

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

C.M. No. 19748-CII-2018 in/and

FAO No. 7059 of 2011 (O&M)

Date of decision : September 19, 2018

Smt. Shanti and others

.....Appellants

Versus

Nigam Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Goyal, Advocate
for the appellants.

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate
for respondent No. 3.

LISA GILL, J.

C.M. No. 19748-CII-2018

Prayer in the application is for listing the appeal for final hearing. The matter was placed before the Lok Adalat but no settlement could be arrived at and the matter was sent back to the High Court.

Notice of the application.

No objection is raised by learned counsel for the respondent - insurance company.

Application is allowed.

On request of learned counsel for the parties, appeal is taken on Board for hearing today itself.

FAO No. 7059 of 2011 (O&M)

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal') on account of death of Raj Kumar vide award dated 04.08.2011.

Brief facts necessary for adjudication of the case are that the

claimants i.e. widow and children of the deceased filed petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Raj Kumar on 12.09.2009 in a motor vehicle accident caused due to driving of the offending vehicle Truck bearing registration No. HR-55A-9534 driven by respondent No.1 in a rash and negligent manner. It was averred that Raj Kumar alongwith his son Krishan was going from Karnal Town to New Grain Market, Karnal for doing carpenter work. They were on their separate bicycles. When they reached near Grain market, Karnal, offending truck bearing registration No. HR-55A-9534 driven by respondent No.1 in a rash and negligent manner came from behind and hit the bicycle of Raj Kumar. Due to the impact, Raj Kumar fell down and was run over under the wheels of the truck. Raj Kumar received multiple grievous injuries on his person and became unconscious. Thereafter he was taken to the hospital, where he was declared dead. The deceased, aged 44 years at the time of the accident was stated to be working as a carpenter with M/s New Light Furniture Works, Furniture Market, Karnal, getting ₹9,000/- per month as salary. Compensation was prayed for.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether the accident in question resulting in fatal injuries to Raj Kumar since deceased took place due to rash and negligent driving of truck bearing registration No. HR-55A-9534 being driven by respondent No. 1, as alleged? OPP
2. If issue No. 1 is proved to what of compensation, the claimants are entitled to recover if so how much and from whom?OPP
3. Whether the claim petition is not maintainable in the present form, as alleged? OPP.
4. Whether respondent No. 1 was not holding a valid and

effective driving licence, if so to what effect? OPR3

5. Whether the vehicle in question was being driven in contravention of the terms and conditions of the insurance policy as alleged? OPR3.

6. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 12.09.2009 due to rash and negligent driving of the offending Truck bearing registration No. HR-55A-9534 by respondent No. 1. Learned Tribunal awarded a sum of ₹4,53,800/- with interest at the rate of 6% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹3,900/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 14 was applied as the deceased was 45 years old at that time. Additionally, a sum of ₹5,000/- on account of loss of consortium was awarded to claimant widow and a sum of ₹2,000/- on account of loss of estate besides a sum of ₹10,000/- on account of funeral expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that the deceased was highly skilled labourer, thus, his income was assessed on the lower side by the learned Tribunal. It is submitted that in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, loss of future prospects at the rate of 25% should be afforded. It is further submitted that meagre compensation has been awarded under the conventional heads. Multiplier of 14 has been applied correctly. It is, thus, prayed that

compensation awarded to the claimants be enhanced.

Learned counsel for the respondent - insurance company while refuting the arguments raised submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 04.08.2011 be upheld.

Heard learned counsel for the parties.

There is no dispute that Raj Kumar lost his life in a motor vehicle accident, which took place on 12.09.2009 caused due to the rash and negligent driving of Truck bearing registration No. HR-55A-9534 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality. It is also not disputed that the deceased was 45 years old at the time of the accident.

Income of the deceased has been assessed as ₹3900/- per month by the learned Tribunal. The deceased was treated to be working as a Carpenter with New Light Furniture Works, Furniture market, Karnal. PW3 Gian Bhushan, who deposed that the deceased was working in his shop, has not produced any documentary evidence on record to show the employment of the deceased at his shop. However it cannot be ignored that in September, 2009 even minimum wages of a skilled worker in State of Haryana were ₹4,044/-, therefore, income of the deceased is assessed as ₹4,044/-. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 25% (₹809/-) as the deceased was 45 years old at the time of accident, which takes the income of the deceased to ₹4,853/- per month. In view of law laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Versus Delhi**

1/3rd is to be applied as number of dependants is three (3), thereby rendering income of the deceased to be ₹3235/-(4853-1618). Applying a multiplier of 14, dependency of the claimants is, therefore, assessed as ₹5,43,480/- (₹3235x12x14). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate instead of ₹10,000/- and ₹2,000/- respectively. Besides the claimant widow is entitled to ₹40,000/- instead of ₹5,000/- on account of loss of consortium. Claimants are, thus, entitled to total compensation of ₹6,13,480/-, detailed as under:-

Loss of dependency (₹3235x12x14)	₹5,43,480/-
Loss of consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹6,13,480/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

September 19, 2018
rts

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