

**Sr. No.207
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.5457 of 2005 (O&M)

Date of Decision: 08.08.2018

Balvinder Kaur and others

... Appellants

Versus

Talwinder Singh and others

... Respondents

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

Present:- Mr. Ravindra Jain, Advocate,
for the appellants.

Mr. Vinod Gupta, Advocate,
for respondent No.3.

TEJINDER SINGH DHINDSA, J.(ORAL)

This is claimants' appeal seeking enhancement of compensation.

A claim petition under Section 166 of the Motor Vehicles Act was filed before the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri seeking compensation to the tune of Rs.22 lakhs on account of death of Surinder Kumar in a motor vehicle accident that took place on 20.01.2004.

Claimants were the widow, two minor sons and aged mother of the deceased.

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

1) "Whether the accident had taken place due to rash and negligent driving of truck No.HR58-4887 by respondent No.1? OPP.

2) If issue No.1 is proved, to what amount of

compensation, the claimants are entitled to and from whom? OP Parties.

3) Whether respondent No.3 is not liable to pay any compensation in view of preliminary objections taken by it in its written statement? OPR-3.

4) Relief.”

Insofar as issue No.1 is concerned, findings were returned in favour of the claimants and it was held that death of Surinder Kumar was the result of rash and negligent driving of truck driver i.e. Talwinder Singh-respondent No.1 bearing registration No.HR-58-4887.

The Tribunal has computed total compensation as Rs.4,04,000/- along with interest @ 7.5% from the date of filing of the claim petition till realization. The liability to pay compensation amount has been fastened upon respondent No.3-United India Insurance Company Limited.

Since the only issue raised in the instant appeal is with regard to quantum of compensation, I have heard counsel for the appellants as also Mr. Vinod Gupta, Advocate for contesting respondent No.3-Insurance Company.

In the considered view of this Court, the compensation amount awarded by the Motor Accident Claims Tribunal vide award dated 07.09.2005 requires to be re-assessed and suitably enhanced.

Accident took place on 20.01.2004. Claimants had asserted that age of the deceased as on the date of accident was 35 years. Tribunal has rightfully accepted such assertion on the basis

of deposition of PW-2 Balvinder Kaur i.e. widow of the deceased as also as per age mentioned in the post-mortem report Ex.P-2.

Even though claimants had asserted that the deceased was working as a 'Driver' with Dhingra Transport Company and was earning Rs.3000/- as salary, Rs.1000/- as bonus every month and Rs.50/- per day but no cogent and conclusive evidence was adduced to substantiate such claim.

Accordingly, Tribunal has assessed the monthly income of the deceased to be Rs.3000/- per month. Since the accident had occurred way back in the year 2004, the assessment of the monthly income as done by the Tribunal does not call for any interference.

Tribunal has made a deduction of $1/3^{\text{rd}}$ from the monthly income towards personal and living expenses of the deceased. Keeping in view the fact that there were 04 dependents i.e. widow, two minor sons and aged mother, the deduction ought to have been taken as $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$. It is so directed.

Keeping in view the age of the deceased as 35, the Tribunal has correctly applied the multiplier of 16. This Court finds that the Tribunal has overlooked the aspect as regards grant of increase in income towards future prospects. Deceased was self-employed and his age had been accepted as 35 years. As such by applying the dictum laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***, 40% increase in income towards future prospects is granted.

Further more Tribunal has been rather frugal in

awarding only Rs.20,000/- under the conventional heads Rs.10,000/- towards funeral expenses and transportation of body and Rs.10,000/- towards loss of consortium. As per guidelines issued in *Pranay Sethi's case (supra)*, a lump sum amount of Rs.70,000/- is awarded towards loss of consortium, loss of estate and funeral expenses.

In view of the above, the revised enhanced compensation is computed as under:-

Sr. No.	Head	Calculation
1.	Income Rs.3000/- p.m.	Rs.3000 + 40% future prospects =3000+1200=Rs.4200/-
2.	1/4 th deduction towards personal and living expenses of the deceased	Rs.4200-1050=3150/- Rs. 3150 x 12=37,800/-
3.	Compensation after applying multiplier of 16	Rs. 37,800 x 16=6,04,800/-
4.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.6,74,800/-

The afore-calculated enhanced compensation be released in favour of appellant No.1 i.e. widow and mother/natural guardian of appellant Nos.2 and 3 along with interest @ 6% from the date of filing of the claim petition till actual realization.

Appeal is allowed in the aforesaid terms.

08.08.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes