

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No: 5679 of 2011
DECIDED ON: OCTOBER 12, 2018

GURMAIL SINGH & OTHERS

.....APPELLANTS

VERSUS

BALJINDER SINGH & OTHERS

.....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ashok Jindal, Advocate
for the appellants.

Mr. Rajan Bhargav, Advocate for
Mr. Vishal Aggarwal, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (ORAL)

The present appeal has been filed by the legal heirs of Harbans Kaur, for enhancement of compensation awarded by Motor Accident Claims Tribunal, Bathinda (hereinafter referred as 'the Tribunal') vide award dated 06.06.2011.

2. The brief facts are that on 22.08.2010, Harbans Kaur alongwith her grandson was going towards her house from bus stand. When she reached near Dharmshala of Village Tungwali, she was struck by a tanker bearing registration No. HR-57-A-0912 (for short 'the offending vehicle), which was being driven

by respondent No.1 in a rash and negligent manner. As a result of accident she sustained fatal injuries. FIR No. 125, dated 23.08.2010, under Sections 304-A and 279 of the Indian Penal Code was registered at Police Station Nathana.

3. The husband of the deceased-Harbans Kaur and three major sons filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act'). The driver of the offending vehicle; owner of the offending vehicle and insurer of the offending vehicle, were arrayed as respondents No.1 to 3 respectively, in the claim petition.

4. The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of offending vehicle. The age of the deceased was 62 years. The Tribunal awarded a lump-sum compensation of ₹1,80,000/- and further, awarded ₹5000/- for funeral expenses and ₹5000/- for loss of consortium. A total sum of ₹1,90,000/- was awarded alongwith interest @7% per annum. The amount was to be paid by the insurer but recovery rights were granted.

5. Learned counsel for the appellants argued that the Tribunal erred in awarding a lump-sum compensation and not applying the multiplier method. He further argued that the amounts awarded under the Conventional Heads is on the lower side.

6. Learned counsel for Insurance Company argued that the monthly income of deceased was claimed as ₹5000/- but same was not established by the claimants, the Tribunal rightly awarded lump-sum amount.

7. No one has put in appearance on behalf of owner and driver of the offending vehicle in spite of service.

8. The contention of learned counsel for the appellants that the

Tribunal should have applied the multiplier method deserves acceptance. The Supreme Court in a number of cases has held that the multiplier method should be applied for awarding just and equitable compensation. There is no dispute upon the fact that the deceased was 62 years of age and a house wife.

9. The Apex Court in **Jitendra Khimshankar Trivedi and others vs. Kasam Daud Kumbhar and others; 2015 (4) SCC 237**, has held as under:

“Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency.”

10. Since the contribution of a house wife cannot be under estimated and it is very difficult to equate her contribution in monetary terms, it would be appropriate, if her notional income is taken as ₹4,500/- per month. The deceased was 62 years of age and multiplier of 7 is to be applied. In case where the notional income of the house-wife is considered, no deduction for self-expenses is to be made. This Court relying upon a decision of the Apex Court in case of **Arun Kumar Aggarwal and another Versus National Insurance Company and others;** (2010-3) 159 PLR 428 (SC) in **Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others,** Vol. CLXXII (2013-4) 329, has held as under:

"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be ₹3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

11. In view of Apex Court judgment rendered in the case of National Insurance Co. Ltd. vs. Pranay Sethi and others; AIR 2017 SC 5157, claimants are entitled to an amount of ₹70,000/- under the Conventional Heads i.e. ₹15,000/- for funeral expenses, ₹15,000/- for loss of estate and ₹40,000/- for loss of consortium.

12. In view of above discussion, the compensation is recalculated as under:

Monthly Income	₹4500/-
Annual notional Income (₹4500x12)	₹54,000/-
Applying multiplier of '7' (₹54,000x7)	₹3,78,000/-
Funeral Expenses	₹15,000/-
Loss of estate	₹15,000
Loss of Consortium	₹40,000/-
Total	₹4,48,000/-

13. The award dated 06.06.2011 is modified to the extent that amount awarded of ₹1,90,000/- is enhanced to ₹4,48,000/-. The appellants shall be entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount.

14. The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

OCTOBER 12, 2018
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<i>Whether speaking/reasoned:</i>	<i>Yes / No</i>
<i>Whether reportable :</i>	<i>Yes / No</i>