

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

FAO No.1059 of 2015

Date of Decision: 05.12.2018.

Harjinder Kaur and another

...Appellants

Versus

Harvinder Singh Kohli and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Upender Prasher, Advocate for the appellants.

Mr. Punit Jain, Advocate for

Mr. M.B. Jain, Advocate for respondent No.5.

B.S.WALIA, J (Oral).

1. Appeal has been filed by the wife and child of deceased, Balwinder Singh, who died in a motor vehicular accident on 17.07.2013.
2. Prayer is for enhancement of compensation of ₹6,80,000/-, awarded by the learned Motor Accidents Claims Tribunal, Amritsar (hereinafter referred to as 'the Tribunal').
3. The learned Tribunal by taking into account the age of the deceased as 44 years, income as ₹5,000/-, multiplier as '14' and by making deduction @ 1/4th of the income of the deceased towards his personal expenses and by awarding a sum of ₹50,000/- under conventional heads, awarded total compensation of ₹6,80,000/-.
4. Learned counsel for the appellants has confined his plea for enhancement of compensation on the ground that the income of the deceased wrongly assessed as that of unskilled labourer, whereas the deceased was a mason besides no future prospects were awarded despite

entitlement. Moreover, loss of consortium was to be awarded to the wife as well as child of the deceased.

5. Per contra, learned counsel for respondent No.3/Insurance Company has reiterated the reasoning for the passing of the award and contends that the compensation awarded is just and proper. Learned counsel further contended that no evidence whatsoever was led before the learned Tribunal of the deceased being a mason, therefore, at best the deceased could be treated as a labourer.

6. In this context, learned counsel for the appellants has not been able to refer to any evidence to show that the deceased was working as mason except for the statement of his wife. In the circumstances, the deceased is treated to have been a labourer. Learned counsel for the appellants has, however, relied on a notification issued by the Government of Punjab for the relevant period showing minimum wages payable to an unskilled labourer as ₹5695/- per month. Copy of the notification has been handed over to learned counsel for respondent No.3/Insurance Company who does not dispute the minimum wages payable to an unskilled labourer at ₹5695/- per month. Copy of the notification duly signed by learned counsel for the parties is taken on record as Mark-A. Accordingly, the income of the deceased is taken as ₹5695/- (rounded off to ₹5700/-) per month being unskilled labourer.

7. As per paragraph No.61 (iv) of the decision in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, where the deceased was self employed and between the age of 40 to 50 years as on the date of accident, 25% of the established income

of the deceased less tax component is to be added on account of future prospects while computing compensation.

8. Since in the instant case the deceased was admittedly 44 years of age and was earning ₹5700/- per month, therefore, the appellants are held entitled to award of compensation by adding 25% of the established income of the deceased less tax component on account of future prospects.

9. ₹50,000/- was awarded on account of compensation under conventional heads. As per paragraph 61 (viii) of the decision of Hon’ble the Supreme Court in Pranay Sethi’s case (supra), ₹15,000/- is payable on account of funeral expenses, ₹15,000/- on account of loss of estate besides ₹40,000/- on account of loss of consortium to the wife of the deceased. However, Hon’ble the Supreme Court in Magma General Insurance Co. Ltd. vs, Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, has held that children of the deceased are also entitled to award of compensation on account of loss of parental consortium.

10. Accordingly, the appellants are held entitled to award of ₹15,000/- on account of loss of estate as also ₹15,000/- on account of funeral expense. As regards loss of consortium, appellant No.1-wife and appellant No.2/child are held entitled to ₹40,000/- each on account of loss of spousal/parental consortium.

11. In the circumstances, the appellants/claimants are held entitled to the following compensation:-

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
1	Income	₹5000/-	₹5700/-

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
2	Future Prospects	Nil	(25% of ₹5700)=₹1425/-
3.	Total Income	₹5000/-	₹7125/-
4.	Multiplier applied	14	14
5.	Deduction	1/4 th of ₹5000=₹1225/-	1/4 th of ₹7125/-=₹1781/-
6.	Annual Dependency	₹3750x12x14=₹6,30,00/-	₹5344x12x14=₹8,97,792/-
7.	Conventional heads	₹50,000/-	₹15,000/- (funeral expenses) ₹15,000/- (loss of estate) ₹40,000/- (loss of spousal consortium to appellant No.1-Wife) ₹40,000/- (loss of parental consortium to appellant No.2-son)
	Total	₹6,80,000/-	₹10,07,792/-

12. Accordingly, as against the compensation of ₹6,80,000/- awarded by the Tribunal, the appellants/claimants are held entitled to award of compensation of ₹10,07,792/- along with interest @ 7% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

13. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment of ₹40,000/- towards loss of spousal/parental consortium to wife and son of the deceased i.e. appellants herein. The Insurance Company shall make the payment to the appellants after making deduction of the tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

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14. Accordingly, appeal is allowed and award dated 04.09.2014 passed by the learned Tribunal is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

05.12.2018.

rajesh.k.khurana

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