

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4737 of 2015 (O&M)
Date of Decision : 21.03.2018

Sunita and another

....Appellants

Versus

Rakesh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sajjan Singh, Advocate
for the appellants.

Mr. Suresh Kalia, Advocate
for respondents 1 and 2.

Mr. Ram Avtar, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Rohtak (later referred to as 'the Tribunal') for death of Ravi (later referred to as 'the deceased'), in a motor vehicle accident on 19.07.2013 with car bearing registration no. HR-35-F-6622 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal vide award dated 20.03.2015 awarded compensation of ₹3,26,500/- (50% of the amount of compensation, holding it to be a case of contributory negligence), to claimants-appellants, which was computed as follows:-

(i)	Name of the deceased	Ravi
(ii)	Age of the deceased	22 years

(iii)	Monthly income of the deceased as assessed by the Tribunal	₹8000
(iv)	½ of (iii) above deducted towards personal expenses	₹8000- ₹4000) = ₹4000 per month
(v)	Compensation calculated after applying the multiplier of 11 in view of age of mother of the deceased	(₹4000X12X11) = ₹528000
(vi)	Compensation for funeral expenses	₹25000
(vii)	Compensation for loss of love and affection	₹100000
Total		₹653000

4. Learned counsel for appellants has argued that the deceased was a diploma holder in Mechanical Engineering and Tribunal has assessed his income as ₹8000/- per month, which is on lower side. While referring to law settled by Hon'ble Apex Court in case of **National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, he has argued that claimants are entitled to 40% addition in income of the deceased towards future prospects and the multiplier attracted while computing amount of compensation is age of the deceased and not the age of claimant-mother, which has been applied by the Tribunal.

5. Learned counsel for insurance company has argued that in the absence of any evidence regarding income of the deceased, Tribunal has rightly assessed his notional income as ₹8000/- per month, which calls for no interference. He has further argued that the Tribunal has allowed compensation of ₹1,00,000/- for loss of love and affection and ₹25,000/- towards funeral expenses while as per law settled by Hon'ble Apex Court in case of **Pranay Sethi (supra)**, claimants are entitled to compensation of ₹15,000/- each under the conventional heads for loss of estate and for funeral expenses.

Ltd. vs. Jaswinder Kaur and others) decided on 20.03.2018, the deceased was a diploma holder in Computer Engineering and his income was assessed by the Tribunal as ₹12,000/- per month. In that case the accident had taken place in the year 2011. In appeal (FAO No. 2085 of 2014), income assessed by the Tribunal was approved. In the present case also, the deceased was a diploma holder in Mechanical Engineering and his status was better than a skilled worker. Keeping in view the income of deceased, who was also a diploma holder in Computer Engineering, as approved in FAO No. 2085 of 2014, income of the deceased is taken as ₹12,000/- per month. Claimants are also entitled to 40% addition in income of the deceased towards future prospects. However, under the conventional heads, they are entitled to compensation of ₹30,000/- instead of ₹1,25,000/- as awarded by the Tribunal. The multiplier attracted in this case is 18 as per age of the deceased.

7. Learned counsel for appellants on the issue of contributory negligence of the deceased as assessed by the Tribunal has argued that the Tribunal has taken contributory negligence of the deceased on higher side. Though, the deceased was negligent while crossing the road, his negligence can be taken in the ratio of 70:30 instead of 50:50.

8. Admittedly, the accident had taken place, when the deceased was crossing the road for going towards petrol pump, which was on opposite side. The offending vehicle was coming on the road and it was duty of the deceased to take care of the traffic going on main road. Taking note of above facts, the Tribunal has committed no error in apportioning the negligence in the ratio of 50:50 for the deceased and driver of the offending vehicle.

9. In view of my above discussion compensation, to which claimants-appellants are entitled, is computed as follows:-

(i)	Monthly income of the deceased	₹12000 per month
(ii)	40% of (i) above added towards future prospects	(₹12000+ ₹4800)= ₹16800 per month
(iii)	½ of (ii) above deducted towards personal expenses	(₹16800- ₹8400) = ₹8400 per month
(iv)	Compensation calculated after applying the multiplier of 18	(₹8400X12X18) = ₹1814400
(v)	Compensation towards loss of estate	₹15000
(vi)	Compensation towards funeral expenses	₹15000
Total		₹1844400

10. As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Ravi is enhanced from ₹6,53,000/- to ₹18,44,400/- and being a case of 50% contributory negligence, claimants are allowed compensation of **₹9,22,200/-**. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of instant appeal till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants will share the enhanced amount of compensation as per award.

11. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimants.

March 21, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No