

**Sr. No. 222
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.10499 of 2014 (O&M)

Date of Decision: 07.08.2018

Manisha and others

... Appellants

Versus

Anil and others

... Respondents

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

Present:- Mr. Surender Saini, Advocate,
for the appellants.

Mr. Rajbir, Advocate,
for respondent No.3.

TEJINDER SINGH DHINDSA, J.(ORAL)

This is claimants' appeal seeking enhancement of compensation.

Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 seeking compensation to the tune of Rs.20 lakhs on account of death of Parveen in a motor vehicle accident that took place on 11.07.2013. Claimants were the widow, minor son and parents of the deceased. It was asserted that on 11.07.2013 in the area of G.T.Road Murthal, District Sonapat, a car bearing registration No. HR-10-T-2550 had struck against the deceased who was proceeding on a bicycle. Parveen (since deceased) sustained serious and grievous injuries and to which he succumbed on the spot. FIR No.201 dated 11.07.2013 was lodged with the Police Station Murthal on the statement of Ravinder i.e. brother of the deceased.

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

1. ***“Whether the death of Parveen was caused on account of motor vehicular accident dated 11.07.2013 by respondent No.1 on account of his rash and negligent driving while driving offending vehicle No. HR-10-T-2550? OPP.***
2. ***If issue No.1 is decided in favour of the claimants/petitioners, whether the claimants/petitioners are entitled to claim the amount as claimed in the claim petition and from whom? OPP.***
3. ***Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident or that respondent No.2 violated the terms and conditions of the insurance policy, if so to what effect? OPR-3.***
4. ***Relief.”***

Since the only issue arising in the instant appeal is with regard to quantum of compensation, this Court would be adverting to the findings returned by the Tribunal as regards issue No.2.

Perusal of the impugned award would reveal that for the purpose of computing compensation, the income of the deceased has been taken as Rs.6867/- per month. 1/3rd deduction has been made towards personal and living expenses of the deceased. Age of the deceased has been taken as 35 years and, accordingly, multiplier of 16 has been applied. That apart an amount of Rs.1 lakh towards loss of consortium, Rs.1 lakh towards loss of care and guidance for the minor child, Rs.25,000/- towards

funeral expenses and Rs.25,000/- towards pain, loss and suffering was determined. That apart an amount of Rs.3000 was awarded towards transportation expenses of the body. The total compensation determined by the Tribunal is Rs.11,31,976/- to be paid along with 7.5% interest per annum from the date of filing of the claim petition till date of actual realization. The liability of paying the compensation was held to be jointly and severally amongst the respondents i.e. Driver, owner as also the Insurance Company.

I have heard counsel for the appellants, counsel for contesting respondent No.3-Insurance Company and have even perused the original records of the case that had been summoned.

In the considered view of this Court, the compensation awarded in favour of the claimants would require to be reassessed.

From the records of the case, it becomes apparent that documentary proof had been adduced on record in the shape of Ex.C-7, it was the salary slip of deceased Parveen reflecting the salary amount of Rs.7000/- per month while working as a driver with Magnet Industries, Industrial Area, Ghanaur. To the same effect was the deposition of PW-5, Alok Tyagi, Field Officer of the employer. Ex.C-11 depicted the ESI Number assigned towards the deceased for making necessary deductions/contributions. The Tribunal, however, while assessing the income has taken into account deductions towards ESI welfare fund and other miscellaneous funds and thereafter assessed the income to be

Rs.6867/- per month. The deductions that had been noticed by the Tribunal for all intents and purposes would be part of the salary of the deceased. This would be particularly so while assessing monthly income while computing award of compensation under a beneficial piece of legislation. Accordingly, it is held that income of the deceased would be taken as Rs.7000/- per month instead of Rs.6867/-.

This Court finds that the Tribunal has overlooked the aspect as regards increase in income towards future prospects. As per evidence adduced, deceased was employed with a private firm and was drawing a fixed salary. Keeping in view the age bracket of the deceased i.e. 37 years, a 40% increase in income towards future prospects is also granted as per ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

Deceased was survived by 04 dependents i.e. a widow, minor child and aged parents. By applying the principles laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77***, 1/4th deduction towards personal expenses of the deceased ought to have been taken instead of 1/3rd that has been applied by the Tribunal in the impugned award. It is so directed.

This Court finds from the records that the Tribunal has erred in taking the age of the deceased to be 35 years of age. In this regard, Tribunal has gone only as per the age indicated in the post-mortem report at Ex. C-6.

Adduced on record at Ex. C-11 was an Employees' State Insurance Corporation Identity Card assigning IP No.13144-15840 in the name of deceased Parveen. Such card reflected the precise date of birth of the deceased to be 01.07.1976. This was a document that had been placed on record and relied upon by the claimants themselves. There was no occasion for the Tribunal to have discarded such document at Ex.C-11 which would be construed as concrete and conclusive evidence with regard to age of the deceased. Admittedly, the accident in question had taken place on 11.07.2013. Keeping in view the date of birth reflected in the ESIC Card at Ex. C-11 age of Parveen (since deceased) as on the date of accident would be 37 years. In view thereof the multiplier that ought to have been applied would be 15 instead of 16 that has been applied by the Tribunal.

Further more even the amount of Rs.2,53,000/- awarded by the Tribunal under the conventional heads is on the excessive side. By following the dictum laid down by the Apex Court in **Pranay sethi's case (supra)**, a lump sum amount of Rs.70,000/- towards loss of consortium, loss of estate and funeral expenses is awarded.

In view of the discussion hereinabove, the compensation payable at the hands of the Insurance Company is re-assessed and calculated as under:-

Sr. No.	Head	Calculation
1.	Income Rs.7000/- p.m.	Rs.7000 + 40% future prospects =7000+2800=Rs.9800/-

2.	1/4 th deduction towards personal and living expenses of the deceased	Rs.9800-2450=7350/- Rs. 7350 x 12=88,200/-
3.	Compensation after applying multiplier of 15	Rs. 88,200 x 15=13,23,000/-
4.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.13,93,000/-

The enhanced compensation amount is directed to be apportioned equally between appellant No.1 and appellant No.2 i.e. the widow and minor son of the deceased along with interest @ 6% from the date of filing of the present appeal till actual realization.

It is further directed that the amount falling to the share of appellant No.2 i.e. minor son would be deposited in a Fixed Deposit in a nationalized bank carrying maximum rate of interest and it would be subject to maturity upon appellant No.2 attaining the age of majority.

Petition is allowed in the aforesaid terms.

07.08.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes