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

**AT CHANDIGARH**

**F.A.O. No.4914 of 2015 (O&M)**
**Date of Decision: 26.02.2018**

Rajni Bala & others

....Appellant (s)

Versus

Kasturi Lal & others

Respondent(s)

***CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA***

Present:- Mr. D.K. Gupta, Advocate
for the appellant(s).

Mr. Munish Puri, Advocate
for respondent no.2.

Ms. Vandana Malhotra, Advocate
for respondent no.3-Insurance Company.
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***HARI PAL VERMA, J. (Oral)***

**CM-15067-CII-2015:**

The application is allowed, as prayed for.

**CM-15068-CII-2015:**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 96 days in filing the present appeal.

For the reasons stated in the application, the same is allowed. Delay of 96 days in filing the present appeal is condoned.

**F.A.O. No.4914 of 2015:**

The appellant-claimants have filed the present appeal seeking enhancement of compensation granted by the Motor Accident Claims Tribunal, Pathankot (hereinafter referred to as "the Tribunal") vide award dated 20.11.2014.

Brief facts of the case are that on 12.07.2013, deceased Raj Kumar was going on his motorcycle from his village. His son Deepak Saini along with his uncle was also following him on a separate motorcycle. When they reached Narot Mehra Puli on GT Road, Sarna Station, Pathankot, the offending truck, which was being driven by respondent no.1 in a rash and negligent manner, came from back side and dashed into the motorcycle of deceased. The deceased Raj Kumar received multiple injuries and died on the spot.

The appellant-claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") seeking compensation on account of death of Raj Kumar who was 52 years of age. The deceased left behind his widow namely Rajni Bala, two sons namely Deepak Saini and Munish Kumar, one daughter namely Anjana Saini and mother namely Kartaro Devi.

The Tribunal after considering the monthly income of the deceased as Rs.7,550/-, while applying 1/3$^{rd}$ deductions towards 'personal expenses' and multiplier of '11', awarded compensation of Rs.6,84,400/-, which also included Rs.5,000/- each towards, 'loss of consortium for wife', 'loss of love and affection for family', 'loss of estate' and 'funeral expenses' with interest @ 9% per annum from the date of award till its realization, in the following manner:-

| **"COMPUTATION IN CASE OF DEATH** | | |
|---|---|---|
| Name of deceased | Raj Kumar | |
| Age | 52 years | |
| Occupation | Private Job | |
| Claimants | Widow, children and mother | |
| HEADS OF CLAIM: | | |
| Sr. No. | Heads | Amounts |
| 1 | Annual Income (7550 x 12) | 90600 |
| 2 | Less deduction (1/2, 1/3, 1/4, 1/5) | 1/3 |
| 3. | Multiplicand (annualized by multiplying 12) | 60400 |
| 4. | Multiplier | 11 |
| 5. | Loss of dependence | 664400 |
| 6. | Medical expenses | - |
| 7. | Loss of consortium for wife | 5000 |
| 8. | Loss of love & affection for family | 5000 |
| 9. | Loss of estate | 5000 |
| 10. | Funeral expenses | 5000 |
| | Total | 684400 |
| (Rupees six lakhs, eighty four thousand and four hundred only) | | |

Not satisfied with the aforesaid amount of compensation, the appellant-claimants have preferred the present appeal seeking enhancement in the amount of compensation.

Learned counsel for the appellants has argued that the impugned award needs modification and the amount of compensation is required to be enhanced. The deceased Raj Kumar was about 52 years of age and left behind his widow, three children and old mother and therefore, 1/4$^{th}$ deduction should have been applied instead of 1/3$^{rd}$. He has relied upon judgment of Hon'ble the Apex Court in the case of ***National Insurance Co. Ltd vs. Pranay Sethi 2017(4) RCR (Civil) 1009,*** to contend that the deceased Raj Kumar is also entitled for compensation under the head 'future prospects' apart from enhancement of compensation under the 'conventional heads'. Moreover, though the Tribunal has awarded compensation along with interest @ 9% per annum, but it has been awarded from the date of award and not from the date of filing of the claim petition, which needs to be modified.

On the other hand, learned counsel appearing for the respondent-insurance company, has argued that considering the age of the deceased, the Tribunal has awarded adequate compensation and no further enhancement is warranted in the present case.

I have heard learned counsel for the parties and perused the impugned award.

Admittedly, the accident and liabilities are not in dispute. The dispute in the instant case is about deduction on account of 'personal expenses' of the deceased, compensation under the heads 'future prospects' and 'conventional heads' and the 'date of entitlement to recover the interest'.

The award shows that no amount of compensation has been awarded towards 'future prospects'. Similarly, the Tribunal has awarded a total sum of Rs.20,000/- i.e. Rs.5,000/- each towards 'loss of consortium for wife', 'loss of love and affection for family', 'loss of estate' and 'funeral expenses' and 1/3$^{rd}$ deduction towards 'personal expenses of the deceased' have been applied. However, in view of law laid down by Hon'ble the Apex Court in the case of ***Pranay Sethi*** (*supra*), the appellant-claimants are entitled for compensation under the head 'future prospects'. The deceased being 52 years of age, 10% addition is required to be made in the income of the deceased under the head of 'future prospects'. Similarly, under the conventional heads, the appellant-claimants are entitled for a total compensation of Rs.70,000/- instead of Rs.20,000/- i.e. Rs.15,000/- towards 'loss of estate, Rs.40,000/- towards 'loss of consortium' and Rs.15,000/- towards 'funeral expenses'. Moreover, the deceased having left behind five dependents, 1/4$^{th}$ deduction should have been applied instead of 1/3$^{rd}$.

Accordingly, the present appeal is allowed and the impugned award is modified to the extent that the appellant-claimant shall be entitled for an enhanced amount of Rs.2,07,795/- over and above the amount of compensation already granted to them, in the following manner:-

| **S.No.** | **Heads** | **Calculation (Rs.)** |
|---|---|---|
| **1** | **Month Income of deceased** | 7,550 |
| **2** | **Future prospects** (10%) | 755 |

| | | |
|---|---|---|
| **3** | **Total monthly income** | 7550+755=8,305 |
| **4.** | **Annual income** | 8305x12=99,660 |
| **5** | **Deduction (1/4th)** | 24,915 |
| **5** | **Net Annual Income** | 99660-24915=74,745 |
| **6** | **Multiplier** | 11 |
| **7** | **Total Compensation** | 74745x11=8,22,195 |
| **8** | **Conventional Heads** | 15000+40000+15000= 70,000/- |
| **9** | **Total compensation** | 822195+70000=8,92,195/- |
| **10** | **Amount already awarded** | 6,84,400/- |
| **11** | **Enhancement** | 892195-684400=2,07,795/- |

It is further ordered that the enhanced amount of compensation shall be released to the claimants in same proportion and manner, as granted by the Tribunal and this enhancement shall fetch interest @ 7.5% per annum instead of 9% per annum from the date of filing the claim petition till its realization. However, as the present appeal has been filed after a delay of 96 days, the appellant-claimants shall not be entitled for interest for the aforesaid period, as the appeal remained barred by limitation during the aforesaid period.

February 26, 2018 **( HARI PAL VERMA )**
**AK** **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No