IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102) **FAO-361-2003 (O&M)**
Decided on: August 06, 2018.

Smt. Ram Murti And Others

.... Appellants

Versus

Sukhdeep Singh And Others

..... Respondents

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ashwani Arora, Advocate,
for the appellants.

Mr. Arvind Kumar, Advocate
for Mr. H.K. Aurora, Advocate
for the respondent No.2.

Mr. Paul S.Saini, Advocate
for the Insurance Company-respondent No.3.

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B.S.WALIA, J (ORAL)

1. Prayer by the widow, 3 minor daughters and one minor son is for enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') to the widow, 04 minor daughters and 2 minor sons of Ramesh (hereinafter referred to as the deceased) aged 30 years, who died in a motor vehicle accident on 19.11.2000.

2. The deceased was claimed to be working as a labourer earning ₹2500/- per month. It would be relevant to mention here that the claim petition was filed before the Tribunal by the widow, 04 minor daughters and

1 minor son of deceased i.e. by 06 claimants. However, one child was born to the widow after the filing of the claim petition as is evident from paragraph No. 8 of the award wherein it has been mentioned that a male child namely Rohdas was born to the widow of the deceased after the death of her husband. Accordingly, there are 07 persons who were dependent upon the deceased. Although, the Tribunal awarded compensation of ₹1,92,000/- to 07 dependents including Miss Anita minor daughter claimant No.6 and Master Rohdas minor son claimant No.7 as is evident from paragraph No. 12 of the award, yet, for reasons best known to the appellant, the present appeal has been filed on behalf of 05 claimants i.e. excluding Miss Anita minor daughter-claimant No.6 and Master Rohdas minor son-claimant No.7 of the deceased-Ramesh. Learned counsel for the appellant contends that the same is due to inadvertence, therefore, the number of claimants be treated as 07.

3. Widow of the deceased PW-1 deposed on oath before the learned Tribunal that her husband was a labourer and was earning ₹2500/- per month. No evidence was led in rebuttal by the respondents. However, the learned Tribunal took the income of the deceased at ₹1500/- per month and by deducting ₹500/- per month towards personal expenses of the deceased, worked out dependency at ₹1000/- per month. Further by applying multiplier of 16, compensation of ₹1,92,000/- was awarded to the seven dependents in proportion to the ratio stipulated in paragraph No. 12 of the award.

4. Learned counsel for the appellants assailed the award of compensation on two grounds. Firstly on the ground that assessment of

income was made on the lower side and the same ought to have been taken at ₹2500/- per month since neither the respondents led any evidence in rebuttal nor was the evidence of the widow in respect thereto demolished in her cross-examination. Moreover the deceased left behind 06 dependents besides the seventh one was born after his death. Learned counsel further contended that the question of assessment of income of the deceased at ₹1500/- per month did not arise under any circumstances, even if, the income of the deceased was to be assessed as per the minimum wages i.e ₹2116/- per month during the relevant period. Secondly, learned counsel contended that the appellants were entitled to amount of compensation of ₹9500/- under conventional heads as per the second schedule of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act).

5. I have considered the submissions of learned counsel for the parties.

6. Although, the minimum wages payable to a labourer during said period is admitted by learned counsel for the respondent at ₹2116/- per month, yet, in the absence of the credibility of PW-1, of the deceased earning ₹2500/- per month, being demolished, the income of the deceased ought to have been taken at ₹2500/- per month, particularly in view of the fact that he was supporting a large family. Learned counsel for the respondent has not been able to controvert the claim of the appellants for enhancement of assessment of income of the deceased to ₹2500/- per month since the respondents failed to rebut the claim of the deceased earning ₹2500/- per month. In the circumstances, the income of the deceased is taken at ₹2500/- per month. Since 07 persons were dependent on the

deceased, therefore, as per the second schedule of Section 163-A of the Act, deduction of 1/3rd of the income of the deceased is to be made towards his personal expenses. Moreover, in view of the deceased being 30 years old multiplier of 17 is to be applied.

7. In the light of the aforementioned position, the dependency would be worked out to ₹2500-1/3rdx12x17. Accordingly, the dependency is worked out at ₹3,40,000/-. No amount has been awarded under the conventional heads whereas as per the second schedule under Section 163-A of the Act, a sum of ₹2000/- is to be awarded for funeral expenses, ₹5000/- on account of loss of consortium and ₹2500/- on account of loss of estate. Accordingly a sum of ₹9500/- is awarded in addition to the compensation assessed above. Thus, the total amount of compensation payable works out to ₹3,49,500/- i.e. (₹2500-1/3rdX12X17=3,40,000+9500/-).

8. In the light of the position as noted above, the award is modified and compensation payable is enhanced as under:

Sr. No.	**Head**	**Amount assessed by Tribunal in ₹**	**Amount assessed by this Court in ₹**
1	Income	1500/-	2500/-
2.	Deduction towards personal expenses of deceased.	1/3rd of ₹1500= ₹ 500/-	1/3rd of ₹2500/- =833.33/-
3.	Dependency arrived at	1000/-	1666.67
4	Multiplier applied	16	17
5	Compensation awarded	1000x12x16 = 1,92,000/-	1666.67x12x17 = 3,40,000/-
6	Loss of consortium	NIL	5000/-
7	Funeral expenses	NIL	2000/-
8	Loss of Estate	Nil	2500/-
	Total	**1,92,000/-**	**3,49,500/-**

9. Accordingly, in the light of the position as noted above, the

appellants are held entitled to compensation of ₹3,49,500 along with interest @ 7.5% per annum with effect from the date of claim petition till the date of payment less amount, if any, already paid.

10. It would be relevant to note that the compensation awarded was released to the claimants in the proportion as mentioned in paragraph No. 12 of the award. However, as per paragraph No. 14 of the award, the widow was permitted to withdraw only a sum of ₹20,000/- out of ₹42,000/- awarded to her. The said condition is modified. Accordingly appellant No.1 i.e. widow of the deceased would be entitled to get the enhanced amount of compensation and the amount on account of loss of consortium while the children of the deceased would be entitled to get the enhanced compensation on attaining the age of majority. Accordingly, the Executing Court would place the amount received on account of enhanced compensation in a fixed deposit qua the 06 minors in proportion to their share which is to be released to them on their attaining the age of majority.

11. Accordingly, appeal is allowed. Award dated 01.02.2002 passed by the learned MACT, Chandigarh is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

August 06, 2018.
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No