

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-4874-2002 (O&M)

Date of decision: 19.08.2019

Smt. Kaushalya Devi and another

..... Appellants

Versus

Jagir Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Neeraj Khanna, Advocate for the appellants.

Mr. DP Gupta, Advocate for respondent No. 2-Insurance Co.

RAMENDRA JAIN, J. (ORAL)

The claimants have approached this Court, for enhancement of compensation, modifying the impugned Award dated 05.06.2002 of the Motor Accident Claims Tribunal, Ambala (for short-'the Tribunal'), in a claim petition filed by them under Section 166 of the Motor Vehicles Act, 1988, awarding ₹1,03,000/- as compensation against the death of their son-Naresh Kumar @ Billu, along with interest @ 9% per annum from the date of filing of claim petition till realization.

Briefly, aforesaid Naresh Kumar @ Billu, aged around 21 years, student of BA final year died in a motor vehicular accident, in the evening of 16.05.2000, while going from his village Ugala to Barara, for purchasing paddy seeds, as a pillion rider on motor cycle bearing

registration No. HR-01-F-0276 driven by Tarsem, being hit by offending tractor bearing registration No. HR-07-D-0756, driven and owned by respondent No. 1-Jagir Singh. After holding trial, claim petition of the appellants was accepted vide impugned Award dated 05.06.2002, in the manner as narrated above.

Heard.

Having given thoughtful consideration to the rival submissions, this Court is of the view that the learned Tribunal has wrongly applied deduction of 30% towards contributory negligence of deceased-Naresh Kumar @ Billu, without any reason. In fact, Tarsem, was driving motor-cycle bearing registration No. HR-01-F-0276, upon which deceased-Naresh Kumar @ Billu, was travelling as a pillion rider. Thus, no negligence could be attributed to deceased from any angle. At the most, it was case of composite negligence, therefore, the entire liability to pay compensation ought to have been fixed upon respondent No. 1-Jagir Singh, who was driver and owner of offending tractor. Even otherwise, there was no iota of evidence to show negligence of Tarsem, driver of the motor-cycle.

According to the latest law laid down by the Apex Court in **National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR(Civil) 1009**, the learned Tribunal ought to have taken prevalent minimum wages, which at the relevant time were ₹1906/- and 40% is to be added towards future prospects of the deceased. Therefore, annual dependency of the appellants upon deceased comes to ₹32,016/-. Since,

deceased was un-married, therefore, 50% is deducted towards personal expenses of the deceased. Thus, the annual dependency comes to ₹ 16,800/-. Considering the age of deceased as 21 years at the time of his death, multiplier of 18 has to be applied. That apart, a sum of ₹15,000/- each has to be awarded to the appellant-claimants towards loss of love and affection. Therefore, the compensation to which the appellant-claimants are entitled, is reassessed as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased	₹1906/- per month.
(ii)	Annual dependency after adding 40% towards future prospects	1906+40% (1906+762=2668) 2688 x 12=₹32,016/-
(iii)	Compensation after deducting 1/2 towards personal expenses of the deceased and applying multiplier of 18	(32016x 18x1/2)=₹2,88,144/-
(iv)	Compensation under loss of love and affection	₹15,000/- each total comes to ₹ 30,000/-
(v)	Total	₹288144+₹30000=₹3,18,144/-
	Total enhanced compensation	318144-103000= ₹2,15,144/-

The appellants are entitled to the enhanced compensation of ₹2,15,144/-, over and above the amount of ₹1,03,000/- already granted by the learned Tribunal. Accordingly, respondent No. 3-Insurance Company, through its counsel is directed to deposit the enhanced compensation of ₹2,15,144/- before the learned Tribunal within six weeks from today, along with up-to-date interest @ 7.5% per annum from the date of filing

of claim petition till realization, for onward disbursement to the claimant-appellants, in proportion so arrived at by it, in accordance with law against proper receipt and identification.

In case aforesaid enhanced amount is not deposited within stipulated time, Insurance Company would be liable to pay the same with interest @15% from the date of institution of claim petition till realization.

Disposed of

August 19, 2019
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(RAMENDRA JAIN)
JUDGE

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