

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

FAO No. 5560 of 2004 (O&M)

Date of decision : October 05, 2018

Nalini and others

.....Appellants

Versus

Arjan Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Neeraj Khanna, Advocate
for respondent No. 3.

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the 'Tribunal') on account of death of R. Venugopal vide award dated 08.09.2004.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, children and parents of the deceased filed petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of R. Venugopal on 02.03.2002 in a motor vehicle accident caused due to the rash and negligent driving of the offending vehicle truck trailer bearing registration No. PB-11D-6755 by respondent No.2. It was averred that R. Venugopal was going back to Nabha after dropping his elder son near Blossams School, Patiala on his car bearing registration No. PB-11-K-7787. He picked Surinder Kumar Sayal on the way, who was working as a Consultant with the same company in which the deceased was serving.

When both of them reached near Haridass Colony, Nabha, a truck trailer bearing registration No. PB-11-D-6755 coming from the opposite side in a rash and negligent manner hit the car of the deceased. As a result thereof, deceased suffered multiple injuries. The deceased was lying entangled with the steering ring of the car. He was bleeding profusely. He was removed to the Civil Hospital, Nabha where he was declared dead. The deceased, aged 47 years at the time of the accident was stated to be working as Assistant Manager with Smithkline Beecham Consumer Health Care Limited, Nabha, earning a sum of ₹41,500/- per month. Compensation was prayed for.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether R. Venugopal died in a motor vehicular accident which took place on 02.03.2002 on account of rash and negligent driving of truck trailer No. PB-11-D-6755 driven by Jaswant Singh respondent No. 2 ? OPP
2. If issue No. 1 is proved, whether the claimants are entitled to seek compensation, if so, to what extent and from which of the respondent? OPP.
3. Whether the driver of the truck trailer No. PB-11-D-6755 was not having a valid driving licence at the time of alleged accident? OPR
4. Whether the claim petition is bad for non joinder of necessary parties?OPR
5. Whether this Court has no territorial jurisdiction to try the present claim petition?OPR
6. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 02.03.2002 due to rash and negligent driving of the offending truck trailer bearing registration No. PB-11-D-6755 by respondent No. 2. Learned Tribunal awarded a sum

of ₹12,00,000/- with interest at the rate of 6% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹16,312/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 10 was applied as the deceased was 47 years 4 months old at that time.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that the learned Tribunal has erred in assessing the income of the deceased to be ₹16,312/- whereas the deceased was receiving a sum of ₹41,508/- which was duly proved by the evidence on record vide Ex. P3 as well as Ex. P8. Multiplier, it is contended, has been wrongly applied as 10. Keeping in view the number of dependants, deduction of 1/4th should have been effected. No compensation has been awarded under the conventional heads. It is submitted that in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others** **2017 (4) RCR (Civil) 1009**, increment on account of future prospects at the rate of 25% should be afforded. It is, thus, prayed that compensation awarded to the claimants be enhanced.

Learned counsel for the respondent - insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is further submitted that component of income tax i.e. ₹4,310/- as well as Leave Travel Allowance of ₹8,750/- should in any case be deducted from the said amount. It is, thus, prayed that this appeal be dismissed.

Heard learned counsel for the parties.

There is no dispute that R. Venugopal lost his life in a motor vehicle accident, which took place on 02.03.2002 caused due to the rash and negligent driving of Truck trailer bearing registration No. PB-11-D-6755 driven by respondent No.2. Finding of the learned Tribunal on this issue has attained finality. There is no dispute regarding the age of the deceased. Perusal of Exs. P3 to P8 reveal that the deceased was drawing an income of ₹41,508/- per month. The complete break up of salary received by the deceased is available on record. Deductions in income on account of GPF etc. are also not to be effected. Learned Tribunal has clearly erred in assessing the income of the deceased to be ₹16,312/- per month as the amount of House Rent Allowance, GPF, travel allowance etc. was a part of the deceased's income and cannot be deducted. Thus, income of the appellant is assessed as ₹41,508/- per month. A sum of ₹4,310/- is, however, to be deducted from the income of the appellant on account of income tax. Thus, total income of the appellant after deducting tax is ₹37,198 (41,508-4310). In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 25% (₹9299/-) is afforded, as the deceased was 47 years old at the time of accident, which takes the income of the deceased to ₹46,497/- per month. In view of the guidelines of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77, deduction of 1/4th instead of 1/3rd is to be applied as number of dependants is four (4), thereby rendering income of the deceased to be ₹34,873/-(46497-11624). Applying a multiplier of 13, dependency of the claimants is, therefore, assessed as ₹54,40,188/- (₹34873x12x13). The

claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of spousal consortium. In terms of the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others (Civil Appeal No. 9581 of 2018), appellants No. 2 and 3 i.e. children of the deceased are entitled to ₹40,000/- each on account of loss of parental consortium and ₹40,000/- each on account of loss of filial consortium is awarded to appellants No. 4 to 6 (being LR's of parents of the deceased).

Claimants are, thus, entitled to total compensation of ₹56,70,188/- detailed as under:-

Loss of dependency (₹34873x12x13)	₹54,40,188/-
Loss of spousal consortium to the widow	₹40,000/-
Loss of filial consortium to the parents (40,000 x 2)	₹80,000/-
Loss of parental consortium to the two children (40,000 x 2)	₹80,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹56,70,188/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of

compensation, present appeal is disposed of.

October 05, 2018
rts

(Lisa Gill)
Judge

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