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

FAO No.187 of 2012 (O&M)
Date of Decision: 20.09.2018

Mamta Rani and others

... Appellants

Versus

Kulwinder Singh @ Kinder and others

... Respondents

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

Present:- Mr. Neeraj Khanna, Advocate,
for the appellants.

Ms. Sanya Sapra, Advocate for
Mr. Ashwani Talwar, Advocate,
for respondent No.3.

TEJINDER SINGH DHINDSA, J.(ORAL)

CM No.907-CII of 2012

For the reasons mentioned in the application, the delay of 18 days in re-filing the appeal is condoned.

Application disposed of.

Main Appeal

This is a claimants' appeal seeking enhancement of compensation.

Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 seeking compensation to the tune of Rs.50 lakhs on account of death of Raj Kumar in a motor vehicle accident that took place on 19.02.2009. Claimants were the widow, two minor sons, minor daughter and aged mother of the deceased.

Claimants asserted that on the date of the accident Raj Kumar (since deceased) was proceeding on a scooter and was struck by a Tata Mini Truck bearing registration No. PB-05-M-9980 being driven by Kulwinder Singh in a rash and negligent manner. Claim petition having been contested, the following issues were framed by the Tribunal:-

> 1) ***"Whether Raj Kumar died in a motor vehicle accident occurred due to rash and negligent driving of truck No. PB-05-M-9980 by its driver, respondent No.1, Kulwinder Singh on 19.02.2009 in the area of near Pardeep Woollen Mills, Opposite Milk Plant, Verka, Amritsar? OPA.***
> 2) ***Whether claimants are entitled to the compensation, if so, to what amount and from whom? OPA.***
> 3) ***Whether respondent No.1, driver of the offending vehicle was not holding a valid and effective driving license at the time of accident? OPR-3.***
> 4) ***Relief."***

With regard to issue No.1, findings have been returned in favour of the claimants and it has been held that death of Raj Kumar took place on account of injuries suffered in an accident involving the offending/insured vehicle and which was being driven in a rash and negligent manner. Insofar as quantum of compensation is concerned, a total compensation amount of Rs.11,25,000/- along with interest @ 6% per annum from the date of filing of the claim petition till actual realization has been awarded. The liability to pay the compensation amount has been held to be joint and several.

Since the only issue arising in the instant appeal is with regard to quantum of compensation, I have heard counsel for the claimants/appellants as also learned counsel representing the contesting respondent Insurance Company.

Counsel for the appellants while claiming enhanced compensation submits that the monthly income of the deceased has been assessed as Rs.9500/- only whereas it ought to have been taken as Rs.19,000/- as the deceased was engaged and serving as Spinning Master in two separate concerns i.e. Pearl Woollen Mills and Pardeep Kumar Bros.

Further contended that no addition in income towards future prospects has been granted and even under the conventional heads only Rs.10,000/- has been awarded.

Per contra counsel representing the contesting respondent Insurance Company has argued that the income that has been assessed at Rs.9500/- per month is correct and based upon due appreciation of evidence adduced on record. It has been very fairly conceded that the amount under the conventional heads deserves to be enhanced to Rs.70,000/- as per dictum laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

Having heard counsel for the parties at length, this Court is of the considered view that the compensation amount deserves to be re-visited and suitably re-assessed/enhanced.

Insofar as the assessment of monthly income at Rs.9500/- per month of the deceased is concerned, the same would not call for any interference.

Even though claimants had examined Satish Sachdeva Manager-cum-Accountant of Pearl Woollen Mills and Pardeep Kumar Bros. as AW4 and who had tendered in evidence documents Ex.A-1 to A-10 and which would prima facie indicate that the deceased had been engaged as Spinning Master in both the firms and earning Rs.9500/- per month from each unit yet such version has been disbelieved by observing that if the income was to be clubbed and taken as Rs.19,000/- per month, the annual income of the deceased would swell to Rs.2,28,000/- per annum and in spite there of no evidence had been led as regards income tax having been paid. The claimants did not lead any evidence towards Attendance Register which in turn could have reflected that the deceased was discharging his duties and responsibilities in the capacity of Spinning Master in both the concerns i.e. Pearl Woollen Mills and Pardeep Kumar Bros. simultaneously.

Under such circumstances, the Tribunal has rightfully taken the monthly income of the deceased as Rs.9500/- per month.

Tribunal, however, has completely overlooked the aspect as regards addition in income towards future prospects. Age of the deceased has been accepted by the Tribunal as 48 years and which was so mentioned in Ex.A-12 i.e. post mortem report. Date of the accident was 19.02.2009. Since deceased was not in any permanent job, otherwise was a salaried person and keeping in view his age to be in the age bracket of 40-50 years, an addition in income @ 25% towards future prospects is granted by following the judgment laid down in ***Pranay Sethi's case (supra).*** Tribunal has rightfully made a deduction of 1/4th towards personal and living expenses of the deceased keeping in view the number of dependants. Even multiplier of 13 has been rightfully applied to the multiplicand keeping in view the age of the deceased is 48 years. Under the conventional heads, the amount awarded by the Tribunal would stand enhanced from Rs.10,000 to Rs.70,000/- i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and like amount of Rs.15,000/- towards funeral expenses.

In view of the above, the compensation amount awarded is re-assessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Income Rs.9500/- p.m. as assessed by Tribunal	Rs.9500/-
2.	Future prospects @ 25%	Rs.9500 +2375=11,875/-
3.	1/4th deduction towards personal and living expenses of the deceased	Rs.11875-2969=8906/- Rs. 8906 x 12=1,06,872/-
4.	Compensation after applying multiplier of 13	Rs. 106872 x 13=13,89,336/--
5.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.14,59,336/-

The afore calculated enhanced compensation amount be released in favour of the claimants/appellants along with interest @ 6% from the date of claim petition till actual realization.

The apportionment of the compensation amount as granted by the Tribunal would stay intact.

Petition is allowed in the aforesaid terms.

20.09.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No