

Sr. No.216

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

FAO No.6159 of 2014 (O&M)

Date of Decision: 16.10.2018

Tara Devi and others

... Appellants

Versus

Updesh Kumar and others

... Respondents

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

Present:- Mr. Lalit Kumar, Advocate for
Mr. Johan Kumar, Advocate,
for the appellants.

Mr. Shashi Kumar Yadav, Advocate,
for respondent No.3.

TEJINDER SINGH DHINDSA, J.(ORAL)

This is a claimants' appeal seeking enhancement of compensation.

Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, Palwal seeking compensation to the tune of Rs.15 lakhs on account of death of Bhura in a motor vehicle accident that took place on 19.07.2010.

Claimants were the widow, son and minor daughter of the deceased.

In the claim petition, it was asserted that while Bhura (since deceased) was proceeding on his motorcycle on 19.07.2010, he was struck by a commercial vehicle bearing

registration No. HR-38-L-4920 being driven at a high speed by the driver, namely, Updesh Singh, respondent No.1.

Bhura is stated to have suffered fatal injuries in the accident. FIR No. 279 dated 20.07.2010, under Sections 279, 337, 338, 304-A and 427 IPC was registered at Police Station Gabhana against respondent No.1. Claimants had further asserted that Bhura at the time of accident was 42 years of age and was working as a 'Building Painter' and was earning Rs.12,000/- per month.

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

- 1. "Whether Bhura had died on dated 19.07.2010 at about 4.45 p.m. on Kanhoi Mod falls with the jurisdiction of P.S.Thana, Gabhana, District Aligarh (U.P.) on account of accident caused by respondent No.1 Updesh Singh with his rash and negligent driving of truck bearing registration No.HR-38L-4920?***
- 2. If issue No.1 stands proved, to what amount the petitioners are entitled for compensation and from whom? OPP***
- 3. Whether respondent No.1 was not having valid, effective driving licence on the date of alleged accident? OPR***
- 4. Whether respondent No.2 has violated the terms and condition of insurance policy? OPR***
- 5. Whether the petitioners have got no cause of actions and locus standi to file present petition? OPR.***
- 6. Relief."***

Insofar as issue No.1 is concerned, findings were returned in favour of the claimants and it was held that the death of Bhura took place on account of injuries suffered in an accident dated 19.07.2010 involving the offending vehicle and on account of rash and negligent driving by respondent No.1 Updesh Singh.

In the award dated 20.12.2013, the compensation amount has been computed as Rs.5,92,800/- in favour of the claimants along with interest @ 7% per annum from the date of filing of the claim petition till actual realization. Since the vehicle was insured, the Tribunal has fastened the liability to pay the compensation amount upon respondent No.3-Insurance Company.

The only issue raised in the instant appeal is with regard to quantum of compensation, I have heard counsel for the appellants as also counsel representing the contesting respondent No.3-Insurance Company.

In the considered view of this Court, the compensation amount awarded by the Tribunal would require to be revisited and enhanced suitably in the light of guidelines furnished by the ***Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009*** and ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77.***

Even though claimants had asserted that Bhura (since deceased) was earning Rs.12,000/- per month but no evidence had been led to substantiate such claim. Under such circumstances, Tribunal has assessed the monthly income of the deceased to be

Rs.5000/- per month at par with the minimum wages admissible to a daily wager in relation to the date of accident. No intervention in this regard is called for.

Keeping in view the number of dependents i.e. widow, son as also daughter, Tribunal has rightfully made a deduction of 1/3rd towards personal and living expenses of the deceased. A multiplier of 14 has been applied to the multiplicand against the backdrop of the age of the deceased to be 42 years and as per judgment passed in ***Sarla Verma's case (supra)***.

The Tribunal has awarded a total sum of Rs.30,000/- under the conventional heads i.e. Rs.10,000 each towards loss of consortium, loss of estate and for last rites and transportation.

This Court finds that the Tribunal has completely overlooked the aspect with regard to addition in income towards future prospects. By following the judgment of the ***Apex Court in Pranay Sethi's case (supra)*** and keeping in view the undisputed factual premise that deceased was self-employed and was 42 years of age as on the date of accident, 25% addition in income towards future prospects is awarded.

With regard to awarding compensation under the conventional heads, counsel for the appellants has placed reliance upon a recent judgment of the Hon'ble Supreme Court delivered by a two Judge Bench in ***Magma General Insurance Company Limited Vs. Nanoo Ram (Civil Appeal No.9581 of 2018) arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018*** to

contend that appellant Nos.2 and 3 i.e. son and daughter of the deceased are entitled to Rs.40,000/- each towards parental consortium. With regard to awarding compensation under the conventional heads, this Court would be guided by the Constitution Bench Judgment of the Apex Court in **Pranay Sethi's case (supra)**, wherein a total amount of Rs.70,000/- had been awarded under the conventional heads i.e. Rs.40,000/-towards loss of consortium in favour of widow, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Accordingly, even in the present case, the amount of Rs.30,000/- awarded by the Tribunal under the conventional heads would stand enhanced to Rs.70,000/-.

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

Sr. No.	Head	Calculation
1.	Income Rs.5000/- p.m.	Rs.5000
2.	Addition in income @ 25% towards future prospects	Rs.5000+1250=R. 6250/-
3.	1/3 rd deduction towards personal and living expenses of the deceased	Rs.6250-2083=4167 Rs. 4167 x 12=50,004
4.	Compensation after applying multiplier of 14	Rs.50,004 x 14=7,00,056/-
5.	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total	Rs.7,00,056+70,000= Rs.7,70,056/-

The afore-calculated enhanced compensation amount be released in favour of appellant No.1 i.e. widow of the deceased

along with interest @ 6% from the date of filing of the claim
petition till actual realization.

Appeal is allowed in the aforesaid terms.

16.10.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No