

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

FAO No. 2040 of 2015 (O&M)

Date of decision : September 28, 2018

Husna

.....Appellant

Versus

Harkewal and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Karan Singla, Advocate for
Ms. Monika Jalota, Advocate
for the appellant.

Mr. Nikhil Chopra, Advocate
for respondents No. 1 and 2.

Mr. Suvir Dewan, Advocate
for respondent No. 3.

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as the 'Tribunal') on account of death of Mewa Khan vide award dated 22.07.2014.

Brief facts necessary for adjudication of the case are that the claimant - widow of the deceased filed petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Mewa Khan on 11.10.2013 in a motor vehicle accident caused due to driving of the offending vehicle, i.e. Milk Tanker bearing registration No. PB-13X-8198 driven by respondent No.1 in a rash and negligent manner. It was averred

that on 08.10.2013, Mewa Khan (deceased) alongwith his grand daughters was going from village Bhaini Kambo to village Peheri on scooter PB-28-B-6478 driven by Mewa Khan. When they reached a little ahead of Bus Stand, village Bhaini Kambo towards Malerkotla side, offending vehicle Milk Tanker bearing registration No. PB-13X-8198 came from the opposite side in a rash and negligent manner and struck against the scooter of the deceased. Injuries were received by Mewa Khan and other occupants. They all were removed to Civil Hospital, Malerkotla. Thereafter, he was referred to Rajindra Hospital, Patiala and then to PGI, Chandigarh, where he succumbed to his injuries on 11.10.2013. The deceased, aged 50 years at the time of the accident was stated to be earning a sum of ₹20,000/- per month while working as contractor.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether on 08.10.2013 at about 5.00 p.m. in the area of P.S. Amargarh, Mewa Khan son of Rahmat Khan died due to rash and negligent driving of Milk Tanker bearing registration No. PB-13X-8198 by respondent No. 1? OPP
2. Whether the claim petition is not maintainable? OPP.
3. Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident? OPR-3
4. Whether of offending vehicle was not holding valid RC, fitness and route permit at the time of accident? OPR3
5. To what amount of compensation, the claimant is entitled to and from which of the respondents? OPP
6. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 08.10.2013 due to rash and negligent driving of the offending Milk Tanker bearing registration

No. PB-13X-8198 by respondent No. 1. Learned Tribunal awarded a sum of ₹5,73,800/- with interest at the rate of 7% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹5,000/- per month. Multiplier of 11 was applied as the deceased was 52 years old at that time as per the Post Mortem Report (Ex.P2). Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of ₹25,000/- on account of funeral expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellant submits that learned Tribunal has wrongly assessed the income of the deceased as ₹5,000/-. It is submitted that in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, loss of future prospects at the rate of 10% should be afforded. Deduction of 1/3rd has been applied. Multiplier of 11 has been rightly applied in view of guidelines laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is further submitted that deduction of 50% should be applied as there is only one claimant in this case. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 22.07.2014 be upheld.

Heard learned counsel for the parties.

There is no dispute that Mewa Khan lost his life in a motor vehicle accident, which took place on 08.10.2013 caused due to the rash and negligent driving of Milk Tanker bearing registration No. PB-13X-8198 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality.

Income of the deceased has been assessed as ₹5,000/- per month by the learned Tribunal. The deceased was employed as a Contractor, therefore, he is entitled to at least the minimum wage of a skilled labourer in the year 2013 in State of Punjab i.e. ₹6,475/-. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 10% (₹647/-) is afforded, as the deceased was 52 years old at the time of accident, which takes the income of the deceased to ₹7,122/- per month. Though it is argued by learned counsel for the insurance company that as the claimant is one i.e. widow of the deceased, therefore, deduction of 50% should be effected, perusal of the file reveals that the deceased had grand children. In fact, he was travelling with two of his grand daughters on the fateful day. Therefore, in the peculiar facts and circumstances of the case, deduction of 1/3rd as effected by the learned Tribunal is upheld. Multiplier of 11 has been correctly applied. After applying the deduction of 1/3rd income of the deceased comes to ₹4748/-(7122-2374). Applying a multiplier of 11, dependancy of the claimants is, therefore, assessed as ₹6,26,736/- (₹4748x12x11). It is not in dispute that the deceased received injuries in the accident and was admitted at Civil Hospital, Malerkotla. Thereafter, he was referred to Rajindera Hospital, Patiala and then to PGI, Chandigarh, where he ultimately

succumbed to his injuries on 11.10.2013. Though no particular bills in respect to medical expenses or the expenses incurred on transportation have been placed on record, it can reasonably be assessed that at least a sum of ₹50,000/- would have been spent in the entire process. ₹50,000/- is, thus, awarded, on account of medical expenses and transportation etc. The claimant is also entitled to ₹15,000/- each for funeral expenses and loss of estate besides ₹40,000/- instead of ₹1,00,000/- on account of loss of consortium. Claimant is , thus, entitled to total compensation of ₹7,46,736/- detailed as under:-

Loss of dependency(₹4748x12x11)	₹6,26,736/-
Loss of consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Medical expenses/Transportation	₹50,000/-
Total	₹7,46,736/-

The amount of compensation already awarded to the appellant, needless to say, shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the awarded 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.

September 28, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No