

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 2190 of 2014

Date of Decision: November 26 , 2018.

Shakuntla Devi and others APPELLANT (s)

Versus

Jaspal Mashin and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Mandeep Singh Dhaliwal, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.6 – Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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, Sangrur (for short, the 'Tribunal') vide impugned award dated 09.07.2013 on account of death of Manoj Kumar in a motor vehicle accident. The claimants are the parents and unmarried sister of the deceased.

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 the death of Manoj Kumar, who

lost his life in a motor vehicle accident which took place on 03.06.2009. FIR No.89 dated 03.06.2009 under Sections 279/337/304A IPC was registered against respondent No.1. The deceased was claimed to be working as an Assistant at a shuttering shop, besides, selling milk. Compensation was thus prayed for.

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 bearing registration No. HR55B-7433 by respondent No.1 – Jaspal Mashin. The said finding of the learned Tribunal has attained finality.

Learned Tribunal awarded a sum of ₹2,44,000/- as compensation to the claimant No.1 vide impugned award dated 09.07.2013. Appellants No.2 and 3 were not held entitled for compensation. The deceased was aged 22 years at the time of the accident. Income of the deceased was assessed as ₹3,000/- per month. Deduction to the extent of 50% on account of personal expenses was effected and multiplier of 13 was applied. ₹5,000/- towards funeral expenses was awarded, besides, ₹5,000/- on account of love and affection.

It is to be noticed at this stage that claim petition No.58 of 2009 was instituted on 27.07.2009 by the claimants. Respondents did not appear despite service and they were proceeded against exparte. Compensation was awarded vide award dated 14.08.2010. However, application under Order 9 Rule 7 and 13 CPC moved by respondents No.2 to 5 was allowed and the matter was remanded before the learned Tribunal. Thereafter, the present award dated 09.07.2013 has been passed after leading of evidence by both the parties.

Learned counsel for the appellants argues that income of the deceased has been wrongly assessed as ₹3,000/- per month whereas, even

minimum wages of a labourer at the time of the accident were much more. It is submitted that future prospects at the rate of 40% be awarded. Moreover, multiplier of 13 has been wrongly applied by the learned Tribunal. It is submitted that compensation under the conventional heads is meagre. Furthermore interest should have been awarded from the date of filing of the MACT No.58 of 2009 instituted on 27.07.2009 instead of from 07.03.2012. It is thus prayed that the compensation be re-worked accordingly.

Learned counsel for respondent No.6 – Insurance Company however refutes the arguments raised. It is submitted that the impugned award dated 08.03.2007 be upheld as there is no ground for any enhancement of the compensation.

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

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. Appellants/claimants who are the parents and unmarried sister of the deceased claimed that Manoj Kumar (deceased) was working as an Assistant at a shuttering shop, besides, selling milk in the morning and evening. However, there is no specific documentary evidence on record to prove the same. The deceased was admittedly about 20 years of age at the time of the accident. In the facts and circumstances of the case, his income cannot be less than the minimum wages of a daily wager prevailing in the State of Punjab at the time of the accident i.e., ₹ 3,300/- per month. Income of the deceased is thus assessed as ₹3,300/- per month.

Increase in income at the rate of 40% on account of future prospects has to be afforded keeping in view the observations of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680.** Deduction to the extent of 50% on account of personal expenses has been correctly effected. The matter regarding application of multiplier while assessing the compensation is no longer res integra. The Hon'ble Supreme Court in **Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347** has specifically held that the multiplier is to be applied with reference to the age of the deceased. The deceased was admittedly 22 years old at the time of the accident. Therefore, multiplier of 18 instead of 13 is required to be applied. ₹15,000/- each towards funeral expenses (instead of ₹5,000/-) and loss of estate are awarded to the appellants. 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,** the appellants are entitled to ₹40,000/- each on account of loss of consortium, instead of ₹5,000/- on account of love and affection. As no challenge has been raised to the finding of the learned Tribunal regarding entitlement of appellant No.1 to the compensation, it is held that appellants No.2 and 3 are entitled to the loss of estate and loss of consortium only while appellant No.1 is entitled to the rest of the compensation.

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

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	3,300 p.m. i.e. ₹39,600/- per annum

2.	Total income after addition at the rate of 40% on account of future prospects	$39,600 + (39,600 \times 40\%) = 55,440$
3.	Income after 50% deduction on account of personal expenses	$55,440 - (55,440 \times 1/2) = 27,720$
4.	Total dependancy after applying a multiplier of 18	$(27,720 \times 18) = 4,98,960$
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of consortium	$(40,000 \times 3) = 1,20,000$
Grand Total		₹6,48,960/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the MACT No.58 of 2009 instituted on 27.07.2009 instead of 07.03.2012 till realization. Manner of disbursement as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

November 26 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No