IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

F.A.O. No.1681 of 2007 (O&M)
Date of Decision: 21.02.2018

Jaswinder Kaur & others

....Appellant (s)

Versus

Inderjit Singh & others

...Respondent(s)

F.A.O. No.2432 of 2007 (O&M)

New India Assurance Company Limited

....Appellant (s)

Versus

Jaswinder Kaur & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Jaideep Verma, Advocate
for the appellant(s) in F.A.O. No.1681 of 2007 &
for respondents no.1 to 4 in F.A.O. No.2432 of 2007.

Mr. R.N. Singal, Advocate
for respondent-insurance company and
for the appellant(s) in F.A.O. No.2432 of 2007.
*****

HARI PAL VERMA, J. (Oral)

This order shall dispose of two appeals i.e. FAO-1681-2007 Jaswinder Kaur & others Vs. Inderjit Singh & others, filed on behalf of the claimants, seeking enhancement of compensation and FAO-2432-2007 New India Assurance Company Limited Vs. Jaswinder Kaur & others, filed on behalf of the insurance company, challenging the impugned award dated 09.02.2017 by the Motor Accident Claims Tribunal, Ropar (hereinafter referred to as "the Tribunal") on the ground that the claimants have failed to establish the involvement of offending vehicle i.e. Tata Sumo No.PB-12F-3919 and that the driver of the offending vehicle was involved in the accident, as both appeals have arisen out of common award passed by the Tribunal. However, for brevity, facts have been noticed from FAO-1681-2007.

Brief facts of the case are that on 22.09.2003 at about 7-00 P.M., when the deceased, who was working as Home Guard, was coming from Police Chowki, Asron to Village Tonsa, on his motorcycle No.CH-01-Z-2490, the said vehicle was hit by a Tata Sumo No.PB-12F-3919, which was being driven by its driver in a rash and negligent manner. The accident resulted in serious injuries to Sukhwinder Singh and he was shifted to Civil Hospital, Ropar, where he succumbed to those injuries.

The appellant-claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") seeking compensation on account of death of Sukhwinder Singh, who died in a motor vehicular accident which occurred on 22.09.2003. He was 30 years of age. He left behind his widow namely Jaswinder Kaur, two minor children namely Jagtar Singh (son) and Paramjit Kaur (daughter) and mother Surjit Kaur.

The Tribunal after considering the monthly income of the deceased as Rs.3,000/-, while applying 1/3rd deductions towards personal expenses of the deceased i.e. Rs.1,000/- and applying the multiplier of '14', awarded compensation of Rs.3,50,000/-, which also included Rs.5,000/- under the head 'Consortium' and Rs.9,000/- towards the 'expenses incurred on the last rites' of the deceased along with and interest.

Not satisfied with the aforesaid amount of compensation, the appellant-claimants have preferred the present appeal seeking enhancement in the amount of compensation.

Learned counsel for the appellants has argued that the impugned award needs modification and the amount of compensation is required to be enhanced. The deceased Sukhwinder Singh was about 30 years of age and left behind his widow, two minor children and old mother. Considering his age, the multiplier required to be applied by the Tribunal was '17' instead of '14'. No compensation has been awarded under the head 'future prospects' as well as other conventional heads. The award also needs to be modified, as wrong deduction has been made towards 'personal expenses', as the deceased had left behind four dependent members and therefore, $1/4^{th}$ deduction should have been applied instead of $1/3^{rd}$.

On the other hand, Mr. R.N. Singal, Advocate, appearing for the respondent-insurance company, has argued that in order to claim compensation under Section 166 of the Act, the claimants were required to prove the accident vis-à-vis the vehicle involved. However, in the case in hand, the FIR was registered at the behest of HC Onkar Singh on 22.09.2003 and in the said FIR, the number of the vehicle and the name of the driver is not mentioned. Therefore, the Tribunal has committed an illegality in awarding compensation to the claimants and it is for this reason, the insurance company has filed the connected appeal, challenging the award on the ground that the claimants have failed to establish the vehicle involved in the accident. He has further argued that even if the

Court comes to a conclusion that the same vehicle i.e. Tata Sumo No.PB-12F-3919 is involved in the accident, as disclosed by PW-3 Gurmit Singh, still the Tribunal has already awarded adequate compensation. Therefore, there is no further scope for enhancement of compensation.

