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

FAO-2523-2015 (O&M)
Date of decision : 18.01.2018

Shish Pal and others

... Appellant(s)

Versus

Balwan Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parvesh K. Saini, Advocate
for the appellants.

Mr. Dharam Pal, Advocate for
Mr. Madan Pal, Advocate
for respondent Nos.1 and 2.

Mr. Ravinder Arora, Advocate
for respondent No.3.

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AMIT RAWAL, J. (ORAL)

CM-7748-CII-2015

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 69 days in filing the appeal is condoned.

FAO-2523-2015

The appeal has been preferred by the claimants being parents, brothers and sisters of Satish Kumar, who died in a motor accident occurred on 15.09.2013, for enhancement of compensation against the Award passed by the Tribunal, whereby a compensation of ₹3,76,400/- along with interest @ 7.5% per annum, had been awarded in a claim petition filed under Section 163-A of the Motor Vehicles Act.

Learned counsel appearing on behalf of the appellants-claimants submits that the Tribunal has awarded the compensation to the tune of ₹3,76,400/-, which is on lower side as the Tribunal took the income of the deceased as ₹3,300/- and the Tribunal has wrongly applied the deduction of '½', whereas it should have 1/3rd. Moreover, no increase was made in the salary towards future prospects and an amount of ₹ 20,000/- towards conventional heads i.e. expenses incurred on last rites and transportation, is also too meagre, thus, there is scope for enhancement.

On the other hand, learned counsel appearing on behalf of the Insurance Company submits that the Tribunal has taken care of all the heads sufficiently and there is no scope for further enhancement, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a scope of enhancement as the compensation to the tune of ₹3,76,400/- is on lower side as the Tribunal has wrongly applied the deduction of '½' instead of 1/3rd and accordingly, I take the income of the deceased as ₹3,300/- per month as has been taken by the Tribunal and apply a multiplier of '18', much less, deduction of 1/3rd to assess the loss of dependency as ₹4,75,200/-.

As regards the grant of compensation towards conventional heads, the Tribunal has already granted ₹20,000/- towards expenses incurred on last rites and transportation, which is not a correct appreciation of law as the provisions of Schedule II attached with Section 163-A of the Motor Vehicles Act specified an amount of ₹4,500/- on account of compensation towards conventional heads i.e. ₹2,500/- for loss of estate and ₹2000/- towards funeral expenses. Accordingly, I hereby reduce the same from ₹20,000/- to ₹4,500/- towards conventional heads i.e. ₹2,500/- for loss of estate and ₹ 2,000/- for funeral expenses by exercising the power under Order 41 Rule 33 CPC as per the *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"U.P.S.R.T.C. V/s Km. Mamta and others" (2016) 4 SCC 172.***

In all the compensation payable shall be ₹4,79,700/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the appeal till its realization. The enhanced amount is passed in favour of appellant/claimant No.2 only. The liability shall remain the same as has already been determined by the Tribunal.

The award passed by the Tribunal is modified to the above extent and the appeal stands allowed.

(AMIT RAWAL)
JUDGE

18.01.2018
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**