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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-542-2016

Date of decision : 05.02.2018

Bhira and others

... Appellant(s)

Versus

Sandeep and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Saharan, Advocate
for the appellant(s).

Mr. Sandeep Suri, Advocate
for respondent No.3/Insurance Company.

AMIT RAWAL, J. (ORAL)

The appeal has been preferred by the claimants being husband and children of Kamlesh, who unfortunately died in a motor accident occurred on 21.09.2012, for enhancement of compensation against the Award passed by the Tribunal, whereby a compensation of ₹4,76,800/- along with interest @ 7.5% per annum, has been awarded.

Learned counsel appearing on behalf of the appellants-claimants submits that the Tribunal has awarded the compensation to the tune of ₹4,76,800/-, which is on lower side as the deceased-Kamlesh was house wife and was also doing agricultural work and used to earn ₹ 10,000/- per month, but the Tribunal took the income of the deceased as ₹3,600/-. The Tribunal also granted ₹1,00,000/- towards loss of consortium, ₹1,00,000/- for loss of love and affection, ₹25,000/- on account of funeral

expenses and transportation and ₹12,400/- for medical expenses. Moreover, no increase was made in the salary towards future prospects, thus, there is scope for enhancement.

On the other hand, learned counsel appearing on behalf of the Insurance Company submits that the Tribunal has taken care of all the heads sufficiently and there is no scope for further enhancement, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a scope of enhancement as the compensation to the tune of ₹4,76,800/- by taking the income of the deceased as ₹3,600/- is on lower side. Accordingly, I take the income of the deceased as ₹5,000/- per month, which were the minimum wages of unskilled labourer in the year 2012 and apply a multiplier of '16' to assess the loss of dependency as ₹9,60,000/-.

As regards the grant of compensation towards conventional heads, the Tribunal has already granted ₹1,00,000/- towards loss of consortium, ₹1,00,000/- for loss of love and affection, ₹25,000/- on account of funeral expenses and transportation, which are on higher side, therefore, I hereby reduce the same from ₹2,25,000/- to ₹70,000/- towards conventional heads i.e. loss of estate, loss of consortium and funeral expenses as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in **SLP (Civil) No.25590 of 2014** titled as **“National Insurance Company Ltd. V/s Pranay Sethi and others”** and by exercising the power under Order 41 Rule 33 CPC as per the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“U.P.S.R.T.C. V/s Km. Mamta and others” (2016) 4 SCC 172**. I

also provide an amount of ₹12,400/- towards medical expenses as awarded by the Tribunal, in essence, total compensation comes to ₹10,42,400/-.

However, the findings of the Tribunal qua attribution of 50% of contributing negligence is hereby upheld.

Resultantly, the appellant(s)-claimant(s) shall be entitled to compensation of ₹5,21,200/- (50% of the total amount of compensation of ₹10,42,400/-). The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the appeal till its realization. The enhanced amount shall be distributed equally amongst the appellants-claimants. The liability shall remain the same as has already been determined by the Tribunal.

Resultantly, the appeal is allowed and the award is modified to the aforementioned extent.

05.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No