IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

F.A.O. No.2823 of 2011
Date of Decision: 04.04.2018

Gurinder Pal Kaur & others

....Appellant (s)

Versus

Gurinder Kaur & others

Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. H.S. Saggu, Advocate
for the appellant(s).

Mr. Vishal Sharma Haritwal, Advocate
for respondent no.2.

Mr. Gopal Mittal, Advocate
for respondent no.4-Insurance Company.
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HARI PAL VERMA, J. (Oral)

The appellant-claimants have filed the present appeal seeking enhancement of compensation over and above the compensation awarded by the Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as "the Tribunal") vide award dated 07.12.2010.

On a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, on account of death of Harmohinder Singh, aged 57 years, in a motor vehicular accident which took place on 21.01.2009, the Tribunal awarded a total compensation of Rs.7,70,000/- along with interest @ 7.5% to the appellant-claimants. The appellant-claimants are claimant no.1 Gurinder Pal Kaur (widow), Preetpal Singh (son), Jaspreet Kaur (daughter).

Not satisfied with the aforesaid awarded compensation, the claimants have filed the present appeal seeking enhancement of compensation, as awarded by the Tribunal.

Briefly stated, on 21.01.2009, appellant-claimant no.1 along with her husband Harmohinder Singh, grandson Babbu and daughter-in-law Diksha were going from Jind in car No.PB-13-S-9980, which was being driven by Darshan Singh at a very normal speed on the correct side of the road. When their car reached near the Nirwarana bypass, the offending car No.DL-3CJ-9948, which was being driven by Hardeep Singh in a rash and negligent manner on the wrong side, came from Patran side and struck against their car. After causing the accident, the driver of the offending vehicle ran away from the spot, leaving the car at the place of accident. Harmohinder Singh died in the accident, whereas appellant no.1 also suffered multiple injuries in the accident. Two separate petitions i.e. one by Gurinder Pal Kaur on account of the injuries suffered by her and second, by the appellant-claimants, on account of death of Harmohinder Singh, were filed under Section 166 of the Motor Vehicles Act and the Tribunal vide common award granted an amount of Rs.73,821/- to the injured-Gurinder Pal Kaur, against which she has filed a separate appeal before this Court seeking enhancement of compensation, which was decided by this Court vide order dated 17.01.2018 passed in FAO-6352-2013 *Gurinder Pal Kaur Vs. Gurinder Kaur & ors.* In the second claim petition, filed on behalf of the appellant-claimants, the Tribunal awarded a total amount of Rs.7,70,000/- to the claimants by assessing the income of the deceased as Rs.7,000/- per month, which was based on his income tax returns submitted for the assessment year 2007-08, wherein he had shown his total income as Rs.1,71,582/-, while considering his age as 57 years. The aforesaid amount of compensation included Rs.4,000/- towards last rites and Rs.10,000/- on account of loss of estate, love and affection and consortium etc.

Learned counsel for the appellant-claimants has argued that the Tribunal has not awarded adequate compensation to the claimants and income of the deceased was assessed wrongly. He has argued that for the assessment year 2008-09, the claimants have submitted his income tax returns to the tune of Rs.2,74,384/- and in this manner, the Tribunal should have awarded higher compensation on the basis of Income Tax Return for the assessment year 2008-09. He has further argued that as held in the judgment of Hon'ble the Apex Court in the case of ***National Insurance Co. Ltd vs. Pranay Sethi 2017(4) RCR (Civil) 1009***, the Tribunal has not awarded compensation under the head 'future prospects' as well as compensation under 'other conventional heads'.

No one has put in appearance on behalf of respondent no.1-owner and respondent no.3-driver.

Mr. Gopal Mittal, Advocate, appearing on behalf of the insurance company has argued that adequate compensation has been awarded to the claimants. No further increase is warranted in the case. He has argued that the income tax return for the assessment year 2008-09, which shows the income of the deceased as Rs.2,74,384/-, cannot be considered for the purpose of assessment of income of the deceased, as the same was filed after the accident and death of the deceased. He has further argued that considering the income of the deceased, which is based on his income tax return for the assessment year 2007-08, the Tribunal has already awarded adequate compensation considering the income of the deceased as Rs.7,000/- per month.

I have heard learned counsel for the parties and perused the impugned award.

There is no dispute that the deceased Harmohinder Singh was 57 years of age at the time of accident and he died in a motor vehicular accident which took place on 21.01.2009. The income tax return for the assessment year 2007-08 is required to be considered for the purpose of assessment of income of the deceased and the Tribunal has rightly negated the income tax returns for the assessment year 2008-09, as the same was filed after the death of deceased Harmohinder Singh. However, as far as the compensation under the head of 'future prospects' and 'other conventional heads' is concerned, this Court finds merit in the case of the claimant-appellants.

In view of law laid down by Hon'ble the Apex Court in the case of ***Pranay Sethi*** (*supra*) and considering the fact that the deceased who was self-employed, fell in the age group of 50-60, the claimants are entitled for addition in income under the head 'future prospects' @ 10% apart from a total sum of Rs.70,000/- under the 'other conventional heads', which includes Rs.15,000/- towards 'funeral expenses', Rs.15,000/- towards 'loss of estate' and Rs.40,000/- towards 'loss of consortium'.

Accordingly, with the assistance of both the counsel, this Court has calculated the total compensation, payable to the appellant-claimants, as under:-

S.No.	**Heads**		**Calculation (₹)**
1	**Monthly Income**		7,000.00
2	**Future prospects**	10%	700.00
3	**Total monthly income** ***(monthly income + future prospects)***		7,700.00
4.	**Annual Income (*****Total monthly income x 12)***		92,400.00
5	**Multiplier**	9	
6.	**Total loss of dependency** **(Annual dependency x multiplier)**		8,31,600.00
7.	**Conventional heads:**		
	Loss of Estate:	:	15,000.00
	Funeral expenses	:	15,000.00
	Loss of Consortium	:	40.000.00
8.	**Total amount of compensation**		9,01,600.00
9.	**Amount already awarded**		7,70,000.00
10.	**Total Enhancement**		1,31,600.00

Accordingly, the present appeal is allowed. The impugned award is modified to the extent that the appellant-claimants shall be entitled for an enhanced amount of Rs.1,31,600/- over and above the amount of compensation already granted to them. It is further ordered that 50% of the enhanced amount of compensation shall be released to the claimant-appellant no.1 Gurinder Pal Kaur whereas the remaining amount shall be released to respondents no.2 Preetpal Singh and respondent no.3 Jaspreet

Kaur in equal shares and this enhancement shall fetch interest @ 7.5% per annum from the date of filing the claim petition till its realization.

A finding has been recorded by the Tribunal that the driver was not holding a valid driving licence and therefore, recovery rights were granted to the insurance company to recover the amount of compensation. Since no one has put in appearance on behalf of the respondent no.1-owner and respondent no.3-driver, to controvert this fact, the recovery rights so granted to the insurance shall remain intact.

April 04, 2018 **(HARI PAL VERMA)**
AK **JUDGE**

Whether speaking / reasoned?	Yes / No
Whether reportable?	Yes / No