

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

F.A.O No. 3394 of 2016

Date of decision:- 29.05.2018

Gurmail Kaur and anr.

...Appellants

Versus

Rakesh Kumar and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Harsh Goyal, Advocate, for the appellants

Ms Vandana Malhotra, Advocate
for respondent No. 3-Insurance Company.

RITU BAHRI J. (Oral)

1. The present appeal has been preferred by the claimants-appellants, seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Barnala (for short, 'the Tribunal') to the tune of Rs.4,70,000/- vide impugned award dated 03.02.2016.

2. The facts which are not in dispute are that on the intervening night of 14/15.11.2014, deceased Sember Singh along with Malkiat Singh was going on the road leading from Rureke Kalan to Barnala on trolly No. PB-19-C-8705. The said trolly was being driven by Malkiat Singh. They were being followed by Baljit Singh and Pal Singh in a car. When they reached near Trident Factor, their trolly struck against a tractor trolley bearing registration No. HR-44-F-9133 which was parked in the middle of the road by its driver-respondent No. 1. As a result of this accident, the deceased Sember Singh received multiple injuries and died on the spot.

F.I.R No. 143 dated 15.11.2014 under Section 304-A/279/427 IPC was

registered at P.S. Barnala against respondent No. 1

3. As per the Tribunal, the deceased-Sember Singh in the present case was 35 years old at the time of the accident. The Tribunal took the income of the deceased at Rs.5000/- per month and 1/2 was deducted towards personal expenses. Thereafter, the tribunal applied the multiplier of 15, in view of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77.*** The claimants were awarded Rs.20000/- for the last rites. The total compensation awarded to the claimant was Rs.4,70,000/-.

4. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, as no future prospects were granted and income has been taken on the lower side.

5. On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal.

6. I have heard learned counsel for the parties and perused the record.

7. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** wherein the issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has

granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the

rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”.

8. In the present case, the compensation is being reassessed by taking the income of the deceased as Rs.6500/- per month as per the judgments mentioned above:-

Sr. No.	Heads	Calculations
(i)	Salary	Rs.6500/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.6500+Rs.2600=Rs.9100/- per month
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.9100-Rs.4550=Rs.4550/- per month
(iv)	Compensation after multiplier of 16 is applied	Rs.4550X 12 X 16= Rs.08,73,600/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Total Compensation awarded	Rs.09,03,600/-
	Enhanced amount of compensation	Rs.09,03,600-Rs.4,70,000=Rs.4,33,600/- rounded of to Rs.4,34,000/-

9. The enhanced amount of compensation of Rs.4,34,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of *Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018*. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

10. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

29.05.2018

G Arora

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No