

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3810 of 2013 (O&M)
Date of decision: 06.08.2018.

Sukhdevi

...Appellant

Versus

Yashpal and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.S. Sidhu, Advocate for the appellant.
Mr. H.K. Brinda, Advocate for respondent No.1.
None for respondent No.2.
Mr. Rajbir Singh, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.3.

LISA GILL, J.

This appeal has been filed by the claimant seeking enhancement of the compensation awarded to her by Motor Accident Claims Tribunal, Rupnagar ('Tribunal' for short) in award dated 06.05.2013 on account of death of her son Khem Raj in a motor vehicle accident on 07.10.2011.

The claimant, who is the mother of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of her son Khem Raj in a motor vehicle accident which took place on 07.10.2011. FIR, Ex.P2, was registered against respondent No.1 with regard to the said accident. 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 offending vehicle by respondent No.1.

The deceased was unmarried and 20 years old at the time of his death. Since the deceased was not a skilled worker, therefore, learned Tribunal assessed the income of the deceased as Rs.3500/- per month treating him to be an unskilled labourer. Deduction of 50% was effected on account of personal expenses as the deceased was unmarried. Multiplier of 14 was applied by the learned Tribunal keeping in view the age of the mother of the deceased. Total dependency was thus worked out in the sum of Rs.2,94,000/-. A sum of Rs.20,000/- was awarded to the claimant on account of loss of love and affection and funeral expenses. Thus, total compensation of Rs.3,14,000/- was awarded with interest at the rate of 7.5% per annum from the date of the institution of the petition till final realization thereof.

Learned counsel for the appellant seeks enhancement on the ground that the learned Tribunal has erred in assessing the income of the deceased to Rs.3500/- per month treating him to an unskilled labourer. The claimant in her statement stated that her deceased son was a Mechanic with PW2 Gurcharan Singh in his shop and he used to earn Rs.5000/- per month. It is submitted that as per PW2 Gurcharan Singh, he had sent the deceased Khem Raj to repair the brakes of the truck belonging to Yashpal Singh on 07.10.2011. When deceased was still repairing the brakes of the truck, Yashpal Singh started the truck and drove the same towards Bilaspur side. Deceased Khem Raj got crushed under the rear left tyre of the truck and died at the spot. FIR Ex.P2 was registered in this regard. Therefore, the income of the deceased should have been assessed at least as the minimum wages of an unskilled labourer in the State of Punjab at the time of accident i.e. Rs.4571/-.

Learned counsel for the appellant submits that Learned Tribunal further erred in applying a multiplier of 14 keeping in view the age of the mother of the deceased whereas a multiplier of 18 should have been applied keeping in view the age of the deceased. It is, thus, prayed that the compensation awarded be enhanced.

Learned counsel for the Insurance Company while refuting the above facts, submits that learned Tribunal has rightly assessed the income of the deceased as Rs.3500/- per month because there is no documentary evidence on record to show the income of the deceased or that the deceased was skilled in any trade. However, the facts and circumstances in which the accident took place is not denied.

I have heard learned counsel for the parties and have gone through the evidence and record with their able assistance.

There is no doubt that there is no documentary evidence in respect to the income of the deceased, however, evidence on record does indicate that the appellant was working as a mechanic with PW2 Gurbachan Singh. The deceased was admittedly repairing the brakes of the offending vehicle itself when its driver/respondent No.1 started the vehicle and drove over the deceased, who lost his life due to the rash and negligent driving of the offending vehicle by respondent No.1. The said finding of the learned Tribunal on this issue has attained finality. Thus, it is considered just and appropriate to assess the income of the deceased as Rs.4571/- i.e. the minimum wage of an unskilled labourer in the State of Punjab at the time of accident.

It is further not disputed that the deceased was unmarried and 20 years old at the time of his death. Learned Tribunal has erred in applying

a multiplier of 14 keeping in view the age of the mother of the deceased whereas multiplier of 18 has to be applied keeping in view the age of the deceased at the time of his death. As per the guidelines laid down by the Hon'ble Supreme Court in **Munna Lal Jain Vs. Vipin Kumar Sharma, 2015 (6) SCC 347**, multiplier has to be applied with reference to the age of the deceased and not with reference to the age of the parents. Therefore, multiplier of 18 instead of 14 has to be applied in this case.

In terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1099**, increase in income on account of future prospects at the rate of 40% should be afforded. Thus, compensation on account of loss of future prospects at the rate of 40% (Rs.1828/-) is afforded in view of the age of the deceased (20 years), which takes the income of the deceased to Rs.6399/-. Deduction of 50% has to be effected on account of personal expenses as the deceased was unmarried, thereby rendering income of the deceased to be Rs.3200/- (6400-3200). Multiplier of 18 instead of 14 has to be applied keeping in view the age of the deceased. The claimant is entitled to Rs.15000/- each on account of loss of estate and funeral expenses as well. In view of the above, the compensation of the appellant/claimant is reworked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	4571 p.m. i.e.Rs.54,852/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	54,852 + (54,852x40%) = 76,793/-

3.	Income after deduction of 50% on account of personal expenses	76,793 – 38,396/- = 38,397/-
4.	Total dependency after applying a multiplier of 18	(38,397 x 18) = 6,91,146/-
5.	Loss of estate	15,000/-
6.	Funeral expenses and loss of love and affection	15,000/-
Grand Total		Rs.7,21,146/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(LISA GILL)
JUDGE

August 06, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No