

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

FAO-5010-2016 (O&M)  
Date of decision: 26.04.2018

RAMESH DAGAR (DECEASED) THR LRS ... Appellants

Versus

RAJESH &amp; ORS ... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. Rakesh Lathwal, Advocate for the appellants.

Mr. Ramesh Malik, Advocate for respondents No.1 and 2.

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**REKHA MITTAL, J. (Oral)**

The present appeal directs challenge against award dated 27.05.2016 whereby compensation has been awarded on account of death of Aman Kumar in a motor vehicular accident that took place on 02.05.2014.

The instant appeal has been preferred by Ramesh Dagar (since deceased) registered owner of the offending vehicle i.e. tractor bearing No.HR-10-G-8412.

Counsel for the appellant would inform that appeal has been filed to assail findings of the Tribunal on issue No.1 as well as quantum of compensation assessed by the Tribunal. It is argued that in the postmortem report, it is mentioned that accident was caused by a truck whereas the offending vehicle is a tractor and this discrepancy creates a doubt in the

story propounded by the claimants.

To challenge quantum of compensation, it is argued that the Tribunal has allowed addition in income for future prospects @ 50% but the same should be 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. Compensation allowed under conventional heads needs to be restricted to Rs.30,000/-.

Counsel representing the claimants has supported the award with the submission that findings recorded by the Tribunal on all the issues are based upon correct appreciation of materials on record.

The Tribunal framed issue No.1 to the following effect:-

*“Whether the accident took place due to rash and negligent driving of tractor bearing registration No.HR-10G-8412 by its driver-respondent No.1 on 03.05.2014 within the jurisdiction of police station, Kundli causing death of Aman Kumar as alleged? OPP.”*

Sushil Kumar PW1 was examined to discharge onus of issue No.1. He tendered into evidence his duly sworn affidavit Ex.PW1/A and deposed that accident was caused by respondent No.1 by driving the offending vehicle in a rash and negligent manner. Copy of FIR Ex.P1 was placed on record. Counsel for the appellants has fairly conceded that in the FIR, particulars of the offending vehicle have been given and on due investigation, challan was presented against Mallu Yadav, driver of the offending tractor. Mallu Yadav did not appear in the witness box to counter

testimony of Sushil Kumar. The fact that in the postmortem report, the vehicle which caused the accident is stated to be truck in place of tractor appears to be the result of some typographical error/omission. As such, I do not find merit in contention of counsel for the appellants that findings recorded by the Tribunal on issue No.1 suffer from infirmity much less illegality.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has awarded an amount of Rs.10,97,000/-, detailed hereunder:-

|                                            |               |
|--------------------------------------------|---------------|
| 1. Monthly income of the deceased          | Rs.6000/-     |
| 2. Addition in income for future prospects | 50%           |
| 3. Multiplier                              | 18            |
| 4. Deduction for personal expenses         | 50%           |
| 5. Expenses on funeral                     | Rs.25,000/-   |
| 6. Loss of love and affection              | Rs.1,00,000/- |

Contention raised by counsel for the appellant that addition in income should be 40% and compensation under conventional heads to be restricted to Rs.30,000/- is meritorious in the light of judgment in **Pranay Sethi's case** (supra). Accordingly, loss of dependency comes to Rs.9,07,200/- (Rs.6000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.30,000/-, namely Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

Total compensation is Rs.9,37,200/- and compensation

awarded by the Tribunal is reduced to the extent of Rs.1,59,800/-  
(10,97,000 - 9,37,200).

The appeal is partly allowed in the aforesaid terms.

26.04.2018  
ashok

(REKHA MITTAL)  
JUDGE

|                            |          |
|----------------------------|----------|
| Whether speaking/reasoned: | Yes / No |
| Whether reportable:        | Yes / No |