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

**FAO No. 4454 of 2014 (O&M)**
Date of decision : August 14, 2018

Kamlesh Kumari and another .....Appellants

Versus

M/s Apace Transport Private Limited and others ....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Chandandeep Singh, Advocate
for the appellants.

Mr. R.K. Bashamboo, Advocate
for respondent No. 3.

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**LISA GILL, J.**

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as the 'Tribunal') on account of death of Aman Sandesh vide award dated 19.03.2014.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow and mother of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Aman Sandesh on 15.10.2011 in a motor vehicle accident caused due to driving of the offending vehicle truck-trolla bearing registration No. HR-38R-2224 by respondent No.2 in a rash and negligent manner. Aman Sandesh suffered serious injuries and succumbed to his injuries on the spot. FIR No. 183 dated 15.10.2011 under Sections 279 and 304-A IPC was registered at Police Station Khanna in respect to the accident. The deceased, aged 26 years at the time of the accident was stated to be earning ₹35,000/- per month from property business and ₹30,000/- from his commission from

DLF insurance. Aman Sandesh was stated to be the sole bread earner of the family.

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

1. Whether Aman Sandesh died in a motor vehicle accident caused by Mahesh Kumar, respondent No. 2 while driving HGV trailor bearing No. HR-38R-2224 rash and negligently? OPP
2. Whether the claimants are entitled for compensation, if so, to what amount and from whom? OPP.
3. Whether the present claim petition is maintainable in the present form? OPR
4. Whether respondent No. 2 was not holding valid and effective driving license at the time of accident? OPR
5. Relief.

Learned Tribunal on consideration of the facts and circumstances of the case decided issues No. 1 and 3 in favour of the claimants and against the respondents. Issue No. 4 was decided against the respondent No. 3 – insurance company. Learned Tribunal on consideration of facts and evidence on record awarded a sum of ₹12,97,000/-. Income of the deceased was assessed as ₹1,00,000/- per annum. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 17 was applied and and total dependency was calculated at ₹11,22,000/-. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of of ₹50,000/- on account of loss of love and affection besides 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 appellants argues that income of the deceased has been wrongly taken as ₹1,00,000/- per annum by the learned Tribunal whereas income tax returns of the deceased Aman Sandesh were proved on record. Income tax returns for the year 2009-10 filed prior to the accident in question, which took place on 15.10.2011, reflect the income of the deceased to be ₹1,17,500/- per annum. It is, thus, prayed that income assessed should be ₹1,17,500/- per annum. It is further 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**, increase in income on account of future prospects at the rate of 40% should be afforded. It is, however, not disputed that compensation on account of loss of consortium, funeral expenses are required to be reworked. Multiplier of 17 has been applied correctly. It is, thus, prayed that compensation awarded to the claimants be recalculated and enhanced.

Learned counsel for the respondent - insurance company refutes the argument regarding enhancement of compensation and submits that reasonable compensation has been afforded. Income Tax Returns for the years 2010-11 and 2011-12 were not filed, which may have reflected reduced income of the deceased. It is, thus, prayed this appeal be dismissed.

Heard learned counsel for the parties. The record has been carefully perused with their able assistance.

There is no dispute that Aman Sandesh lost his life in a motor vehicle accident, which took place on 15.10.2011 caused due to the rash and negligent driving of the offending dumper bearing registration No. HR-38R-2224 driven by respondent No.2. Finding of the learned Tribunal on issue No. 1 regarding the accident being caused on 15.10.2011 due to rash and negligent of offending vehicle by respondent – Mahesh Kumar has attained finality. There is no dispute regarding the liability of the insurance company. The deceased in this case was 27 years old. He was earlier stated to be residing abroad, thereafter joined DLF insurance on returning to India in April, 2011. He was thereafter engaged in the business of sale and purchase of property. It is a matter of record that ITR pertaining to years 2009-10 (Ex.P15) and 2012-13 (Ex. P5) were produced on record. Learned Tribunal has ignored the ITR for the year 2012-13. However, there is nothing on record to show that income reflected in ITR 2009-10 which was admittedly filed before the death of Aman Sandesh is incorrect. There is no justification in reducing the income of the deceased from ₹1,17,500/- to ₹1,00,000/- per annum. Argument of learned counsel for the insurance company to the effect that non-filing of the ITRs for the years 2010-11 and 2011-12 leads to an inference that income of the deceased had reduced is untenable in the absence of any such evidence on record. Hence, this argument is rejected. Income of the deceased is, thus, assessed as ₹1,17,500/- per annum. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase in income on account of future prospects at the rate of 40% (₹47,000/-) is afforded in view of the age of the deceased (26/27 years), which takes the income of the deceased to ₹1,64,500/- per month. Deduction of 1/3$^{rd}$ is to be applied as number of dependants is two (2), thereby rendering income of the deceased to be ₹1,09,667/-(164500-54833). Multiplier of 17 is correctly applied. Annual dependancy of the claimants is, therefore, assessed as ₹18,64,339/- (₹1,09,667x17). The claimants are entitled to ₹15,000/- instead of ₹25,000/- for funeral expenses, ₹15,000/- for loss of estate, claimant wife is entitled to ₹40,000/- on account of loss of consortium. Claimants are, thus, entitled to total compensation of ₹19,34,339/- detailed as under:-

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|---|---|
| Loss of dependency (₹1,09,667x17) | ₹18,64,339/- |
| Loss of consortium | ₹40,000/- |
| Loss of estate | ₹15,000/- |
| Funeral expenses | ₹15,000/- |
| **Total** | ₹19,34,339/- |

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.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

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

**(Lisa Gill)**
**Judge**

August 14, 2018
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No