IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-8720-2015 (O&M)
Date of Decision: 24.07.2018

Poonam & others ... Appellants

Versus

Surender & others ... Respondents

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

Present:- Mr. Sunny Namdev, Advocate for
Mr. Saurabh Dalal, Advocate for the appellants.

Mr. Kuldeep, Advocate
for respondent No.3/Insurance company.

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TEJINDER SINGH DHINDSA, J. (ORAL)

This is claimants' appeal seeking enhancement of compensation.

2. Briefly, it may be noticed that a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed before the Motor Accident Claims Tribunal, Rohtak seeking compensation to the tune of Rs.70 lakhs on account of death of Gajender Singh @ Pappu in a motor vehicle accident that took place on 25.06.2014. Claimants were the widow, son, minor daughter and parents of the deceased.

3. Claimants had stated that while Gajender Singh @ Pappu (since deceased) was proceeding on foot, a car bearing registration No.DL-5-CH-2292 being driven in a rash and negligent manner by Surender (respondent No.1) struck against him and who succumbed to the injuries so suffered. Claimants asserted that age of Gajender Singh @ Pappu as on the date of

accident was 39 years and he was employed with a firm, namely, M/s Mohindra Fastners, Ltd-II, Rohtak. It was asserted that he was getting a salary of Rs.10,500/- per month and in addition thereto, was earning Rs.8000/- per month from agriculture and dairy farm.

4. Claim petition was contested by the owner/driver as also the Insurance Company in terms of filing separate written statements.

5. Upon the pleadings of the parties, the following issues were framed by the Tribunal:

> *"1. Whether the accident in question occurred due to rash and negligent driving of vehicle i.e. car bearing registration No.DL-5CH/2292?OPP*
>
> *2. If issue No.1 is proved, whether Gajender Singh alias Pappu son of Balbir Singh has died due to the injuries received by him in the above-said accident, if so to what amount of compensation and from whom, the claimants are entitled to? OPP*
>
> *3. Whether there was wilful violation of the terms and conditions of the insurance policy, if so to what effect? OPR*
>
> *4. Relief."*

6. Insofar as issue No.1 was concerned, findings were returned in favour of the claimants and it was held that death of Gajender Singh @ Pappu had occurred on account of rash and negligent driving of the offending vehicle by Surender.

7. Insofar as issue No.2 is concerned, the Tribunal has assessed the monthly income of the deceased to be Rs.10,000/- per month based upon testimony of Rajesh Nain, PW-1 i.e. Manager of one Ashu Company and which was the outsourcing agency through whom the deceased has been employed by M/s Mohindra Fastners, Ltd-II, Rohtak. The salary slip, Ex.P-1

and Pay Roll Sheet, Ex.P2 were also taken into account. The claim of the claimants as regards additional income of Rs.8000/- per month from agriculture and dairy farming was not accepted by the Tribunal as no cogent and credible evidence to substantiate such claim has come forth. Age of the deceased was accepted as 43 years as was mentioned in the Post Mortem Report, Ex.P3. Deduction of $1/4^{th}$ was made towards the personal and living expenses of the deceased and as such, the monthly dependency of the claimants was determined to be Rs.7,500/- per month. Keeping in view the age of the deceased as 43 years, multiplier of 14 was applied as per dictum laid down in **Sarla Verma & others Vs. Delhi Transport Corporation & another, 2009 (3) RCR (Civil) 77.** The compensation amount so calculated was Rs.12,60,000/-. In addition thereto, a sum of Rs.1 lakh was awarded towards loss of consortium and Rs.25,000/- towards funeral expenses. The total compensation amount arrived at was Rs.13,85,000/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual realization. The liability to pay the compensation amount was held to be joint and several amongst the respondents.

8. Learned counsel for the appellants has raised a solitary submission to the effect that the Tribunal has not granted any increase in income towards future prospects while determining compensation.

9. Per contra, learned counsel appearing for the contesting Insurance Company would contend that the deceased was not on a permanent job and as such, future prospects of income were not to be awarded. It is further submitted that the Tribunal has already granted a generous amount of Rs.1,25,000/- towards loss of consortium and

funeral expenses.

10. Counsel for the parties have been heard and case paper book has been perused.

11. A Constitutional Bench of the Supreme Court of India in a recent judgment in **National Insurance Company Limited Vs. Pranay Sethi & others,2017 (4) RCR (Civil) 1009** has drawn distinction between the deceased who may on a permanent job as opposed to a self employed or on a fixed salary with regard to addition of income towards future prospects. It was held that in case the deceased was self employed or on a fixed salary and was in the age between 40-50 years, 25% addition has to be made in income towards future prospects.

12. Admittedly, in the present case, the Tribunal on the basis of evidence adduced on record has taken the salary/income of the deceased as Rs.10,000/-. Following the dictum laid down by the Apex Court in **Pranay Sethi's case (supra)**, 25% increase in income towards future prospects ought to have been taken. It is so directed.

13. Insofar as the contention raised by counsel representing the Insurance Company that amount towards conventional heads i.e. loss of consortium and funeral expenses on the higher side has been awarded, undoubtedly, in the case of **Pranay Sethi**, a total sum of Rs.70,000/- has been kept as the benchmark under conventional heads. Be that as it may, this Court would not be inclined to reduce Rs.1,25,000/- given towards loss of consortium and funeral expenses. The compensation has been awarded and worked out under the aegis of a beneficial scheme of legislation.

14. In view of the above, the compensation amount to be awarded

to the claimants is re-assessed in the following terms:

Sr. No.	Head	Calculation
1.	Income 10,000/-	Rs.10,000 + 25% increase in future prospects = 12,500/-
2.	1/4th deduction towards personal and living expenses of the deceased.	Rs.12,500 - 3125 = 9375/- 9375 x 12 =1,12,500/-
3.	Compensation after applying multiplier of 14	1,12,500 x 14 =15,75,000/-
4.	Conventional Heads: loss of consortium/funeral expenses.	Rs.1,25,000/-/-
5.	Total	Rs.17,00,000/-

15. The afore calculated enhanced compensation be released to the claimants along with interest at the rate of 6% from the date of filing of the instant appeal and till the date of realization.

16. The enhanced compensation amount be apportioned in equal shares and be paid to appellant Nos.1, 2 and 3.

17. Appeal is allowed in the aforesaid terms.

24.07.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No