

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

446

**FAO No.1333 of 2000 (O&M)
Date of Decision : 05.07.2018**

Smt. Kavita Devi and others

..... Appellants

Versus

Mohinder Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. C.B.Goel, Advocate
for the appellants.

Mrs. Vandana Malhotra, Advocate
for respondent No.3.

AJAY TEWARI, J. (Oral)

This appeal has been filed for enhancement against the judgment and award of the Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal') awarding a sum of Rs.3,07,200/- as compensation for the death of Dharminder Kumar. On the date of accident, deceased was 27 years old.

Since there is no dispute about liability and only enhancement of compensation is being sought under various heads it is not necessary to give further detailed reference to the facts.

Suffice it to say that the accident took place on 05.10.1998. The claim of the claimants was that the deceased was employed as a Driver with Amar Pal at a salary of Rs.4,500/- per month and also owned land

which he was cultivating. The Tribunal held income of the deceased to be Rs.1,800/- per month from driving and Rs.600/- per month from farming and proceeded on that basis.

Counsel for the appellants has vehemently argued that once the employer and the claimants had stated that the income was Rs.4,500/- and no other evidence was led by the Insurance Company-respondent, there was no justification for awarding only Rs.1,800/- as income from driving.

Counsel for the Insurance Company however points out that this income may have been accepted if there was some documentary or objective proof of the same, but can not be accepted only on the face value of the employer. She points out that in the year 1995, the minimum wages for highly skilled upper were Rs.1,437/- per month. Next revision took place in the year 2002 when it was increased to Rs.2,600/- per month. As per her in these circumstances, the fixation of income at Rs.1,800/- for the year 1998 can not be said to be wrong.

In my opinion, though there is more weight in the argument of learned counsel for the Insurance Company, yet even if the Minimum Wages Act has to be applied, the income in the year 1998 should have been taken to be Rs.2,000/- from driving. Ordered accordingly.

Learned counsel for the appellants has further argued that multiplier of 16 had been applied whereas it should have been 17.

Learned counsel for the Insurance Company has fairly accepted it. Consequently, I fix the multiplier at 17.

Learned counsel for the appellants further points out that nothing has been paid under the conventional heads. In *National*

Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009, the Constitution Bench has held that compensation under conventional head should be Rs.70,000/-.

Consequently, I grant an amount of Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses. Interest was awarded @12%. Present trend is for lesser interest. In the circumstances, the enhanced amount would carry interest @8% from the date of accident till the date of claim petition.

Counsel for the Insurance Company further points out that at one stage this case was dismissed in default and was restored after 752 days and at that time order dated 28.11.2016 was passed whereby it was restored on the condition that the appellants would not be entitled to interest for those 752 days.

Learned counsel for the appellants is not in a position to deny this. In the circumstances, the interest @8% from the date of accident till the date of payment would exclude 752 days.

Appeal stands allowed in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

05.07.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No