

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 5095 of 2014 (O&M)

Date of decision : October 25, 2018

Sudesh Rani and another

.....Appellants

Versus

Manjeet Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vipul, Advocate for
Mr. Neeraj Khanna, Advocate
for the appellants.

Mr. Satpal Dhamija, Advocate
for respondent No. 3.

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as the 'Tribunal') on account of death of Jal Singh vide award dated 04.02.2014.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow and son of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Jai Singh on 24.02.2013 in a motor vehicle accident caused due to the offending vehicle Truck bearing registration No. HR-58C-0887 being driven by respondent No.1 in a rash and negligent manner. It was averred that Jal Singh (deceased) alongwith his son Anil Kumar was going from Mullana to Kalpi on motorcycle bearing registration No. HR-01W-2302.

The motorcycle was driven by Jal Singh and his son was riding pillion. They were proceeding on the correct left side of the road at a slow speed. After crossing the Markanda bridge, offending Truck bearing registration No. HR-58C-8807 driven by respondent No. 1 in a rash and negligent manner, came from behind and hit the motorcycle. Resultantly, Anil the pillion rider fell down in the ditches along the road side whereas Jal Singh fell down on the pucca portion of the road and received serious multiple injuries. He was taken to M.M. College and Hospital, Mullana, where the doctors declared him as brought dead.

Claim petition was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether the accident in question causing death of Jal Singh took place due to rash and negligent driving of truck bearing registration No. HR-58C-0887, by respondent No. 1, as alleged? OPP
2. If issue no. 1 is proved what amount of compensation the claimants are entitled to and from whom? OPP.
3. Whether the respondent No. 3 is not liable to pay any compensation, in view of the breach of terms and conditions of the policy of insurance? OPR3
4. Relief.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 24.02.2013 due to rash and negligent driving of the offending Truck bearing registration No. HR-58C-0887 by respondent No. 1. Learned Tribunal awarded a sum of ₹4,32,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹7,358/- per month while taking into account the salary of ₹4,870/- being received by the deceased from his

current employer as well as ₹1,560/- received as pension from Ambala Central Co-operative Bank. Pension of ₹7,228/- received by the deceased being an Ex-serviceman was reduced to ₹926/- while deducting the pension which the widow continued to receive i.e. ₹6,300/-. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 7 was applied as the deceased was 63 years old at that time. Additionally, a sum of ₹10,000/- on account of loss of consortium was awarded to claimant No. 1 besides a sum of ₹10,000/- on account of transportation, funeral and last rites expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants contends that the learned Tribunal has erred in deducting the sum of ₹6,300/- per month which the appellant – widow was receiving as pension from the total pension of ₹7,228/- per month, which the deceased was admittedly receiving from the Army. It is submitted that though multiplier of 7 has been correctly applied, compensation under the conventional heads is meagre. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 04.02.2014 be upheld.

Heard learned counsel for the parties.

It is not in dispute that the deceased, who was 63 years old at

the time of accident, was an Ex-Army personnel. He was employed and working with Narwal Super Security (Regd.), drawing a salary of ₹4,870/- per month. His salary certificate was proved as Ex. P1. It further emerges from the evidence on record that the deceased Jal Singh was drawing pension amounting to ₹7,228/- being an Ex-serviceman. The same was duly proved by PW5 Senior Auditor, DPDO, Ambala. He was also drawing a sum of ₹1,560/- per month as pension from Ambala Central Cooperative Bank. Learned Tribunal has indeed erred in deducting the sum of ₹6,300/- per month received as pension by the widow. A sum of ₹7,228/- instead of ₹926/- is to be considered while calculating the income of the deceased. Therefore, total income of the deceased is assessed as ₹13,658/- (4870+1560+7228) instead of ₹7,358/-. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77, deduction of 1/3rd is to be applied as number of dependants is three (3), thereby rendering income of the deceased to be ₹9105/-(13658-4553). Applying a multiplier of 7, dependancy of the claimants is, therefore, assessed as ₹7,64,820/- (₹9105x12x7). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of spousal consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018), appellant No. 2 i.e. son of the deceased is entitled to ₹40,000/- on account of loss of parental consortium. Claimants are, thus, entitled to total compensation of ₹8,74,820/- detailed as under:-

Loss of dependency (₹9105x12x7)	₹7,64,820/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹8,74,820/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

October 25, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No