

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

**FAO-10430-2014 (O&M)
Date of Decision:30.08.2018**

Pardeep Kumar & others

... Appellants

Versus

Rameshwar Dayal & others

... Respondents

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

Present: Mr. Jitender Nara, Advocate for the appellants.

Mr. Punit Jain, Advocate for respondent No.3/Insurance Company.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

This is claimants' appeal seeking enhancement of compensation.

Brief facts that may be noticed are that Anuja died in a motor vehicle accident on 28.04.2012 while she was pillion riding on a motorcycle bearing registration No.HR-14-H-8628 and had been struck by a canter truck bearing registration No.HR-47-B-0897.

The claim petition under Section 166 of the Motor Vehicle Act, 1988 was filed before the Motor Accident Claims Tribunal, Rewari by the claimants who happen to be the husband, two minor children, father-in-law and mother-in-law of the deceased. Compensation to the tune of Rs.40 lakhs was claimed.

Upon the pleadings of the parties, the following issues were framed by the Tribunal:

“1. Whether Anuja died and petitioner Narender received injuries in the vehicular accident that took place due to rash and negligent driving of canter bearing registration No.HR-47-

B-0897 by respondent No.1 as alleged in the petition? OPP

2. If issue No.1 is proved, whether the petitioners are entitled to the compensation? If so to what amount and from whom?

OPP

3. Whether respondent No.1 was not holding a valid and effective driving license on the date of accident? If so its effect?

OPR

4. Relief.”

It may be noticed at the outset that the Tribunal recorded a specific finding that the accident had taken place due to rash and negligent driving of the offending/insured canter vehicle and which had hit the motorcycle on which Anuja (deceased) was pillion riding and which resulted in her death. Insurance Company has not challenged such finding of the Tribunal and as such, this aspect has attained finality. The Tribunal vide award dated 16.07.2014 has awarded a total compensation amount of Rs.6,90,000/- and the liability to pay the compensation amount was held to be joint and several. As such, it is the respondent/Insurance Company which would be the contesting party herein.

Learned counsel representing the appellants has argued that the compensation awarded is grossly inadequate. It is urged that Anuja (deceased) was only 23 years of age as on the date of accident and was drawing a salary of Rs.17,000/- per month while serving as a Teacher in a private school. Counsel submits that the Tribunal has not appreciated in the correct perspective the evidence that had been led to prove the monthly income of the deceased to be Rs.17,000/- per month. It is argued that the notional income of Rs.3000/- per month assessed by the Tribunal of the deceased was much on the lower side.

Counsel further contends that the total amount of Rs.35,000/- awarded by the Tribunal under the conventional heads needs to be enhanced.

Per contra, learned counsel representing the respondent/ Insurance Company submits that the award dated 16.07.2014 passed by the Motor Accident Claims Tribunal, Rewari is founded on cogent and valid reasoning and the amount of compensation awarded by the Tribunal would not call for any interference.

Counsel for the parties have been heard.

The only issue that arises for consideration in this appeal is with regard to quantum of compensation.

Perusal of the impugned award would reveal that age of the deceased Anuja has been accepted as 23 years. Even though, claimants had asserted that the deceased was serving as a Teacher in a private school and drawing monthly salary of Rs.17,000/-, yet the Tribunal has not accepted such claim by noticing that the salary certificate Ex.P3 adduced by the claimants reflected deceased Anuja to have worked only from 12.04.2012 to 28.04.2012 i.e. for a period of 16 days. That apart, the attendance register Ex.P5 reflected the time of departure of deceased Anuja from the school on 28.04.2012 at 11.00 A.M. whereas the First Information Report that had been lodged mentions the deceased going along with her husband on the motorcycle at 9 A.M. when the accident had occurred. In the considered view of this Court, the Tribunal has rightfully not accepted the claim as regards monthly income of the deceased to be Rs.17,000/- per month.

Be that as it may, the notional income of the deceased assessed as Rs.3000/- per month by the Tribunal is on the lower side. In the case of

Lata Wadhwa & others Vs. State of Bihar and others (2001) 8 SCC 197, the Apex Court had assessed the notional monthly income of the deceased housewife as Rs.3000/-. In that case, the accident had taken place in the year 1981. The accident in the present case had taken place in the year 2012 i.e. after a period of about 30 years. Keeping in view the time period elapse of more than 30 years between the accident in the case of **Lata Wadhwa (supra)** and the accident in the present case, and coupled with the settled position that contribution of a housewife cannot be estimated and it being not possible to calculate her contribution to the family in monetary terms, it would be a fit case to take the monthly income of the deceased as Rs.6000/- per month. It is so directed.

The Tribunal has applied the multiplier of 18 by accepting the age of the deceased to be 23 years as on the date of accident. The same is as per parameters laid down by the Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**.

The Tribunal has awarded a sum of Rs.5000/- towards funeral expenses, a like amount of Rs.5000/- towards loss of estate and Rs.25,000/- towards loss of love and affection and consortium. Such amount of Rs.35,000/- awarded by the Tribunal under the conventional heads would stand enhanced to Rs.70,000/- in view of the judgment of the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi & others, 2017 (4) RCR (Civil) 1009**.

In view of the discussion made above, the compensation awarded to the claimants is reassessed as follows:

Sr. No.	Computation/Head	Revised calculation
1.	Income Rs.6,000/-	Rs.6000/-
2.	Compensation after applying multiplier of 18	6000 x 12=72,000/- 72,000 x 18 = 12,96,000/-
3.	Conventional Heads i.e. loss of consortium and funeral expenses etc.	Rs.70,000/-
4.	Total	12,96,000 + 70,000 = Rs.13,66,000/-

The afore computed enhanced compensation would be apportioned equally amongst the appellants herein and would be paid to them along with interest @ 6% from the date of filing of the instant appeal and till actual realization.

Appeal is allowed in the aforesaid terms.

30.08.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |