 2011 Ex.R14 and May 2011 Ex.R16, as per which, his income during these months was between Rs.19,000/- to Rs.23,000/-. Accordingly, income of the deceased was assessed on average basis as Rs.22,000/- per month. In this income, 30% has been added as future prospects, which came to Rs.28,600/- (22,000 + 6600). Out of this, 1/4th amount was deducted towards his personal expenses. The dependency of claimants, thus, came to

Rs.21,450/- per month i.e. Rs.2,57,400/- per annum. Deceased-Rajesh Srivastva was 43 years of age at the time of accident/death and the multiplier of 14 was applied. Thus, the claimants were found entitled to compensation of Rs.36,03,600/- (Rs.2,57,400/- x 14). In addition to it, Rs.1,00,000/- were awarded towards loss of consortium, Rs.25,000/- as funeral expenses, Rs.25,000/- for loss of care and guidance for minor children, Rs.10,000/- towards loss of estate. Ultimately, the claim petition was allowed and claimants were found entitled to Rs.37,63,600/- along with interest at the rate of Rs.7% per annum. Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 that the accident took place due to rash and negligent driving of offending vehicle by its driver-respondent No.1.

Claimant-appellants are challenging the impugned award on the quantum of compensation. Learned counsel for the appellants has argued that income assessed by the Tribunal at the rate of Rs.22,000/- per month is on the lower side.

This argument of learned counsel for the claimants is liable to be rejected. In para 25 of the impugned Award, Tribunal has taken into consideration the salary slips of the deceased for the months of October 2011, September 2011, August 2011, July 2011, June 2011 and May 2011 and average salary of deceased for these months has been taken as Rs.22,000/- per month. Though the Tribunal has observed that this salary included medical reimbursement, CCA, bonus and LTA, however, no

deduction has been made on this account. These deduction should have been made in the income of the deceased. Since, the insurance company has not come up in appeal against the impugned Award, the assessment of salary at the rate of Rs.22,000/- per month is not required to be altered.

Next argument of learned counsel for the appellants is that while awarding interest at the rate of 7% per annum, no specific date has been given by the Tribunal and the payment of interest in execution petition has been made by the Insurance Company by taking the date of Award i.e. 18.02.2014.

Learned counsel for the insurance company-respondent No.3 has stated that entire compensation to the tune of Rs.39,48,499/- was paid by the insurance company on 16.07.2014. He clarified that while making this payment, interest of four months at the rate of 15% per annum has been paid.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the impugned Award is being modified to the extent that interest on the awarded amount of compensation shall be paid to the claimants-appellants at the rate of 7% per annum with effect from the date of filing of the claim petition i.e. 24.03.2012 till the date of payment i.e. 16.07.2014.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

16.11.2017
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No