IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 3847 of 2007(O&M)

Date of Decision: October 26 , 2018.

Kusum Goel and others ...... APPELLANT (s)

Versus

Vishal Gupta and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

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

Mr. Vinod Gupta, Advocate
for respondent No.3 – Insurance Company.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Patiala (for short, the 'Tribunal') vide impugned award dated 08.03.2007 on account of death of Akhil Goel in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that, the claimants, who are parents of the deceased, filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of the death of Akhil Goel, who lost his life in a motor vehicle accident which took place on 23.01.2005. FIR No.5 dated 24.01.2005 under Sections 279/304A IPC was registered against respondent No.2. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of Swaraj Tractor bearing registration No. PB-48A-9090 by respondent No.2 – Buga Singh. The said finding of the learned Tribunal has attained finality.

The learned Tribunal awarded a sum of ₹3,85,000/- as compensation to the appellants-claimants vide impugned award dated 08.03.2007. The deceased was a student aged 20 years. Income of the deceased was assessed as ₹4,500/- per month. Deduction to the extent of 1/3rd on account of personal expenses was effected and multiplier of 10 was applied. ₹25,000/- towards funeral expenses was awarded.

Learned counsel for the appellants argues that the deceased – Akhil Goel, son of the appellants, was a brilliant student pursuing 3rd year of Electronic & Communication in Chitkara Institute of Engineering and Technology at Rajpura. The deceased was also working as a part-time Computer Hardware Engineer and Networking Administrator, earning ₹7,500/- per month. PW3-Karun Kaura, proprietor of ICON Computers, Patiala has specifically testified in this regard. The learned Tribunal, it is submitted, has wrongly discarded the testimony of PW3 and assessed income of the deceased to be ₹4,500/- per month. It is submitted that future prospects at the rate of 40% should be awarded, though it is fairly stated that deduction at the rate of 50% instead of 1/3rd may be effected. It is submitted that amount under the conventional heads be awarded in terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance**

Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018. It is thus prayed that the compensation amount be re-worked accordingly.

Learned counsel for respondent No.3 – Insurance Company however refuted the arguments raised. It is submitted that the impugned award dated 08.03.2007 be upheld as there is no ground for further enhancement of the compensation.

I have heard learned counsel for the parties and have gone through the file.

Liability of the Insurance Company is not in dispute and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.2 – Buta Singh. A perusal of the record reveals that the deceased was a student of 6th Semester pursuing Electronic and Communication in Chitkara Institute of Engineering and Technology at Rajpura. Learned Tribunal has specifically observed that the deceased was an intelligent student and his future prospects were quite good. However, keeping in view the facts and circumstances, there is no merit in the argument raised by learned counsel for the appellants that notional income of the deceased should be assessed as ₹10,000/- per month. Reliance by learned counsel for the appellant on decision of this Court in Rekha Rani and another v. Ranjit Singh, *2013(3) RCR(Civil) 770* is misplaced as the said decision relates to an accident which took place in the year 2010. It is evident that PW3 Karun Kaura did not produce any evidence, whatsoever, to firstly show that he is the proprietor of ICON Computers, Patiala neither is there any evidence on record to show that the deceased was an employee with PW3 Karun Kaura. In fact, PW3 Karun Kaura has admitted that he was a class-fellow of the deceased in school and was in fact his friend. Therefore, much reliance cannot be placed on the statement of PW3 Karun Kaura to assess the income of the deceased. However, keeping in view the facts and circumstances of the case, income of the deceased can justifiably be assessed as ₹6,500/- instead of ₹4,500/- per month.

Increase in income at the rate of 40% on account of future prospects has to be afforded keeping in view the observations of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Deduction to the extent of 50% instead of 1/3rd on account of personal expenses needs to be effected. The deceased was 20 years old at the time of the accident, therefore, multiplier of 18 instead of 10 is to be applied as per the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil) 77***. ₹15,000/- each towards funeral expenses (instead of ₹25,000/-) and loss of estate are awarded to the appellants. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018**, the appellants are entitled to ₹40,000/- each on account of loss of filial consortium.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	6,500 p.m. i.e. ₹78,000/- per annum

2.	Total income after addition at the rate of 40% on account of future prospects	78,000 + (78,000 **x** 40%) = 1,09,200
3.	Income after 50% deduction on account of personal expenses	1,09,200 – (1,09,200 **x** 1/2) = 54,600
4.	Total dependancy after applying a multiplier of 18	(54,600 **x** 18) = 9,82,800
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium	(40,000 **x** 2) = 80,000
	Grand Total	₹10,92,800/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the appellants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

October 26 , 2018.
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No