

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

FAO No. 4660 of 2014 (O&M)

Date of decision : November 14, 2018

Smt. Savitri

.....Appellant

Versus

Manjit Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. N.S. Panwar, Advocate
for the appellant.

Mr. Suraj Bhan, Advocate
for respondents No. 1 and 2.

Mr. Vishal Aggarwal, Advocate
for respondent No. 3.

LISA GILL, J.

Present appeal has been filed by the appellant, who is the mother of the deceased, for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as the 'Tribunal') on account of death of Deepak vide award dated 08.07.2013.

Brief facts necessary for adjudication of the case are that the claimant i.e. mother of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Deepak on 27.10.2011 in a motor vehicle accident caused due to driving of the offending vehicle car bearing registration No. CH-03K-9449 by respondent No.1 in a rash and negligent manner. It was averred that Deepak alongwith his friends was coming on motorcycle to his village Deepalpur. When they reached near Vardhan Chowk, G.T. Road, Kishora, offending vehicle i.e.

car bearing registration No. CH-03K-9449 hit the motorcycle from the back side. As a result thereof, all four persons riding the motorcycle fell on the road and suffered serious injuries. Deepak was taken to various hospitals for treatment but he ultimately succumbed to his injuries. Monu who was driving the motorcycle also sustained fatal injuries in the accident passed away. The present appeal deals with the claim petition in respect to Deepak. The deceased Deepak aged 20 years at the time of the accident was stated to be earning a sum of ₹9,000/- per month while working as a Security Guard in Panzer Division Security and Allied Services.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 27.10.2011 due to rash and negligent driving of the offending car bearing registration No. CH-03K-9449 by respondent No. 1 but at the same time it was held that there is an element of contributory negligence as there were four people riding on the motorcycle, thus, the claimant was held entitled to 70% of the total amount of compensation awarded. Learned Tribunal awarded a sum of ₹4,65,000/- with interest at the rate of 7.5% 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. 50% deduction was effected as he was a bachelor. Multiplier of 15 was applied, keeping in view the age of the mother of the deceased, who was 38 years old at that time. Additionally, a sum of ₹10,000/- on account of loss of estate was awarded and a sum of ₹5,000/- on account of funeral expenses and transportation. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that there is no element of contributory negligence at all. Factum of extra pillion riders

by itself does not lead to a presumption of contributory negligence on the part of the deceased. Therefore, this finding of the learned Tribunal be set aside. While not disputing the income as assessed by the learned Tribunal, it is submitted that the increment on account of the future prospects has not been awarded 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**. It is further submitted that multiplier of 15 has been wrongly applied and compensation under the conventional heads is meagre. It is, thus, prayed that compensation awarded to the claimant be enhanced accordingly.

Learned counsel for the respondents argue that once it is admitted that there were as many as four people riding the motorcycle, contributory negligence on the part of the deceased is evident. It is submitted that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. Thus, impugned award dated 08.07.2013 be upheld.

Heard learned counsel for the parties.

It is not in dispute that the offending vehicle struck against the motorcycle from behind. As a result thereof, the persons travelling on the motorcycle received multiple injuries. Deepak, son of the appellant as well as Monu who was driving the motorcycle succumbed to their injuries. Learned Tribunal has proceeded to conclude that the deceased was guilty of contributory negligence to the extent of 30% for the reason that there were four persons riding the motorcycle. Merely because the number of persons riding the motorcycle was excessive cannot per se be a ground to conclude that there is an element of contributory negligence on the part of the deceased. It was incumbent upon the respondents to have proved that it was

the number of riders on the motorcycle, which was one of the causative factors of the accident in question. The offending vehicle admittedly struck against the motorcycle from behind. In this situation, it is unjustified to hold that the deceased was guilty of any contributory negligence. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in **Kumari Kiran versus Sajjan Singh 2015 (1) SCC (Civil) 570** and Full Bench decision of the Madhya Pradesh High Court in **Devi Singh versus Vikram Singh and others 2008 (2) RCR (Civil) 107**.

Finding of the learned Tribunal in this respect is, thus, set aside.

No challenge has been raised to the income of the deceased as assessed by the learned Tribunal i.e. ₹5,000/- per month. 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 40% (₹2000/-) has to be afforded as the deceased was 19 years old, at the time of accident, which takes the income of the deceased to ₹7,000/- per month. Deduction of 50% has been correctly applied, thereby rendering income of the deceased to be ₹3500/-(7000-3500). Multiplier of 18 has to be applied, keeping in view the age of the deceased i.e. 19 years in terms of judgment of the Hon'ble Supreme Court in **Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347**. Dependency of the claimants is, therefore, assessed as ₹7,56,000/- (₹3500x12x18). The claimant is also entitled to ₹15,000/- (instead of ₹10,000) on account of loss of estate and a sum of ₹15,000/- (instead of ₹5,000/-) for funeral expenses. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581

of 2018), the appellant i.e. the mother of the deceased is entitled to ₹40,000/- on account of loss of filial consortium. Claimant is, thus, entitled to total compensation of ₹8,26,000/- detailed as under:-

Loss of dependency (₹1120x12x18)	₹7,56,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹8,26,000/-

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 enhanced amount from the date of filing of the petition till realization. As the finding of the learned Tribunal regarding contributory negligence has been set aside, the claimant is entitled to the entire awarded compensation. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimant shall enure.

Present appeal is, accordingly, disposed of with the abovesaid modifications.

November 14, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :
Whether reportable

:
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Yes/No
Yes/No