

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

FAO No. 4730 of 2014 (O&M)

Date of decision : October 31, 2018

Babli Devi and another

.....Appellants

Versus

Anil Kumar Jangid and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Selja Sharma, Advocate for
Mr. Rajesh Lamba, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate
for respondents No. 1 and 2.

Mr. Ravinder Arora, 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, Gurgaon (hereinafter referred to as the 'Tribunal') on account of death of Lal Singh vide award dated 05.02.2014.

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 ('the Act' – for short) seeking compensation on account of death of Lal Singh on 18.10.2012 in a motor vehicle accident caused due to the offending vehicle tractor bearing registration No. RJ-18-RA-3992 being driven by respondent No.1 in a rash and negligent manner. It was averred that Sharwan Kumar, Vikas, Sandeep and Lal Singh were going from Khandwa to Jhunjhunu in their vehicle

Bolero bearing registration No. RJ-18-UA-3237, which was driven with full care and caution by adopting traffic rules. When they reached near Muradpur hotel, the offending vehicle i.e. tractor bearing registration No. RJ-18-RA-3992 came from the front side and hit the Bolero. All the four persons travelling in the Bolero died at the spot. The deceased, aged 49 years, was pleaded to be working as a Technician in M/s SKH Metals Limited, Udyog Vihar, Gurgaon (Maruti Joint Venture), receiving a salary of Rs.25,000/- per month. Compensation was prayed for.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 18.10.2012 due to rash and negligent driving of the offending tractor bearing registration No. RJ-18-RA-3992 by respondent No. 1. Learned Tribunal awarded a sum of ₹8,68,652/- 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 ₹5,500/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 13 was applied as the deceased was 49 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded 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 submits that the learned Tribunal has wrongly ignored the evidence of PW4 Suresh Yadav, HR Manager, M/s SKH Metals Limited. It is proved on record that even in June, 2010 the deceased Lal Singh was earning a sum of Rs.24,165/- per month, therefore, the learned Tribunal has wrongly assessed the income of the

deceased to Rs.5,500/- per month i.e. by presuming the deceased to be a daily wager. It is further submitted that the compensation under the conventional head as well as increment on account of future prospects may be re-worked 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** and **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others (Civil Appeal No. 9581 of 2018)** though, multiplier of 13 has been correctly applied by the learned Tribunal. 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 by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. Thus, impugned award dated 05.02.2014 be upheld.

Heard learned counsel for the parties and have gone through the record.

There is no dispute that Lal Singh lost his life in a motor vehicle accident, which took place on 18.10.2012 caused due to the rash and negligent driving of tractor bearing registration No. RJ-18-RA-3992 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality. It is also not disputed that the deceased was 49 years old at the time of the accident. There is no dispute regarding the liability of the insurance company as well.

The deceased was admittedly 49 years of age at the time of his death. It is the specific stand of the claimants i.e. widow and mother of the deceased that Lal Singh was working as a Technician with M/s SKH Metals

Limited, Udhog Vihar, Gurgaon (Maruti Joint Venture) earning about Rs.25,000/- per month. PW4 Suresh Yadav, HR Manager M/s SKH Metals Limited has proved documents Ex.P11 and P12. Ex. P12 is a certificate issued by M/s SKH Metals Limited certifying that the deceased Lal Singh was working with the said company from 18.04.1990 to 17.06.2010 as a Technician in the Press shop. He was drawing a salary of ₹24,165/-. PW4 has identified the signatures of Vinod Kaushik, HR Head of the Company on the said documents. Observation by the learned Tribunal that all the facts have not been brought before the learned Tribunal is negated by the evidence on record. Claim petition under Section 166 of the Act was initially filed by the claimant – widow alone. Children, who were married, did not come forward to claim compensation. The mother of the deceased was later impleaded as party to the petition. In fact, it appears that in a truthful manner the married children have not come forward to claim compensation on the death of their father as they were not dependent upon him. Similarly, there is nothing on record to prove that Ex. P12 is a forged and fabricated document. Doubtlessly, the claimants have failed to prove the income of the deceased at the time of the accident i.e. on 18.10.2012 neither is there anything on record regarding the vocation being pursued by Lal Singh after June 2010, however, it can reasonably be presumed that the deceased having worked with the Company in question for a period of ten years would atleast have been able to earn a sum of Rs.12,000/- per month. It is patently unjust to equate the deceased to a daily wager and assess his income as Rs.5,500/-. Accordingly, income of the deceased is assessed as Rs.12,000/- 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 25% instead of 30% (₹3,000/-) as the deceased was 49 years old at the time of accident is afforded, which takes the income of the deceased to ₹15,000/- per month. In terms of the guidelines laid down by the Hon'ble Supreme Court in case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77, deduction of 1/3rd is to be applied as number of dependants is two (2), thereby rendering income of the deceased to be ₹10,000/-(15000-5000). Applying a multiplier of 13, dependency of the claimants is, therefore, assessed as ₹15,60,000/- (₹10000x12x13). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹25,000/-) and loss of estate besides the claimant widow is entitled to ₹40,000/- (instead of ₹1,00,000) on account of loss of spousal consortium. In terms of the judgment of the Hon'ble Supreme Court in case of **Magma General Insurance Company Limited** (supra) appellant No. 2 i.e. mother of the deceased is entitled to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹16,70,000/- detailed as under:-

Loss of dependency (₹10000x12x13)	₹15,60,000/-
Loss of spousal consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹16,70,000/-

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.

October 31, 2018
rts

(Lisa Gill)
Judge

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