

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-2994-2006 (O&M)
Date of Decision: 30.07.2018

Santosh Kumari & others

--Appellants

Versus

Sukhdev Singh @ Sukha & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Jagdish Manchanda, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate with
Ms. Sanya Sapra, Advocate for respondent no.3.

TEJINDER SINGH DHINDSA.J (Oral)

This is claimants' appeal seeking enhancement of compensation.

Briefly it may be noticed that a petition under Section 166 of the Motor Vehicle Act was filed before the Motor Accident Claims Tribunal, Karnal (herein after to be referred as the Tribunal) claiming compensation to the tune of Rs.20 lacs on account of death of Brij Kumar Bhatia in a motor vehicle accident that took place on 29.3.2005. Claimants were the widow, two sons, daughter and aged widowed mother of the deceased.

Case set up on behalf of the claimants was that on 29.3.2005 while the deceased was proceeding on a bicycle, a Qualis vehicle bearing registration no. CH-03C-3728 being driven by Sukhdev Singh in a rash and negligent manner, struck against the bicycle and on account of which severe injuries were suffered by Brij Kumar Bhatia and who succumbed to the same. Deceased was stated to be 54 years of age at the time of accident and was working and posted as Clerk in a Govt. High School and getting

Rs.11,735/- per month as salary from the Education Department, State of

Haryana. It was further averred that the widow, two sons, daughter and aged widowed mother were totally dependent on the earnings of the deceased.

The claim petition was contested by the owner/driver as also the insurance company by filing separate written statements.

Upon the pleadings of the parties, the following issues were framed by the Tribunal:-

“1. Whether the present accident has taken place due to rash and negligent driving of Jeep No. CH-03C-3728 by respondent no.1 Sukhdev Singh alias Sukha?OPP

2. Whether Brij Kumar Bhatia died as a result of injuries received in the present motor vehicular accident which took place on 29.3.2005 if so, to what amount of compensation the claimants are entitled to receiveOPP

3. Who is liable for the payment of amount of compensation?OPP Parties.

4) Whether respondent no.1 was not holding a valid and effective driving licence and the car in question was being driven in contravention of the terms and conditions of the insurance policy, if so, to what effect?OPR-3.

5. Relief.”

As regards Issue No.1 findings were returned in favour of the claimants and it was held that the death of Brij Kumar Bhatia took place on account of injuries suffered in the accident involving the offending vehicle in question and on account of the rash and negligent driving of respondent no.1 Sukhdev Singh.

As regards quantum of compensation, Tribunal has assessed the monthly income of the deceased to be Rs.9500/- per month. Age of the deceased has been taken as 54 years. A deduction of 1/3rd has been made

from the monthly income towards living and personal expenses of the

deceased. Tribunal by taking into reckoning that the deceased was to superannuate on 31.5.2009, has taken the monthly salary as Rs.9500/- per month till the date of superannuation and a sum of Rs.4500/- per month thereafter. By adopting a unique methodology a multiplier of 11 has been bifurcated into two components. For the period that the deceased would have remained in service, a multiplier of 4 has been applied and post retirement by taking monthly income to be Rs.4500/- a multiplier of 7 has been applied. That apart, a sum of Rs.2,000/- has been awarded towards funeral expenses, Rs.2500/- for loss of estate and Rs.5,000/- on account of loss of consortium. Thus, the total compensation awarded in favour of claimants is Rs.5,65,000/- along with interest @ 7.5% from the date of filing of the claim petition till actual realization. Liability to pay compensation amount has been fastened jointly and severally upon the respondents i.e. the owner, driver as also the insurance company.

Since the only issue involved in the instant appeal is with regard to quantum of compensation, I have heard counsel for the appellants as also for the contesting respondent no.3-Insurance Company.

In the considered view of this Court, the amount of compensation awarded by the Tribunal requires to be reassessed and suitably enhanced.

It has gone uncontroverted that salary statement of the deceased for the month of March, 2005 had been adduced on record as Ex.PW2/A reflecting the total salary to be Rs.12,008/- per month. Such salary statement also reflected certain deductions in the nature of contribution towards Provident Fund etc. and the carry home salary was shown to be Rs.9428/- and which has been rounded off to be Rs.9500/- per month. This

is the monthly income that has been assessed by the Tribunal. In the considered view of this Court the Tribunal has committed a patent error in not taking Rs.12,008/- as the monthly income. The deductions made towards employee's contribution/Provident Fund etc. would have to be construed to be part and parcel of the salary of the employee. This would specially be so when the question arises with regard to assessment of monthly income to compute a compensation amount under a beneficial scheme of legislation. Accordingly, it is directed that for purposes of computing compensation the monthly salary of the deceased would be taken as Rs.12,008/-.

The Tribunal has rightfully taken the age of the deceased Brij Kumar Bhatia as 54 years as on the date of accident based on service record adduced.

Keeping in view the number of dependents/claimants the Tribunal ought to have made a 1/4th deduction from the monthly income of the deceased to meet out his personal/living expenses. The same is so directed.

The Tribunal has further erred in bifurcating the income of the deceased i.e. while he is in service and post retirement and likewise having applied a multiplier of 4 to the income of the deceased till the age of superannuation and a multiplier of 7 post retirement. Such concept is alien to the settled principle of computing compensation under the Motor Vehicle Act. As per age of the deceased i.e. 54 years and by keeping in view the principle laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77***, multiplier of 11 ought to have been applied. It is so directed. That apart, the Tribunal has been

rather frugal in awarding a sum of Rs.9500/- in all under the conventional heads i.e. loss of consortium, funeral expenses and loss of estate etc. A sum of Rs.70,000/- is, as such, awarded under the conventional heads by following the dictum laid down by Supreme Court in case of *National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) R.C.R (Civil), 1009*.

Yet another parameter on which the impugned award would require modification is that the Tribunal has not granted any increase in income towards future prospects. Keeping in view that the deceased was on a permanent job i.e. serving as a Clerk under the Education Department, State of Haryana and was 54 years of age as on the date of accident, an increase in income of 15% towards future prospects is also awarded.

In view of the discussion above, the revised/reassessed compensation amount is worked out as follows:-

Sr. No.	Head	Calculation
1.	Income (rounded off)	12,000/- per month
2.	15% increase in income towards future prospects	12,000+15%=13,800/-
3.	1/4 th deductions towards personal expenses of the deceased.	13,800 ÷ 4 = 3450/- 13,800-3450 = 10,350/-
4.	Compensation after applying multiplier of 11	10,350x12 = 1,24,200/- 1,24,200x11 = 13,66,200/-
5.	Conventional heads	70,000/-
6.	Total	13,66,200+70,000=Rs.14,36,200/-

The afore-calculated revised/enhanced compensation amount be apportioned in equal shares amongst the claimants/appellants along with interest @ 6% from the date of filing of the instant appeal till actual realization thereof.

Appeal is allowed in the aforesaid terms.

Pending application(s) if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

30.07.2018

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No