

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

FAO No.4974 of 2014 (O&M)

Date of Decision: 06.09.2018

Mannu Devi and another

... Appellants

Versus

Phool Kumar and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. S.S.Kharb, Advocate,
for the appellants.

Mr. Pardeep Kumar, Advocate,
for respondent No.3.

Mr. M.K.Garg, Advocate,
for respondent No.4.

TEJINDER SINGH DHINDSA, J.

This is a claimants' appeal seeking enhancement of compensation.

Briefly noticed that a claim petition was filed under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.50 lakhs on account of death of Ram Niwas in a motor vehicle accident which took place on 16.02.2012.

Claimants were the widow and minor son of the deceased.

In the claim petition, it was asserted that while Ram Niwas (since deceased) was proceeding on a truck/trollia, he was struck by a tempo truck bearing registration No. HR-69A-5395 and on account of which he suffered grievous injuries and succumbed

to the same.

The claim petition having been contested, the following issues were framed by the Tribunal-

- “1. Whether the accident in question took place on 16.02.2012 resulting in the death of Ram Niwas on account of rash and negligent driving of truck dumper bearing no.HR-69A-5395 driven by respondent No.1 as alleged in the petition? OPP.***
- 2. If issue No.1 is proved in the affirmative, what amount of compensation the petitioners are entitled to and from whom? OPP.***
- 3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR.***
- 4. Relief.”***

Insofar issue No.1 is concerned, the findings were returned by the Tribunal in favour of the claimants and it was held that the death of Ram Niwas occurred on account of injuries suffered in the accident that took place on 16.02.2012 involving the offending/insured vehicle and which was being driven in a rash and negligent manner by the driver, namely, Phool Kumar.

With regard to quantum, Motor Accident Claims Tribunal, Jind in its award dated 21.01.2014 has computed the compensation amount of Rs.8,50,000/- to be payable along with interest @ 7% from the date of institution of the claim petition till actual realization. The liability to pay compensation amount was fastened as joint and several upon the respondents.

Since the only issue involved in the instant appeal is

with regard to quantum of compensation, I have heard counsel for the appellants as also learned counsel representing the respondent Insurance Company.

It is a case where learned counsel representing the contesting respondent Insurance Company states that the compensation amount deserves to be enhanced as per parameters laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

Even though in the claim petition, the claimants had asserted that deceased Ram Niwas was a 'driver' by profession and was earning Rs.10,000/- per month but no documentary evidence had been adduced on record to substantiate such claim. The Tribunal by taking the deceased to be a driver by profession has assessed his monthly earnings to be Rs.6000/- per month. Such assessment is not being put to question by counsel representing the appellants. Deceased was survived by a widow as also a minor son. Tribunal has rightfully made a 1/3rd deduction from the monthly income towards personal and living expenses of the deceased. Tribunal has accepted the version of the claimants as regards age of the deceased to be 35 years as the same age was reflected even in the post-mortem report Ex.P-2.

Under such circumstances and keeping in view the age of 35 years, the Tribunal ought to have applied the multiplier of 16 instead of 15 as per guidelines furnished by ***Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77.*** It is so directed.

The Tribunal, however, has completely overlooked the aspect with regard to addition in income towards future prospects. Since it was the claimants assertion themselves that deceased was self-employed and keeping in view his age to be 35 years, an addition in income @ 40% towards future prospects is granted.

The Tribunal has, however, awarded a sum of Rs.1,30,000/- in all under the conventional heads i.e. loss of consortium, loss of estate and funeral expenses. Such amount would, however, stand scaled down to Rs.70,000/- i.e. Rs.40,000/- for loss of consortium, Rs.15,000/- for loss of estate and a like amount of Rs.15,000/- towards funeral expenses.

In view of the above, the compensation amount is re-assessed and calculated as follows:

Sr. No.	Head	Calculation
1.	Income Rs.6000/- p.m.	Rs.6000/-
2.	Addition in income @ 40%	Rs.6000+2400= Rs.8400/-
3.	1/3 rd deduction towards personal and living expenses of the deceased	Rs.8400-2772=5628/- Rs. 5628 x 12=67,536/-
4.	Compensation after applying multiplier of 16	Rs. 67,536 x 16=10,80,576/-
5.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.10,80,576+70,000= 11,50,576/-

The afore calculated enhanced compensation amount be released in equal shares to the appellants along with interest @ 6% per annum from the date of filing of the instant appeal till actual realization.

Appeal is allowed in the aforesaid terms.

06.09.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No