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

FAO-5178-2014 (O&M)
Date of Decision: 20.08.2018

Nirmala and others -- Appellants

Versus

Raj Kumar and others --Respondents

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

Present:- Mr.Krishan Singh, Advocate
for the appellants.

Mr.Vinod Gupta, Advocate
for respondent No.3.

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**TEJINDER SINGH DHINDSA.J.**

This is claimants appeal seeking enhancement of compensation.

Brief facts of the case are that the claim petition was filed under Section 166 of Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri, seeking compensation to the tune of Rs.20 lakhs on account of death of Dev Raj in a motor vehicle accident that took place on 11.11.2012.

Claimants were the widow, two minor daughters and minor son of the deceased. It was averred in the claim petition that on the fateful day, Dev Raj (since deceased) had gone for a morning walk along with Harbans Lal. At about 6.30 a.m., a truck bearing registration No.HR-37-8887 being driven in a rash and negligent manner hit Dev Raj from behind. He sustained multiple injuries and was taken to Gaba Hospital, Yamuna Nagar and where he remained hospitalised up to 17.11.2012. He was then referred to PGI Chandigarh and succumbed to his injuries on 17.11.2012 itself. FIR No.409 under Sections 279, 337 and 304-A of the Indian Penal Code was registered at Police Station Farakpur on 11.11.2012.

Claim petition having been contested, the following issues were framed by the Tribunal :-

1. Whether any accident took place with the truck No.HR-37-8887 driven by the respondent No.1 on 11.11.2012 due to rash and negligent driving of respondent No.1.? OPP
2. Whether the petitioners are entitled to any compensation, if so to what extent and from whom? OPP
3. Whether the vehicle in question was being driven in violation of terms and conditions of insurance policy? OPR
4. Whether the claim petition is not maintainable in the present form? OPR
5. Relief.

It may be noticed at the outset that the Tribunal vide award dated 06.01.2014 returned findings that the death of Dev Raj occurred on account of injuries sustained in an accident dated 11.11.2012 on account of rash and negligent driving by the driver of the offending/insured vehicle. The Insurance Company has not assailed such finding and as such, the same has attained finality. Insofar as the quantum of compensation is concerned, the Tribunal has awarded a total sum of Rs.7,72,600/- in favour of the claimants and the liability to pay the compensation amount has been held to be joint and several. In other words, the respondent-Insurance Company would be the contesting respondent.

Counsel representing the claimants/appellants has argued that the compensation amount awarded is grossly inadequate. Income of the deceased has been assessed as Rs.6,000/- per month, which is on the lower side. Tribunal has ignored the evidence adduced on record by the claimants in support of their stand that the deceased was earning Rs.30,000/- per month. Further urged that the amount awarded by the Tribunal under the conventional heads i.e. Rs.20,000/- also needs to be enhanced.

Per contra, Mr. Vinod Gupta representing respondent No.3-Insurance Company even though broadly supports the award but very fairly states that the case for marginal enhancement is made out.

Counsel for the parties have been heard and records of the case have been perused.

The only issue that arises for consideration in this appeal is with regard to the quantum of compensation.

Perusal of the impugned award dated 06.01.2014 reveals that the Tribunal had taken the age of the deceased to be 46 years and 10 months at the time of his death by relying upon his academic qualification Certificate Ex.P38 and Ex.P39. Income of the deceased has been assessed to be Rs.6,000/- per month. 1/4$^{th}$ deduction has been made towards personal and living expenses of the deceased and a multiplier of 13 has been applied. Claimant No.1 being the widow has been awarded a sum of Rs.10,000/- as loss of consortium. Rs.5,000/- has been awarded towards funeral expenses and a like amount of Rs.5,000/- towards loss of estate. That apart an amount of Rs.30,553/- has been granted towards medical expenses/ treatment.

Even though, the claimants had asserted that the deceased Dev Raj was earning Rs.30,000/- per month while practicing as a medical practitioner having a clinic at Jaroda yet no documentary evidence in the shape of income tax returns etc. was placed on record. Be that as it may, the testimony of Sanjay Kumar PW4 would be relevant. In his affidavit Ex.PW4/A Sanjay Kumar has deposed that the deceased has taken his shop on rent @ Rs.2500/- per month and was running a medical clinic and used to practice as an Ayurvedic doctor. Even PW5 Harbans Lal had categorically deposed that the deceased was a medical practitioner having a clinic at Jaroda. Claimant/appellant No.1 i.e. widow of the deceased had placed on record the certificate Ex.P39 i.e. Vaid Visharad Certificate issued from Rajkiya Ayurvedic & Unani Chikitsa Parishad, Bihar. Such evidence if appreciated collectively would clearly point towards the deceased being an Ayurvedic practitioner. He had taken on rent a premises @ Rs.2500/- per month for running his clinic. That apart he was supporting his family comprising of wife and three minor children. The accident had taken place in the year 2012. Under such circumstances, it would be fair and equitable to assess the notional income of the deceased as Rs.7500/- per month. It is so directed.

The Tribunal has rightfully assessed the age of the deceased to be approximately 46 years at the time of his death. Keeping in view the number of dependents, deduction of 1/4th towards personal and living expenses from the income is also correct. A multiplier of 13 has been applied by the Tribunal as per parameters laid down by the Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil 77***.

The Tribunal, however, has overlooked the aspect of addition in income towards future prospects. By applying the dictum laid down by the Apex Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*** and keeping in view the age of the deceased as on the date of accident i.e. 46 years approximately and coupled with the fact that he was self employed an addition in income @ 25% towards future prospects is granted.

The total amount of Rs.20,000/-awarded by the Tribunal under heads of loss of consortium, loss of estate and funeral expenses would now stand enhanced to Rs.70,000/- in terms of judgment rendered in ***Pranay Sethi's case (supra).***

The Tribunal has awarded a total sum of Rs.30,533/- towards medical expenses/treatment on the basis of the bills produced on record Ex.P1 to Ex.P5, Ex.P6 to Ex.P34 and Ex.P43. The same does not call for any interference.

In view of the above, the compensation amount is reassessed and computed as follows:-

| **Sr. No.** | **Heads** | **Amount** |
|---|---|---|
| 1 | Notional income per month | Rs.7500/- |
| 2 | Addition in income 25% towards future prospects | Rs.7500+1875=9375/- |
| 3 | Annual income | Rs.9375x12=1,12,500/- |
| 4 | 1/4th deduction towards personal and living expenses | Rs.28,125/- |
| 5 | Annual dependency | Rs.84,375/- |
| 6 | Income after applying the multiplier of 13 | Rs. 84,375 x13=10,96,875/- |
| 7 | Conventional heads i.e. Loss of consortium, loss of estate and funeral expenses | Rs.70,000/- |
| 8 | Medical expenses/treatment | Rs.30,553/- |
| | Total | Rs.11,97,428/- |

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

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

20.08.2018
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i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No