

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

**FAO No.2882 of 2010(O&M)
Date of Decision: 07.05.2018**

Parminder Kaur & anr.

... Appellants

Versus

Sarabjit Kaur & ors.

.. Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. Ekta Thakur, Advocate,
for the appellants.

Mr. Garvit Kalra, Advocate, for
Mr. Suman Jain, Advocate,
for respondent No.3-Insurance Company.

RAMENDRA JAIN, J.(Oral)

CM-13605-CII-2010

For the reasons mentioned in the application, the same is allowed. Delay of 29 days in filing the appeal is condoned.

FAO No.2882 of 2010(O&M)

This appeal has been filed by only two claimants i.e. minor daughter and mother of the deceased for enhancement of compensation, modifying impugned award dated 06.10.2009 of the Motor Accident claims Tribunal, Chandigarh (in short 'the Tribunal').

Briefly stated, a claim petition under Section 163-A of the Motor Vehicles Act (for short 'the Act') was filed by the appellants along with widow of deceased namely Sarabjit Kaur.

Learned Tribunal after holding trial awarded compensation of ₹4,15,000/- along with interest @ 6% per annum from the date of institution

of claim petition till realization in the following proportion:-

1. ₹1,00,000/- to Sarabjit Kaur, widow of deceased Jaswinder Singh.
2. ₹2,15,000/- to minor daughter of deceased Jaswinder Singh.
3. ₹1,00,000/- to the mother of deceased Jaswinder Singh.

Learned counsel for the appellants *inter alia* contends that widow of deceased has left the matrimonial home by executing a compromise deed (Ex.P-7) with the parents of the deceased and taking ₹1,00,000/- as permanent alimony relinquishing her rights and claim in the compensation amount so to be awarded in their claim petition under Section 163-A of the Act. The claimants-appellant had claimed income of the deceased at ₹3,200/- per month. Appellant-Kuldip Kaur appearing as PW-1 had also deposed about income of the deceased at the said rate vide her affidavit Annexure PW/1A. However, learned Tribunal without any basis, erroneously considered the income of the deceased at ₹3,000/- instead of ₹3,200/- per month. Learned Tribunal ignoring the said compromise deed (Ex.P-7) has wrongly and illegally granted ₹1,00,000/- to Sarabjit Kaur, widow of the deceased as compensation.

On the other hand, learned counsel for respondent No.3 opposing the above submissions pleaded the legality and validity of the impugned award.

Having given considerable thoughts to the submission made by both the sides, this Court finds that the learned Tribunal has wrongly considered the income of the deceased at ₹3,000/- instead of ₹3,200/- without any basis. No reasoning whatsoever has given by the learned Tribunal for taking the income at ₹3,000/-, despite the fact that there was statement of appellant-claimant Kuldeep Kaur appearing as PW-1 that his son was earning

₹3,200/- per month. Accordingly the monthly income of the deceased Jaswinder Singh is taken at ₹3,200/-. After deducting 1/3rd from the same towards personal expenses of the deceased, the amount comes to ₹2,134/- and annually ₹25,608 (₹2,134/-x12). The age of the deceased was 25 years at the time of his death. Therefore, multiplier of 17 has to be applied according to 2nd schedule of the Act. On applying the same, the amount comes to ₹4,35,336/-. That apart, ₹4,500/- has to be awarded to the claimants towards funeral expenses and loss of estate. The total compensation comes to ₹4,39,836/-. Respondent No.1 widow of deceased has relinquished her right through compromise deed (Ex.P-7) (Annexure P-1 before this Court). Therefore, the learned Tribunal ought to have awarded the entire compensation to the appellants only in exclusion to the widow of the deceased Jaswinder Singh.

Learned Tribunal has already awarded compensation of ₹4,15,000/- to the appellants, therefore, the difference comes to ₹24,836/-. The insurance Company is directed to deposit the enhanced amount of compensation before the learned Tribunal within two months from today along with interest @ 6% per annum from the date of institution of the claim petition till realization for onward disbursement to the appellants-claimant, in accordance with law against proper receipt and identification.

In view of compromise deed (Ex.P-7), the share of respondent No.1 i.e. widow of deceased namely Sarabjit Kaur be also disbursed to the appellants against surety and indemnity bond indemnifying therein that in case, widow of the deceased respondent No.1 in future would claim any share in the compensation enhanced, they would indemnify the Court for all consequences and would redeposit the compensation amount of the share of

the widow of the deceased along with upto-date interest @ 6% from the date of disbursement till redeposit in the Court.

With the above observation, this appeal stands disposed of.

07.05.2018
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(RAMENDRA JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>