IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No.7250 of 2015 (O&M)
Date of decision:- 01.02.2018

Amar Kaur ...Appellant

Versus

Rajesh Kumar and Ors. ...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Puneet Pali, Advocate,
for the appellant.

Mr. D.K.Prajapati, Advocate,
for RS Madan, Advocate,
for the insurance company.

<u>RITU BAHRI J. (Oral)</u>

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') vide Award dated 10.03.2015, on account of death of Krishan Chander @ Krishan Chand in a motor vehicular accident which took place on 25.08.2013.

<u>FACTS NOT IN DISPUTE</u>

Brief facts of the case are that on 25.08.2013 Krishan Chander @ Krishan Chand since deceased was coming from Ambala to Village Jatwar on his motorcycle bearing registration No. HR-04-A-9527 by driving the same on the correct left side of the road at a normal speed. It is further averred that , at about 12.15 AM, when he reached near Bus Stand Handesra, Gulzar Singh, respondent No. 4 came from Mohali side to Handesra to Hanover delivery of two wheelers while truck bearing registration No. HR38-L-8001 and after parking his truck on the road just opposite the agency of “Prince Automobiles”, came down and was standing on the road. It is further averred that at the same time, Nachhatar Singh, respondent No. 7 also came her and started talking to respondent No. 4 by stopping his truck bearing registration no. HP12-3595 and he had stopped his motorcycle behind the truck of respondent No. 4. In the meanwhile respondent No. 1 while driving his car bearing registration No. HR04D-1051 rashly, negligently and without observing the traffic rules came from Ambala side and without watching the vehicle standing ahead to him, hit against the motorcycle of Krishan Chander @Krishan Chand, as a result thereof, he fell down alongwith motorcycle and thereafter, car hit against truck bearing registration no. HR 38 L 8001 and oil tank bearing registration NO. HP-12-3595. It is further averred that accident was witnessed by Raj Kumar, owner of Prince Automobiles and after that Krishan Chander was shifted to Civil Hospital, Dera Basi, where the doctors declared him as brought dead. The matter was reported to the Police and in this regard FIR Ex. 155 dated 25.08.2013 filed.

Consequently, claimants-appellants filed a claim petition before the Tribunal.

<u>COMPENSATION ASSESSED BY THE MACT</u>

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused due to rash and negligent act of offending vehicle by respondent no.1. PW1 wife of the deceased deposed that her husband also used to receive old age pension to the tune of Rs.1000/- per month and further stated that she has no proof regarding income of her husband to the tune of Rs. 13,000/- per month.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the claimants. Tribunal took the income of the deceased at Rs.5000/- per month . Admittedly, deceased was married and as such 1/3rd is to be deducted from his income towards his personal and living expenses and total annual dependancy of the claimants comes to Rs.3334X12=40008/-. As per the law laid down in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77, multiplier of 7 be applied as deceased at the time of accident was 61 years of age and, compensation assessed by the Tribunal as under :

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs. 5000/- per month
(ii)	1/3rd deducted towards personal expenses as he was bachelor	Rs.5000-1666=3334/- per month
(iii)	Multiplier applied	Rs.3334X12X7= 2,80,056/-
(iv)	Compensation towards loss of consortium	Rs.20,000/-
(v)	Compensation towards Funeral Expenses, last rites and transpiration	Rs. 20,000/-
	Total Compensation Awarded	**Rs.3,20,056/-**

The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to the enhanced.

I have heard learned counsel for the parties and perused the record.

<u>REASSESSED COMPENSATION</u>

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017 wherein t***he issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the

revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

In the present case, income be reassessed by this court on the basis of minimum Wages Act as deceased was skilled laborer at the time of accident, the compensation is being reassessed as per the judgments mentioned above and no future prospects be granted as the age of the deceased above 60 years:-

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs. 5500/- per month
(ii)	1/3rd deducted towards personal expenses as he was bachelor	Rs.5500-1833=3667/- per month
(iii)	Multiplier applied	Rs.3667X12X7= 3,08,028/-
(iv)	Compensation towards conventional heads	Rs. 30,000/-
	Total Compensation Awarded	**Rs.3,28,028/-**
	Total Enhanced Amount	**Rs. 3,28,028-3,20,056=7972/-**

The enhanced amount of compensation of Rs.7,972/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. The remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

01.02.2018 **(RITU BAHRI)**
Riya Grover ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***