IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-1740-2013 (O&M)
Date of Decision: 26.07.2018

Kavita & others ... Appellants

Versus

Ishwar Singh & others ... Respondents

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

Present:- Mr. Mukesh Yadav, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3/Insurance company.

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TEJINDER SINGH DHINDSA, J. (ORAL)

This is claimants' appeal seeking enhancement of compensation.

2. Briefly, it may be noticed that a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed before the Motor Accident Claims Tribunal, Bhiwani claiming compensation to the tune of Rs.40 lakhs on account of death of Kuldeep Singh in a motor vehicle accident that took place on 14.10.2009. Claimants were the widow, minor daughter, minor son and father of the deceased.

3. Claimants had asserted that on 14.10.2009, Kuldeep Singh (since deceased) was proceeding on a motorcycle and at about 7 P.M., a tractor bearing registration No.HR-18-A-6808 being driven in a rash and negligent manner by Ishwar Singh-driver struck against the motorcycle and Kuldeep Singh succumbed to the injuries that he suffered. It was pleaded that the deceased was running a cloth shop under the name and style of M/s Adhunik Fancy Emporium and was earning an income of more than

Rs.12,000/- per month. Age of the deceased was disclosed as 27 years in the claim petition.

4. Claim petition having been contested, the following issues were framed by the Tribunal:

> *"1.Whether the accident which occurred on 14.10.2009, at 7:00 P.M. Caused injuries to petitioner Kavita and death to Kuldeep, husband of Kavita and father and son of petitioners No.2 and 3 respectively petitions due to rash and negligent driving of respondent No.1 while driving vehicle No. HR-18A-6808 as alleged? OPP*
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> *2. If issue No.1 is proved, whether the petitioner Kavita and LRs of deceased Kuldeep are entitled for compensation, if so, to what amount and from whom? OPP*
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> *3. Whether the petition is not maintainable in the present from? OPR*
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> *4. Whether the petitioners have no locus standi to file the present petition? OPR*
>
> *5.Whether the driver of the offending vehicle i.e. respondent No.1 was not holding the valid driving license on the date of accident? OPR*
>
> *6. Whether the petition is bad for non joinder and mis joinder of necessary parties? OPR*
>
> *7. Whether the respondent No.3 liable to indemnify the compensation to the claimant? OPR*
>
> *8. Relief."*

5. Insofar as issue No.1 was concerned, findings were returned in favour of the claimants and it was held that Kuldeep Singh had died in the accident that took place on 14.10.2009 involving the offending tractor and on account of rash and negligent driving of respondent No.1/Ishwar Singh.

6. Insofar as quantum of compensation is concerned, age of the deceased was taken as 27 years as mentioned in the Post Mortem Report,

Ex.PW1/A. Tribunal has taken the income of the deceased to be Rs.4126/- per month i.e. the wages admissible to an unskilled worker in relation to the date of the accident. Deduction of 1/4th from the income was made towards the personal and living expenses of the deceased. Multiplier of 17 was applied and the compensation was worked out as Rs.6,31,380/-. In addition thereto, Rs.5000/- was awarded towards transportation of the body, Rs.10,000/- as funeral expenses and Rs.10,000/- as loss of consortium.

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

8. In the considered view of this Court, the compensation awarded by the Tribunal is on the lower side and it requires to be enhanced suitably.

9. Claim set up on behalf of the claimants was that Kuldeep Singh was running a cloth shop under the name and style of M/s Adhunik Fancy Emporium and earning more than Rs.12,000/- per month. To substantiate such claim, claimants had examined PW2, Virender Goyal, Proprietor Virender Bhagwan Dass and Associates, Charted Accountant as also Naresh Bansal, Proprietor of Sumit Textiles Rohtak as PW6 and from whom items were purchased by Kuldeep Singh (since deceased) in the course of his commercial dealings.

10. Tribunal has, however, discounted the testimony/evidence adduced on behalf of the claimants. It has been observed that no income tax and sales tax returns have been produced. Even the testimony of Naresh Bansal, PW6 has been read over in Court today itself by learned counsel representing the Insurance Company and which also does not inspire confidence and could not have been taken as conclusive evidence with

regard to the deceased actually running a shop and earning a handsome income.

11. This Court, as such, does not find any infirmity in the view taken by the Tribunal in not having accepted the claim set forth as regards income of the deceased to be more than Rs.12,000/- per month while running a cloth shop.

12. Be that as it may, accident took place on 14.10.2009. Deceased was maintaining and supporting a family comprised of his widow, two minor children and dependant father. Income of the deceased has been taken as Rs.4126/- per month by the Tribunal i.e. at par with the minimum wages of an unskilled worker in the State of Haryana at the relevant point of time. In the given facts and circumstances of the case, it would be safe to presume that the deceased was earning Rs.6000/- per month to support his family. The relevant State Government Notification is only indicative of the bare minimum wages that would be admissible to an unskilled worker. Even though, the documentary as also oral evidence may not have been sufficient to record a finding as regards income of the deceased to be Rs.12,000/-, yet it was certainly indicative of the deceased to be running a shop.

13. For the reasons stated above, the income of the deceased would be taken as Rs.6000/- per month.

14. Furthermore, Tribunal has erred in not granting and recognizing any increase in income of the deceased towards future prospects. Keeping in view the guidelines in **National Insurance Company Limited Vs. Pranay Sethi & others,2017 (4) RCR (Civil) 1009** and coupled with the fact that the deceased was a person who was self employed and aged 27 years, 40% increase in income towards future prospects would be appropriate. It is so

directed.

15. Even with regard to compensation amount awarded under the conventional heads i.e. funeral expenses, loss of estate and consortium, the amount would stand enhanced to Rs.70,000/- as opposed to Rs.25,000/- that was awarded by the Tribunal.

16. In view of the above, the compensation amount to be awarded to the claimants is re-assessed in the following terms:

Sr. No.	Head	Calculation
1.	Income 6000/-	Rs.6000 + 40% increase in future prospects = 8400/-
2.	$1/4^{th}$ deduction towards personal and living expenses of the deceased.	Rs.8400 - 2100 = 6300/- 6300 x 12 =75,600/-
3.	Compensation after applying multiplier of 17	75,600 x 17 =12,85,200/-
4.	Conventional Heads: loss of consortium/funeral expenses.	Rs.70,000/-
5.	Total	Rs.13,55,200/-

17. The enhanced compensation as calculated hereinabove be released in favour of appellant No.1, Smt. Kavita i.e. widow of the deceased as also mother and natural guardian of appellants No.2 and 3 along with interest at the rate of 6% from the date of filing of the instant appeal and till the date of realization.

18. Appeal is allowed in the aforesaid terms.

26.07.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No