I have heard learned counsel for the parties and perused the impugned award.

The crucial issue No.1, as framed by the Tribunal, reads as under:-

> *"1. Whether Surjit Singh respondent no.2, driver of Sumo No.PB-12-F/3919 caused the death of Sukhwinder Singh by his rash and negligent driving of Sumo No.PB-12-F/3919 on 22.0.2003 in the area of Village tonsa near DSM factory on Ropar-Nawanshahar road? OPP".*

In order to prove that the vehicle i.e. Tata Sumo No.PB-12F-3919 had caused the death of deceased Sukhwinder Singh, the claimants have examined Piara Singh as PW-2 and Gurmit Singh alias Rinku as PW-3 and HC Sukhbir Singh as PW-4.

PW-3 Gurmit Singh alias Rinku, who is stated to be an eyewitness of the occurrence, has filed his affidavit Ex.PW-3/A. He has specifically stated that at the time of accident, the offending vehicle i.e. Tata Sumo No.PB-12F-3919 came at a fast speed from Ropar side and the driver was driving it at a fast speed in a rash and negligent manner. When he was in the process of overtaking the motorcycle of the deceased without blowing any horn, he hit the Tata Sumo on the side of the motorcycle.

Resultantly, the motorcycle fell down on the road. After some time, the police also reached the spot.

It has been held by the Tribunal that PW-3 Gurmit Singh alias Rinku is an independent witness. He was neither known to the claimants nor was he related to them, in any manner. Rather, in his cross-examination, he has specifically stated that he did not know the deceased or the family members of the deceased prior to the occurrence. He being an eyewitness, has made a categorical statement that Tata Sumo bearing registration No.PB-12F-3919 was involved in the accident.

Accordingly, this Court finds that there is no illegality in the impugned award passed by the Tribunal so far as the factum of accident caused by the offending vehicle i.e. Tata Sumo No.PB-12F-3919 is concerned. Therefore, this Court finds that issue No.1 has rightly been decided by the Tribunal. However, as far as quantum of compensation is concerned, this Court finds that since the deceased was about 30 years of age, the Tribunal was required to apply the multiplier of '17' instead of '14'. Similarly, in view of judgment of Hon'ble the Apex Court in the case of ***National Insurance Co. Ltd vs. Pranay Sethi 2017(4) RCR (Civil) 1009,*** the deceased Sukhwinder Singh is also entitled for compensation under the head 'future prospects' apart from compensation under other conventional heads. This Court also finds that the deceased Sukhwinder Singh has left behind four dependents i.e. his widow, two minor children and mother and therefore, considering the family dependency, the Tribunal was required to make $1/4^{th}$ deduction instead of $1/3^{rd}$ towards 'personal expenses' of the deceased.

Accordingly, the appeal i.e. FAO-1681-2007, filed on behalf of the claimants, is allowed the impugned award is modified to the extent that the appellant-claimant shall be entitled for an enhanced amount of Rs.3,62,600/- over and above the amount of compensation already granted to them, in the following manner:-

S.No.	**Heads**	**Calculation (Rs.)**
1	**Income**	3,000
2	**Future prospects (**40%)	1,200
3	**Total monthly income**	3,000+1,200=4,200
4	**Deduction (1/4th)**	1,050
5	**Net monthly income**	4,200-1,050=3,150
6	**Multiplier**	17
7	**Total Compensation**	3,150x12x17=6,42,600/-
8	**Conventional Heads**	70,000
9	**Total compensation**	6,42,600+70,000=7,12,600/-
10	**Amount already awarded**	3,50,000
11	**Enhancement**	7,12,600-3,50,000=**3,62,600/-**

It is further ordered that the enhanced amount of compensation shall be released to the claimants in same proportion and manner, as granted by the Tribunal and this enhancement shall fetch interest @ 7.5% per annum from the date of filing the claim petition till its realization.

The other appeal i.e. FAO-2432-2007, filed on behalf of the insurance company, shall stand dismissed.

February 21, 2018 **(HARI PAL VERMA)**
AK **JUDGE**

Whether speaking / reasoned? Yes / No
Whether reportable? Yes / No