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

**FAO No.7965 of 2014 (O&M)
Date of Decision: 27.09.2018**

Savita Garg and others

... Appellants

Versus

Amarjot Sharma and others

... Respondents

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

Present:- Mr. P.K.S.Phoolka, Advocate,
for the appellants.

Mr. R.K.Bashamboo, Advocate,
for respondent No.3-Insurance Company.

TEJINDER SINGH DHINDSA, J.(ORAL)

This is a claimants' appeal seeking enhancement of compensation.

Briefly noticed, a claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, seeking compensation to the tune of Rs.35 lakh on account of death of Rakesh Kumar in a motor vehicle accident that took place on 04.10.2012.

Claimants were the widow, two minor children and aged mother of the deceased. It was asserted in the claim petition that Rakesh Kumar (deceased) was proceeding along with his brother Sandeep Kumar on a motorcycle and was struck by another motorcycle bearing registration No. PB-03-AB-6021 which was being driven in a rash and negligent manner by Amarjot Sharma. Rakesh Kumar is stated to have succumbed to the injuries suffered in the accident on 04.11.2012.

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

1. "***Whether Rakesh Kumar died in the incident on 04.10.2012 as respondent No.1 Amarjot Sharma was driving the motorcycle No.PB-03-AB-6021 rashly and negligently? OPP***
2. ***If issue No.1 is decided in favour of the claimants, from whom the claimant claim compensation to what extent? OPP***
3. ***Whether the claimants have no locus standi or cause of action to file the petition? OPR-1***
4. ***Whether the respondent No.1 was not holding valid and effective driving license? OPR-3***
5. ***Relief."***

Insofar as issue No.1 is concerned, findings were returned in favour of the claimants and it was held that death of Rakesh Kumar occurred on 04.11.2012 on account of injuries suffered in an accident dated 04.10.2012 involving the offending/insured motorcycle bearing registration No. PB-03-AB-6021 and which was being driven in a rash and negligent manner. As regards compensation, the Motor Accident Claims Tribunal, Bathinda vide award dated 22.05.2014 has awarded a total compensation amount of Rs.24,49,728/- inclusive of medical expenses/treatment component of Rs.7,79,499/-.

The liability of paying compensation amount was held to be joint and several.

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

In the considered view of this Court, the compensation amount awarded by the Tribunal requires to be re-visited and re-assessed.

As per claimants, deceased Rakesh Kumar was earning a monthly income of Rs.35,000/- while working as an agent with the Life Insurance Corporation of India. Details of the net commission earned by the deceased for various financial years had been furnished. Concededly, deceased was also an income tax assessee and even income tax returns for the financial year 2008-09 to financial year 2012-13 had been adduced on record. Tribunal has assessed the monthly income of the deceased to be Rs.9912/- by relying upon the total annual income of Rs.1,18,950/- declared in the income tax return pertaining to the financial year 2008-09. This Court does not find any justifiable basis for the Tribunal to have ignored the income tax return filed by the deceased pertaining to the year 2010-11 in which the annual income declared was Rs.1,99,445/-. Such factual premise has not even disputed by counsel representing the contesting respondent Insurance Company. By taking into reckoning, the income tax return filed by the deceased for the financial year 2010-11, the monthly income of the deceased would come to Rs.16,620/-. For purposes of computing the compensation amount, monthly income of deceased is rounded to Rs.16,500/- per month.

This Court finds that Tribunal has erred in not making any deduction from the monthly income towards personal and living expenses of the deceased. Since deceased was maintaining a family of his widow, two minor children and aged mother, the deduction of 1/4th from the monthly income ought to have been made. It is so directed.

Tribunal has completely overlooked the aspect as regards addition in income towards future prospects. By following the parameters laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009*** and keeping in view the uncontroverted factual premise that deceased was 42 years of age as on the date of death and was self employed, an addition in income @ 25% is granted towards future prospects. The multiplier of 14 shall be applied by following the dictum laid down by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77.***

Even the amount of Rs.5000/- awarded towards funeral expenses would now stand enhanced to Rs.15,000/-. That apart a further amount of Rs.15,000/- is awarded towards loss of estate and Rs.40,000/- towards loss of consortium. The component of Rs.7,79,499/- towards medicines/medical treatment awarded by the Tribunal would stay intact.

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

Sr. No.	Head	Calculation
1.	Income Rs.16,500/-/- p.m.	Rs.16,500/-
2.	Addition in income 25% towards future prospects	Rs. Rs. 16,500 + 4125 = Rs.20,625/-
3	1/4th deduction towards personal and living expenses of the deceased	Rs.20,625-5156=Rs. 15,469/- Rs.15,469 x 12=1,85,628/-
4	Compensation after applying multiplier of 14	Rs.1,85,628 x 14=25,98,792/-
5	Conventional Heads: loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
6	Towards medicines and Medical expenses/treatment (as awarded by the Tribunal)	Rs. 7,79,499/-
	Total	Rs. 25,98,792+70,000+7,79,499= Rs. 34,48,291/-

The afore-calculated enhanced compensation amount be released in favour of the appellants in equal shares along with interest @ 6% per annum from the date of filing of the instant appeal till actual realization.

Appeal is allowed in the aforesaid terms.

27.09.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No