

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO No.7076 of 2015 (O&M)  
Date of decision:20.11.2018.

Amar Pal and others

...Appellants

Versus

Vijay Kumar and others

....Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Ishan Singh Cooner, Advocate for  
Mr. J.S. Cooner, Advocate for the appellants.

Mrs. Madhu Sharma, Advocate for respondent No.3/Insurance  
Company.

**LISA GILL, J.**

CM No.22323-CII of 2015

Heard.

For the reasons mentioned in the application and the arguments  
addressed, delay of 39 days in filing of the appeal is condoned.

Application is allowed.

FAO No.7076 of 2015

This appeal has been filed by the claimants seeking enhancement  
of the compensation awarded to them by the learned Motor Accident Claims  
Tribunal, Patiala ('Tribunal' for short) vide award dated 24.04.2015 on account  
of death of Mohinder Pal alias Mohinder Singh in a motor vehicle accident on  
28.09.2014.

The claimants, who are wife and children of the deceased, filed a  
petition under Section 166 of the Motor Vehicles Act seeking compensation on  
account of death of Mohinder Pal alias Mohinder Singh due to injuries received  
in a motor vehicle accident which took place on 28.09.2014. FIR No.237 dated  
29.09.2014 was registered under Sections 279,304-A,338 and 427 IPC at  
Police Station Patran, District Patiala against respondent No.2. It was pleaded

that the deceased at the time of his death was working as a Mason and during the harvesting period, he used to work as a contractor in grain market, Patran. He was claimed to be 38 years old at the time of accident, earning Rs.20,000/- 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 the offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

Learned Tribunal further concluded the deceased to be 38 years old at the time of his death and assessed his income as Rs.4500/- per month considering him to be an unskilled labourer. Deduction of 1/3<sup>rd</sup> was effected towards personal expenses. Multiplier of 15 was applied keeping in view the age of the deceased. Thus, total dependency was assessed at Rs.5,40,000/- (36,000x15). A sum of Rs.1,00,000/- was awarded to claimant No.1 towards loss of consortium besides Rs.10,000/- each to claimants No.2 to 4 towards loss of love and affection. Another sum of Rs.10,000/- was awarded towards last rite expenses. Thus, the claimants were held entitled to total compensation of Rs.6,80,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellants argues that the learned Tribunal has erred in assessing income of the deceased as Rs.4500/- per month whereas, even the minimum wage of an unskilled labourer in the State of Punjab at the time of accident was about Rs.6647/-. Moreover, no increment has been afforded on account of future prospects. However, learned counsel for the appellants submits that compensation awarded under conventional heads may be reworked in terms of the judgments of Hon'ble the Supreme Court in

National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009 and Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018. It is further contended that deduction of 1/3<sup>rd</sup> has wrongly been applied as number of dependents are four. Meagre compensation has been afforded to the claimants on account of funeral expenses and nothing has been awarded towards loss of estate. It is thus prayed that this appeal be allowed and compensation awarded be enhanced.

Learned counsel for respondent No.3/Insurance Company has refuted the above said arguments while submitting that the impugned award has been passed correctly and no ground for any enhancement is made out.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is not in dispute that Mohinder Pal alias Mohinder Singh lost his life due to injuries received in a motor vehicle accident which took place on 28.09.2014 due to the rash and negligent driving of the offending vehicle by respondent No.2. The deceased was 38 years old at that time. Learned Tribunal has indeed erred in assessing the income of the deceased as Rs.4500/- per month as even minimum wage of an unskilled labourer in the State of Punjab at the time of accident was about Rs.6647/-. It was pleaded that the deceased was a mason by profession earning Rs.20,000/- per month but there is no evidence on record to prove the same. However, his income cannot be considered to be less than that of even an unskilled labourer in the State of Punjab at the time of the accident i.e. on 28.09.2014. In the facts and circumstances of the case, it is considered just and expedient to assess the income of the deceased to be Rs.6650/- per month. In view of the judgment of Hon'ble the Supreme Court in

the case of Pranay Sethi and others (supra), 40% increase in income has to be afforded on account of future prospects.

Perusal of the record reveals that number of dependents, i.e. wife and three children, are four. Therefore, deduction of 1/4<sup>th</sup> instead of 1/3<sup>rd</sup> has to be applied. Multiplier of 15 has rightly been applied keeping in view the age of the deceased. In view of the judgment of Hon'ble the Supreme Court in the case of Magma General Insurance Company Ltd. (supra), appellant No.1 is entitled to Rs.40,000/- instead of Rs.1,00,000/- towards spousal consortium and appellants No.2 to 4 are entitled to Rs.40,000/- each on account of parental consortium instead of Rs.10,000/- awarded for loss of love and affection. The appellants are entitled to Rs.15,000/- each for loss of estate and funeral expenses instead of Rs.10,000/- awarded towards last rites.

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

| <b>Sr.No.</b>      | <b>Heads of Claim</b>                                                         | <b>Rupees</b>                              |
|--------------------|-------------------------------------------------------------------------------|--------------------------------------------|
| 1.                 | Income                                                                        | 6650 p.m.<br>i.e., 79,800/- per annum      |
| 2.                 | Total income after addition at the rate of 40% on account of future prospects | 79,800+31,920 (79,800x40%)<br>= 1,11,720/- |
| 3.                 | Income after deduction of 1/4 <sup>th</sup> on account of personal expenses   | 1,11,720–27,930 (1,11,720/4)<br>= 83,790/- |
| 4.                 | Total dependency after applying a multiplier of 15                            | (83,790 x15) =12,56,850/-                  |
| 5.                 | Loss of estate                                                                | 15,000/-                                   |
| 6.                 | Funeral expenses                                                              | 15,000/-                                   |
| 7.                 | Loss of consortium to appellants No.1 to 4 @ 40,000<br>40,000x4=1,60,000/-    | 1,60,000/-                                 |
| <b>Grand Total</b> |                                                                               | <b>14,46,850/-</b>                         |

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Apportionment and disbursement of the compensation shall be as per directions of the learned Tribunal in award dated 24.04.2015. Appellants shall be entitled to interest at the rate of 7.5% per annum on the entire amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 24.04.2015, present appeal is disposed of.

**(LISA GILL)**  
**JUDGE**

20.11.2018  
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No