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

**F.A.O No. 5084 of 2013
Date of decision:-03.04.2018**

Anita and Others ...Appellants

Versus

Kulwant and another ...Respondents

***CORAM: HON'BLE MS. JUSTICE RITU BAHRI***

Present: None for the appellants.

Brig. B. S. Taunque, Advocate,
for respondent No.2.

***RITU BAHRI J. (Oral)***

Learned counsel for the appellant stated that liability of insurance company is joint and several and service of respondent No.1 could not be effected as he was not found at the given address, so service of respondent no. 1 is dispensed herewith under section 151 of Motor Vehicles Act.

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') vide award dated 16.07.2013, on account of death of Rajpal in a motor vehicular accident which took place on 27.11.2011.

***FACTS NOT IN DISPUTE***

Brief facts of the case are that, on 27.11.2011, Rajpal, since deceased, was going for evening walk on foot from his house to fields on Rohtak side. Manjit son of Ramphal and Tajbir son of Chander Singh, both residents of Karontha were also going behind him. Rajpal was walking on the road side Kacha portion. At about 5.00 pm, when Rajpal reached near the school, a truck bearing registration No.JK-02AT-4987 came from the side of Jhajjar which was being driven by its driver/respondent No. 1 in a rash and negligent manner and respondent No.1 without blowing any horn strucked his truck into Rajpal. Due to that impact, Rajpal fell down on the road and his head and crushed by the tyre of the truck and he expired due to the multiple, grievous and serious injuries sustained by him in the accident. This accident was witnessed by Manjeet son of Ramphal who have noted the number of the vehicle, the post mortem of Rajpal was got conducted by the doctors of General Hospital, Rohtak, on the statement of Manjeet son of Ramphal. In this regard an FIR No. 433 dated 27.11.2011,under Sections 279/304-A IPC was got registered in police station Sadar Rohtak against the driver of offending vehicle.

Consequently, claimants-appellants filed a claim petition before the Tribunal.

***<u>COMPENSATION ASSESSED BY THE MACT</u>***

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of negligent driving of offending vehicle by respondent No.1. Claimants deposed that at the time of accident/death, deceased was 49 years of age and he was earning Rs.15,000/- per month by working as agriculture and by doing dairy farming.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the claimants. Hence, Tribunal assessed the compensation as under:

| ***Sr. No.*** | ***Heads*** | ***Calculations*** |
|---|---|---|
| (i) | Income | Rs. 4,500/-Per month |
| (ii) | 1/3rd deducting from (i) towards personal expenses | Rs.4,500-1,500=Rs.3,000/- |
| (iii) | Multiplier applied | Rs.3,000X12X13=4,68,000/- |
| (iv) | Compensation towards last rites and funeral expenses and transportation | Rs.10,000/- |
| (v) | Compensation towards loss of consortium, love and affection | Rs. 10,000/- |
| (vi) | Compensation towards loss of estate | Rs.5,000/- |
| | Total Compensation | Rs.4,93,000/- |

Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal

I have heard learned counsel for the parties and perused the case file.

***REASSESSED COMPENSATION***

The fact of accident is admitted and proved.

Learned counsel for the appellant stated that deceased was working as agriculturist which was proved by Ex. P3 and P4 he can be treated as semi skilled labourer and as per minimum wages prevalent at Haryana, his salary can safely be taken as Rs.6,000/- per month.

In the peculiar facts and circumstances of the case, to meet the ends of justice and compensation awarded by the Tribunal requires to be reassessed keeping in view the judgments passed by Hon'ble Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided October 31, 2017 wherein t***he issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

*"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-,*

*Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."*

In the present case, the compensation is being reassessed as per the judgments mentioned above:-

| ***Sr. No.*** | ***Heads*** | ***Calculations*** |
|---|---|---|
| (i) | Income | Rs. 6,000/- |
| (ii) | 25% added in (i) towards future prospects | Rs.6,000 +1,500=Rs.7,500/- |
| (iii) | 1/4th deducted from (ii) towards personal expenses | Rs.7,500-1,875= Rs.5,625/- |
| (iv) | Multiplier applied | Rs.5,625X12X13= 8,77,500/- |
| (v) | Compensation towards conventional heads | Rs. 70,000/- |
| | Total reassessed compensation | Rs.9,47,500/- |
| | **Enhanced amount of compensation** | **Rs.9,47,500 -4,93,000=Rs.4,54,500/-** |

The enhanced amount of compensation of **Rs.4,54,500/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. As per the judgment of Hon'ble Supreme Court in case ***Shri Nagar Mal and Ors versus The Oriental Insurance Company Ltd. And Ors decided on 19.01.2018*** the enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

03.04.2018 **(RITU BAHRI)**
***Riya Grover*** ***JUDGE***

| | |
|---|---|
| ***Whether speaking/reasoned*** | ***Yes*** |
| ***Whether reportable*** | ***No*** |