

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

FAO No.2797of 2006 (O&M)

Date of Decision: February 23, 2018

Kanchan Kumari and others

...Appellant

Versus

Maya Ram and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

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

Mr.Lalit Garg, Advocate for respondent No.3 – Insurer.

HARINDER SINGH SIDHU, J.

This is an appeal filed by the claimants for enhancement of compensation as awarded by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') vide its award dated 23.2.2006.

Brief facts as disclosed in the claim petition are that on 06.12.2003 in the area of Zirakpur a vehicular accident took place involving Truck No.HR-38A-9558 (herein for short 'the offending vehicle') and a Toyota Qualis No.CH-02-0943, wherein, Rajesh Kumar, driver of Toyota Qualis suffered serious injuries. He was taken to the hospital, where he succumbed to the injuries on 08.12.2003. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

The Tribunal assessed the income of the deceased at Rs.3000/- per month, deducted 1/3rd towards his personal expenses, applied the multiplier of 16 (deceased aged 28 years). The loss of dependency was assessed at

Rs.3,84,000/-. Besides, amounts of Rs.5000/- towards 'loss of consortium'

and Rs.2000/- as 'funeral expenses' were awarded. In all, compensation of Rs.3,91,000/- along with interest was awarded.

Feeling dissatisfied with the quantum of compensation, the claimants are before this Court.

It is argued on behalf of the claimant – appellants that the Tribunal has assessed the income of the deceased on lower side. It is contended that the deceased was a driver and at the time of death, he was on the wheels of Toyota Qualis No.CH-02-0943, owned by one Kirpal Singh. Said Kirpal Singh also appeared before the Tribunal and testified that Rajesh Kumar – deceased was being paid Rs.5000/- per month as salary. Kanchan Kumari, the widow of the deceased as AW2 stated that she was being paid Rs.3500/- per month by her deceased husband to meet the day-to-day expenses.

Ld. Counsel for the Insurance Company contended that there was no documentary proof regarding the salary allegedly be drawn by the deceased. He argued that in the absence of such evidence, the income of the deceased, at best, ought to be assessed as per the minimum wages in respect of a skilled worker.

It is not possible to agree with the contentions of the Ld Counsel for the Insurance Comapany. Kirpal Singh the owner of Toyota Qualis No.CH-02-0943 in his deposition before the Tribunal stated that Rajesh Kumar – deceased was employed as a driver and he was being paid Rs.5000/- per month as salary. He was admittedly driving the Toyota-Qualis which was involved in the accident. There is no reason to disbelieve the statement of Kirpal Singh regarding the salary being paid to the deceased. The accident occurred on 06.12.2003. Even otherwise considering

his avocation of a driver, it would be fair to assess his income at Rs. 5,000/-.

Consequently and in the light of the decision of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680 the compensation is re-assessed as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Monthly Income	5000/-
(ii)	40% of above (i) to be added as future prospects (deceased aged 28 yrs.)	5000+2000 = 7000/-
(iii)	Loss of income (1/4 th of (ii) deducted as personal expenses of the deceased - four dependants)	7000-1750=5250/- per month
(iv)	Loss of dependency after multiplier of 17 is applied	5250x12x17= 10,71,000/-
(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	Rs.40,000/-
(vi)	Loss of Estate	Rs.15,000/-
(vii)	Funeral Expenses	Rs.15,000/-
	Total	Rs.11,41,000/-

Hence, the appeal is allowed. The Award of the Tribunal is modified to the extent that the appellant is held entitled to total compensation of Rs.11,41,000/-, that is, Rs.7,50,000/- (1141000-391000) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

February 23, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No