IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 5520 of 2015

Date of Decision: November 27 , 2018.

Gayatri Devi and another ...... APPELLANT (s)

Versus

Tahir Hussain and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashish Gupta, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.2– Insurance Company.

Mr. Virendra Rana, Advocate
for respondent No.4.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Mewat (for short, the 'Tribunal') vide impugned award dated 16.04.2015 on account of death of Jitender in a motor vehicle accident. Claimants are the widow and minor child of the deceased.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of the death of Jitender, who lost his life in a motor vehicle accident which took place on 26.03.2014. FIR (Ex.P1) was lodged against respondent No.1 at the instance of PW3 Tej Singh. The deceased was claimed to be self-employed, earning ₹2,000/- per month. Compensation was thus prayed for.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of Hiwa truck bearing registration No. HR-74A-3293 by respondent No.1 – Tahir Hussain. The said finding of the learned Tribunal has attained finality.

Learned Tribunal awarded a sum of ₹5,64,000/- as compensation to the claimants vide impugned award dated 16.04.2015. The deceased was aged 28 years at the time of the accident. Income of the deceased was assessed as ₹4,000/- per month. Deduction to the extent of 1/3rd on account of personal expenses was effected and multiplier of 17 was applied. A sum of ₹20,000/- towards funeral expenses and love & affection was awarded.

Learned counsel for the appellants submits that income of the deceased has been wrongly assessed as ₹4,000/- per month by the learned Tribunal, whereas minimum wage of an unskilled labourer in the State of Haryana at the time of the accident was ₹5,547/- per month. It is submitted that increment on account of future prospects has not been awarded and neither is adequate compensation awarded under the conventional heads. It is thus prayed that the compensation be enhanced accordingly.

Learned counsel for respondent No.2 – Insurance Company however refutes the arguments raised. It is submitted that the impugned award dated

16.04.2015 be upheld as there is no ground for any enhancement of the compensation.

I have heard learned counsel for the parties and have gone through the file.

Liability of the Insurance Company is not in dispute and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.1. Learned counsel for the Insurance company is unable to deny that even the minimum wages in the State of Haryana at the relevant time i.e., 26.03.2014 were ₹5,547/- per month. Therefore, the learned Tribunal has erred in assessing the income of the deceased to be ₹4,000/- per month, the same is assessed as ₹5,547/- per month.

Increase in income at the rate of 40% on account of future prospects has to be afforded keeping in view the observations of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Deduction to the extent of 1/3rd on account of personal expenses has been rightly effected and the multiplier of 17 has also been corrected applied. ₹15,000/- each towards funeral expenses (instead of ₹20,000/-) and loss of estate are awarded to the appellants. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018**, the appellants as well as proforma respondent No.4 (mother of the deceased) are entitled to ₹40,000/- each on account of loss of consortium.

Appellants-claimants are, thus, entitled to compensation which is reworked as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	5,547 p.m. i.e. ₹39,600/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	66,564 + (66,564 **x** 40%) = 93,190
3.	Income after 1/3rd deduction on account of personal expenses	93,190 – (93,190 **x** 1/3) = 31,063
4.	Total dependancy after applying a multiplier of 17	(31,063 **x** 17) = 5,28,071
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of consortium	(40,000 **x** 4) = 1,60,000
	Grand Total	₹7,18,071/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the appellants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

November 27 , 2018.
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No