

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-6951-2016 (O&M)
Date of Decision: 27.08.2018

Gurbachan Kaur @ Bachan Kaur & another --Appellants

Versus

Lakhwinder Singh & others --Respondents

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

Present:- Ms. Manjeet Kaur, Advocate for
Mr. A.S. Khosa, Advocate for the appellants.

Mr. A.P.S. Dhaliwal, Advocate for respondent no.1.

Mr. Aman Sharma, Advocate for respondent no.2.

Mr. Vinod Gupta, Advocate for respondent no.3.

TEJINDER SINGH DHINDSA.J (Oral)

This is claimants' appeal seeking enhancement of compensation.

Briefly noticed that a claim petition under Section 166 of the Motor Vehicles Act was filed before the M.A.C.T., Ferozepur seeking a compensation amount of Rs.50 lakh on account of death of Darshan Singh in a motor vehicle accident that took place on 12.9.2014.

Claimants were the widow and daughter of the deceased. It was asserted that on the fateful day the deceased was pillion riding on a motorcycle which was being driven by Pritam Singh. When the motorcycle reached near the office of Patwari, Makhu, a bus bearing registration no. PB-04 N-9531 came from Zira side and was being driven in a rash and negligent manner at a very high speed and struck against the motorcycle as a result of which both Pritam Singh and Darshan Singh received multiple injuries. Darshan Singh is stated to have died at the spot and Pritam Singh died on the way to the hospital. Occurrence was stated to have been

witnessed by Ajit Singh son of Arjan Singh, who was standing outside the office of Patwari. On his statement, FIR No.163 dated 12.9.2014 was registered at Police Station, Makhu against the bus driver under sections 279, 304-A, 427 I.P.C. Post Mortem on the body of deceased Darshan Singh was got conducted at Civil Hospital, Zira. Claimants averred in the claim petition that the deceased was 60 years of age and was Lambardar of the village. He was an agriculturist and also running a dairy farm and was earning Rs.25,000/- per month. Compensation of Rs.50 lakh was claimed.

The claim petition having been contested, the Tribunal vide award dated 10.11.2015 returned a finding that the accident in question had occurred on account of the rash and negligent driving of the offending bus and on account of which deceased Darshan Singh suffered multiple injuries and which had led to his death. As regards quantum of compensation the Tribunal has awarded a total compensation amount of Rs.2,20,000/- in favour of the claimants and the liability to pay the compensation amount has been held to be joint and several. In other words, it is the respondent-Insurance Company which has to shoulder the burden of the compensation amount.

The Insurance Company has not challenged the findings recorded by the Tribunal as regards the rash and negligent driving of the offending/insured vehicle and which has resulted in the death of Darshan Singh. Such aspect has attained finality.

I have heard counsel for the parties at length.

The only issue that arises for consideration in this appeal is with regard to quantum of compensation.

A perusal of the award dated 10.11.2015 passed by the M.A.C.T., Ferozepur would reveal that the age of the deceased has been accepted as 60 years which had been so recorded even in the Post Mortem Report Ex.P-1. Even though, the claimants had asserted that the deceased was earning Rs.25,000/- per month but such claim has not been accepted by the Tribunal as no evidence had been adduced to substantiate the same. The Tribunal has assessed the monthly income of the deceased to be Rs.4,000/- treating him as an unskilled laborer. A 1/3rd deduction has been made towards the personal and living expenses of the deceased. A multiplier of 5 has been applied. A total sum of Rs.60,000/- has been awarded under the conventional heads i.e. Rs.20,000/- towards funeral expenses, Rs.20,000/- towards loss of estate and Rs.20,000/- as loss of consortium etc.

In the considered view of this Court, the compensation amount awarded by the Tribunal would require to be revisited and enhanced suitably.

The monthly income of Rs.4,000/- that has been assessed by the Tribunal is much on the lower side. The date of accident is 12.9.2014. Counsel for the contesting Insurance Company does not dispute that the minimum wages admissible to a daily wager in relation to the date of accident were Rs.5840/- per month. Such figure would be taken as the monthly income of the deceased.

The Tribunal has completely overlooked the aspect of awarding addition in income towards future prospects. Keeping in view the age of the deceased and by treating him to be self-employed, an addition in income @ 10% is granted towards future prospects, as per judgement rendered by the Apex Court in case of *National Insurance Company Limited Vs. Pranay*

Sethi and others, 2017(4) R.C.R (Civil), 1009.

The Tribunal has erred in applying the multiplier of 5. As per parameters laid down by the Supreme Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77*, multiplier of 9 ought to have been applied against the age of the deceased i.e. 60 years. It is so directed.

Even the amount awarded under the conventional heads of Rs.60,000/- would now stand enhanced to Rs.70,000/- as per dictum laid down in *Pranay Sethi's* case (supra).

In view of the above, the compensation amount payable to the appellants/claimants is reassessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Income as assessed by this court	Rs.5840/- per month
2.	10% increase in income towards future prospects	5840+10%=6424/-
3.	1/3 rd deductions towards personal expenses of the deceased.	6424 ÷ 3% = 2141/- 6424 -2141 = 4283/-
4.	Compensation after applying multiplier of 9	4283x12 = 51,396/- (Annual income) 51,396x9 = 4,62,564/-
5.	Conventional heads i.e. funeral expenses, loss of estate and loss of consortium etc.	70,000/-
6.	Total	Rs.5,32,564/-

The afore-calculated enhanced compensation amount be released to the appellants in equal share 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.

(TEJINDER SINGH DHINDSA)
JUDGE

27.08.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No