

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

FAO No.6844 of 2010 (O&M)

Date of decision: 02.05.2018

Smt. Santosh & others

....Appellants

Versus

Satbir and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Pankaj Middha, Advocate,
for the appellants.

Mr. R.N. Singhal, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

CM No.29585-CII of 2010

In view of the averments mentioned in the application, same is allowed and delay of 41 days in filing of the appeal is condoned.

FAO No.6844 of 2010

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') vide award dated 18.02.2010, on account of death of Prem Singh in a motor vehicular accident which took place on 20.08.2008. Appellant No. 1 is widow and appellant Nos.2 & 3 are sons of deceased Prem Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 20.08.2008, Prem Singh (since deceased), who was posted as Drawing Teacher in Govt. Senior

Secondary School, Shamdo, had boarded a Cruiser Jeep bearing registration No.HR-56-C-4514 from Patiala Chowk, Jind for village Shamdo. Some other persons, including Smt. Poonam Rani wife of Naresh Kumar and Varinder were also travelling in the Jeep. The said Jeep was being driven by respondent No.1-Satbir in a rash and negligent manner. At about 8.00 A.M., when they reached in the area of village Naguran near Khadi Ashram, respondent No.1-driver lost control over the vehicle and it became imbalanced. Thereafter, the said Jeep struck against an eucalyptus tree standing on left side of the road, as a result of which, Prem Singh, Smt. Poonam Rani, Virender and other persons travelling in the vehicle, received serious and grievous injuries. They were taken to the General Hospital, Jind, from where Prem Singh was referred to PGIMS, Rohtak. He remained admitted there as an indoor patient w.e.f. 20.08.2008 to 27.08.2008. Ultimately, he succumbed to the injuries. With regard to the accident, FIR No.124 dated 20.08.2008, under Sections 279/337/304-A IPC was registered at Police Station, Alewa against respondent No.1. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION AWARDED BY THE TRIBUNAL

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by respondent No.1 and thus, returned the finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Virender (PW-10), who was an eye witness of the accident. Further, the claimants have proved on record copy of FIR Ex.P1, postmortem report of deceased Prem Singh and Smt. Poonam as Ex.P2 & Ex.P3.

Deceased-Prem Singh was posted as Drawing Teacher in Govt. Senior Secondary School, Shamdo. As per salary certificate Ex.P6, he was getting total salary of Rs.23,111/- per month. After deducting house rent allowance, medical allowance, special pay etc., his monthly salary was taken by the Tribunal as Rs.22,446/- per month i.e. Rs.2,69,352/- per annum. Out of this, Rs.12,226/- were deducted as income tax. Remaining amount came to Rs.2,57,126/-, out of which, 1/3rd amount was deducted towards his personal expenses. The dependency of claimants, thus, came to Rs.1,71,418/- per annum. Deceased was about 55 years of age at the time of accident/death. The Tribunal had applied multiplier of 2 till the age of retirement of deceased. By doing so, the dependency of claimants came to Rs.3,42,836/- (Rs.1,71,418/- x 2). The Tribunal has further observed that after retirement, the deceased would get 50% of the salary amount as pension. Accordingly, his pension was assessed as Rs.85,000/- per annum. It was further held that he would have been able to ear some income by doing some other work, after retirement, for about 7-8 years. Considering all these circumstances, the annual income of deceased, after retirement, was assessed as Rs.1,00,000/-. After applying the multiplier of 7, claimants were found entitled to compensation of Rs.7,00,000/- (Rs.1,00,000 x 7). In this way, total dependency of claimants came to Rs.10,42,836/- (Rs.3,42,836/- + Rs.7,00,000/-). In addition to it, Rs.13,000/- were awarded towards to claimant No.1 (widow) on account of loss of consortium and Rs.10,164/- as funeral expenses. Ultimately, the claim petition was allowed and claimants were found entitled to Rs.10,65,000/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimants-appellants have

preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 that the accident took place due to rash and negligent driving of offending vehicle by its driver-respondent No.1. The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Hon'ble the Supreme Court in **Sunil Sharma and others vs. Bachitar Singh and others**, 2011 AIR SC (Civil) 1336 has held that deductions on account of HRA, CCA, medical allowance, EPF and GIS cannot be made from the salary of deceased while assessing dependency of claimants. In another judgment passed in **Sri K.R. Madhusudhan and others vs. Administrative Officer and another**, 2011 AIR (SC) 979, Hon'ble the Supreme Court held as under:-

“14. In view of this evidence, the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation, granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years, the multiplier is 11, which is specified in the II Column in the II Schedule in the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.”

In the facts of the present case, the Tribunal has wrongly

applied split multiplier method while assessing the compensation.

Moreover, future prospects has also not been granted while doing so. Accordingly, in the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77 and **National Insurance Company Limited Vs. Pranay Sethi and others**, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income (as per Ex.P6)	Rs.23,111/- per month i.e. Rs.2,77,332/-
(ii)	Income after deduction of income tax of Rs.12,226/-	Rs.2,77,332 - 12,226/- =2,65,106/- per annum
(iii)	15% of (ii) above to be added as future prospects	2,65,106 + 39,766 = Rs.3,04,872/-
(iv)	1/3 rd of (iii) above is deducted as personal expenses of the deceased	Rs.3,04,872 – 1,01,624 = Rs.2,03,248/-
(v)	Compensation after multiplier of 11 is applied	Rs.2,03,248/- x 11 = Rs.22,35,728/-
(vi)	Compensation under conventional heads (funeral expenses etc.)	Rs.70,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.23,05,728/-
(viii)	Enhanced amount of compensation	Rs.23,05,728 – 10,65,000 = Rs.12,40,728/-

The enhanced amount of compensation of **Rs.12,40,728/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “**Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others**, Civil Appeal No.448 of 2018 (arising

out of SLP (C) No.26853 of 2016) decided on 19.01.2018.” Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

02.05.2018
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No