

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

204 (1)

FAO-1277-2014 (O&M)

Mahima (minor) and others

.....Appellants

Versus

Radhey Shyam and another

.....Respondents

(2)

FAO-840-2014 (O&M)

Poonam

.....Appellant

Versus

Radhey Shyam and another

.....Respondents

Date of Decision:06.04.2018

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Devender Nirban (Rao), Advocate,  
for the appellants.

Mr. M.B. Jain, Advocate,  
for respondent No.2-Insurance Company.

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HARI PAL VERMA, J.(Oral)

CM-4195-4196-CII-2014

Prayer in these applications is for condonation of delay of 3 days in filing and 86 days in re-filing the appeal.

For the reasons stated in the applications, same are allowed and the delay of 3 days in filing and 86 days in re-filing the appeal, is condoned.

FAO-1277-2014 (O&M)

This order shall dispose of two appeals i.e. FAO-1277-2014, titled as **Mahima (minor) and others Versus Radhey Shyam and another** and FAO-840-2014, titled as **Poonam Versus Radhey Shyam and another**. FAO-1277-2014 has been filed by appellants-Mahima, Harshita,

who are minor daughters and Bhoop Singh, who is father of deceased-Rambhagat, who died in the motor vehicular accident, which took place on 23.12.2010, whereas FAO-840-2014 has been filed by Poonam, who is widow of deceased-Rambhagat.

These appeals have been filed to seek enhancement of compensation over and above the amount already awarded by the Tribunal.

As per the claim-petition on 23.12.2010, Manbhawati along with her son Rambhagat (since deceased) was going on a motorcycle from Narnaul to their village Sihma. Rambhagat was driving the motorcycle at a moderate speed. When they reached near Rewari road, in the meantime, the offending vehicle bearing registration No.HR-66-3899 being driven by its driver in a rash and negligent manner, at a very high speed, came from the opposite side. It hit the motorcycle of Rambhagat. As a result thereof, Rambhagat and his mother fell down from the motorcycle and they sustained serious and grievous injuries. Budh Ram along with Devender were also coming on their motorcycle to village Sihma, they stopped on seeing the crowd near the pool and came to know that accident is of a boy of their own village. Manbhawati was unconscious whereas Rambhagat was in conscious state. They asked from Rambhagat about the accident. Budh Ram informed the family of Rambhagat about the accident. Manbhawati and Rambhagat were rushed to Civil Hospital, Narnaul, where the doctor declared Manbhawati dead. Rambhagat had also died in the said accident.

The appellants-claimants in both the appeals have filed two separate claim-petitions under Section 166 of the Motor Vehicles Act, 1988, so as to claim compensation on account of death of Rambhagat, who died in the motor vehicular accident. The deceased Rambhagat was about 28 years

of age and was running a Kiryana shop. He was an income tax assessee and as per assessment year 2009-10, his income was about ₹1,51,277/- for the period from 01.04.2009 to 31.03.2010. Thus, the Tribunal has assessed his income ₹13,000/- per month. Vide a common award i.e. MACT case No.189/RT of 2011/2012 filed by Mahima and others and MACT case No.190/RT of 2011/2012 filed by Poonam, the Tribunal has awarded a total compensation of ₹26,77,000/-, which was apportioned amongst the claimants in the following manner :-

*“Out of the compensation awarded i.e. ₹26,77,000/-, Poonam petitioner in claim petition No.190 RT of 2011/2012 is entitled to ₹10,00,000/-. Mahima and Harshita petitioners No.1 & 2 in claim petition NO.189 RT of 2011/2012 are entitled to ₹7,00,000/- each and the remaining amount is awarded to petitioner No.3-Bhoop Singh in claim petition No.189 RT of 2011/2012.”*

Not satisfied with the aforesaid amount of compensation, the appellants have filed the above appeals, seeking enhancement of compensation.

Learned counsel for the appellants has argued that in view of the law laid down by the Hon'ble Apex Court in **National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009**, the claimants are entitled for an addition of 40% under the head of future prospects, but the Tribunal has awarded this amount @ 30%. He has further argued that no amount has been granted under the head of love and affection. Though, considering the age of the deceased as 28 years, multiplier 17 has rightly been applied.

On the other hand, learned counsel for respondent No.3-

adequate compensation and there is no scope for further enhancement of compensation.

I have heard the learned counsel for the parties.

Death of Rambhagat in the accident, his age and income are not in dispute. It is for enhancement of compensation over and above the compensation awarded by the Tribunal, the appeals have been filed. The argument raised by learned counsel for the appellants that no amount of compensation has been awarded under the head of love and affection, cannot be accepted as in the case of Pranay Sethi(supra), this argument has been dealt with by the Hon'ble Apex Court. The Hon'ble Apex Court has held that a total amount of ₹70,000/- is admissible under the conventional heads which included an amount of ₹15,000 on account of funeral expenses, an amount of ₹15,000/- towards loss of estate and another amount of ₹40,000/- on account of loss of consortium. Thus, a total amount of ₹70,000/- is admissible under the conventional heads. The income of the deceased has been reckoned on the basis of his income tax returns submitted for the assessment year 2009-10, wherein his income has been shown as ₹1,51,277/-. This income tax return was submitted by the deceased before his accident and therefore, there is no possibility of any exaggeration. Considering the income of the deceased as ₹13,000/- per month and after applying multiplier 17, coupled with 1/4<sup>th</sup> deductions, as there are total four claimants in these claim-petitions and adding 40% amount towards future prospects, this Court finds that the claimants are held entitled to compensation in the following manner:-

|                        |   |           |
|------------------------|---|-----------|
| Monthly income         | : | ₹13,000/- |
| Future prospects (40%) | : | ₹5,200/-  |
| Total monthly income   | : | ₹18,200/- |

|                                                |   |               |
|------------------------------------------------|---|---------------|
| Annual income                                  | : | ₹2,18,400/-   |
| Income tax                                     | : | ₹6,015/-      |
| Annual income<br>(after tax deductions)        | : | ₹2,12,385/-   |
| Annual dependency<br>(after tax deductions)    | : | ₹1,59,288.75  |
| Total loss of dependency<br>( ₹1,59,288.75x17) | : | ₹27,07,908.75 |
| Loss of estate                                 | : | ₹15,000/-     |
| Funeral expenses                               | : | ₹15,000/-     |
| Loss of consortium                             | : | ₹40,000/-     |
| -----                                          |   |               |
| Total amount of compensation :                 |   | ₹27,77,908.75 |
| Amount already awarded :                       |   | ₹26,77,000.00 |
| -----                                          |   |               |
| Enhanced amount                                | : | ₹1,00,908.75  |
| Rounded off                                    | : | ₹1,00,909/-   |

The enhancement amount of compensation shall be disbursed to the appellants in the similar manner, as indicated in the award of the Tribunal.

The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of claim-petition till its realization.

Since the appeal (FAO-1227-2014) has been filed after a delay of 89 days and the appeal (FAO-840-2014) has been filed after a delay of 149 days, the appellants-claimants in both the appeals shall not be entitled to interest for the delayed period.

With the aforesaid modification in the award, both the appeals stand disposed of.

April 06, 2018  
seema

(HARI PAL VERMA)  
JUDGE

Whether speaking/reasoned: Yes/No  
Whether Reportable: Yes/No