

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

FAO No. 1690 of 2014(O&M)

Date of Decision: October 22 , 2018.

Hasina Begam and others

..... APPELLANT (s)

Versus

Dharminder Singh @ Kaka and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Gopal Mittal, Advocate for
Mr. R.C.Gupta, Advocate
for the appellants.

Ms. Suman Nandal, Advocate for
Mr. Amit Jaiswal, Advocate
for respondent No.2.

Ms. Kiran Vema, Advocate (legal-aid counsel) and
Mr. Sanjeev Kodan, Advocate
for respondent No.3 – Insurance Company.

LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Patiala (for short, the 'Tribunal') vide impugned award dated 28.11.2013 on account of death of Sunil Kumar in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Sunil Kumar, who lost his life in a motor vehicle accident which took place on 16.02.2010. FIR No.10

dated 17.02.2010, under Sections 279/304A IPC was registered against respondent No.1. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of truck canter bearing registration No. HR-38J-9613 by respondent No.1 – Dharminder Singh @ Kaka. The said finding of the learned Tribunal has attained finality.

The learned Tribunal awarded a sum of ₹7,78,000/- as compensation to the appellants vide impugned award dated 25.11.2013. The deceased was 32 years old at the time of the accident. Income of the deceased was assessed as ₹3,000/- per month. Increase in income at the rate of 50% was afforded on account of future prospects. Deduction to the extent of 1/4th on account of personal expenses was effected and multiplier of 16 was applied. ₹1,00,000/- towards loss of consortium and ₹25,000/- towards funeral expenses were awarded, besides, ₹5,000/- on account of loss of care and guidance for minor children.

Learned counsel for the appellants submits that income of the deceased has been wrongly assessed by the learned Tribunal as ₹3,000/- per month whereas, he was earning ₹6,000/- per month. It is however conceded that future prospects at the rate of 40% instead of 50% need to be afforded in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**. Learned counsel further submits that amount under the conventional heads be awarded in terms of the judgment of the Hon'ble Supreme court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal**

No.9581 of 2018 decided on 18.09.2018. It is thus prayed that compensation awarded to the appellants be enhanced.

Learned counsel for respondent No.3 – Insurance Company on the other hand prays that the impugned award does not call for any enhancement of the compensation.

I have heard learned counsel for the parties and have gone through the available record.

Liability of the Insurance Company is not in dispute and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.1 – Dharminder Singh @ Kaka. Age of the deceased was 32 years at the time of the accident. Learned counsel for the appellants is however unable to deny that the deceased was indeed a labourer. Minimum wages of even an unskilled labourer prevalent at the relevant time in the State of Punjab were ₹4,214/- per month, therefore, it is considered just and appropriate to assess the income of the deceased to be ₹4,214/- per month instead of ₹3,000/- per month. Increment on account of future prospects is reworked at the rate of 40% instead of 50% in terms of the judgment of the Hon'ble Supreme Court in Pranay Sethi's case (supra) Multiplier of 16 has been correctly applied and deduction of 1/4th was correctly effected as well. However, instead of ₹1,00,000/- on account of loss of consortium and ₹5,000/- on account of loss of care and guidance for the minor children, all the claimants/appellants are held entitled to a sum of ₹40,000/- each on account of loss of consortium in terms of the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on

18.09.2018. Instead of ₹25,000/- towards funeral expenses, the appellants are entitled to a sum of ₹15,000/- each on account of funeral expenses and loss of estate.

Appellants-claimants are, thus, entitled to the amount of compensation which is re-worked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	4,214 p.m. i.e. ₹50,568 /- per annum
2.	Increase in income at the rate of 40%	(50,568 x 40%) = 70,795
3.	Income after 1/4 th deduction on account of personal expenses	70,795 – (70,795 x 1/4) = 53,096
4.	Total dependancy after applying a multiplier of 16	(53,096 x 16) = 8,49,536
5.	Loss of consortium	2,00,000 (40,000 x 5)
6.	Loss of estate	15,000
7.	Funeral expenses	15,000
Grand Total		₹10,79,536/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the claimants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

October 22 , 2018.
'om'

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