

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

FAO No.1413 of 2001 (O&M)
Date of decision : 31.01.2019

Himansu and another

...Appellants

Versus

Naresh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Jain, Advocate for the appellants.

Mr. Saurabh Girdhar, AAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

Claimants are in the appeal against the award passed by the Motor Accident Claims Tribunal seeking enhancement of the compensation awarded.

Smt. Prem Kumari Arora who was employed as Supervisor with the Family Welfare Department, Haryana, had died in a motor vehicular accident on 20.08.1997. Two minor children had filed petition seeking compensation.

Although, learned counsel appearing for the appellants has submitted that the findings of the Motor Accident Claims Tribunal with regard to contributory negligence to the extent of 50% each between State of Haryana and owner of Matador, is erroneous, however, it is the claimants who have pleaded that the driver of Matador, in which late Smt. Prem

Kumari Arora was travelling, was being driven in a rash and negligent manner and when it was in the process of overtaking the bus when the accident took place. This Court does not find any good ground to interfere.

However, learned counsel has submitted that while assessing the compensation payable, the Motor Accident Claims Tribunal has not awarded any amount on account of increase of income in future and the amounts awarded under the conventional heads namely funeral expenses, loss of consortium and loss of estate, are insufficient. He has further pointed out that the multiplier of 15 applied by the Motor Accident Claims Tribunal, is also on the lower side keeping in view the fact that the age of the deceased was 34 years at the time of death.

On the other hand, learned counsel for the State has submitted that in para 14 of the award, the Motor Accident Claims Tribunal has noted monthly salary of deceased as ₹5750/- per month whereas while making calculation, the Court in para 36, has taken the income as ₹6723/- per month. No doubt, there is discrepancy, however, in para 36, the Motor Accident Claims Tribunal has referred to the statement of Mohinder Singh, an Assistant in the office of Child Development Project who has appeared as PW5. Learned counsel for the State could not draw attention of the Court to the salary certificate which records that the salary was only ₹5750/- per month and not ₹6723/- per month. The record of the case has been burnt and only partially burnt file is available with the Court. Still further, State of Haryana is not in appeal.

In these circumstances, this Court has to decide the case on the material available. State of Haryana which is respondent and the deceased

was its employee, could have produced the evidence to prove that the Court has committed an error. In absence thereof, the Court has to proceed on the basis of what has been found by the Tribunal. On account of future prospects, the law has been well settled by the Constitution Bench in case of *National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017(10) SC 450*. According to which, 50% increase on account of future prospects is required to be added in the income. As regards conventional heads, the appellants are entitled to ₹70,000/- (funeral expenses ₹15,000/-, loss of consortium ₹40,000/- and loss of estate ₹15,000/-).

Keeping in view the age of the deceased, the multiplier applied is also on the lower side and appropriate multiplier is 16. Keeping in view the aforesaid facts, the compensation payable is re-calculated as under:-

Heads	Compensation awarded by the Tribunal	Compensation awarded by the High Court
Income assessed + future prospects (50%)	₹6723/- + NIL	₹6723/- (+) ₹3361.5 ₹10084.5/-
(-) 1/3 rd deduction	(-) ₹2241/-	(-) ₹3328/-
Total Dependency	₹4482/-	₹6756/-
Annual Dependency	₹4482/- x 12 = ₹53,784/-	₹6756/- x 12 = ₹81,072/-
Multiplier	₹53,784/- x 15 = ₹8,06,760/-	₹81,072/- x 16 = ₹12,97,152/-
<u>Conventional Heads</u>		
Loss of Estate	NIL	₹15,000/-
Funeral Expenses	₹5,000/-	₹15,000/-
Consortium	NIL	₹40,000/-
	₹8,11,760/- (₹8,12,000/- rounded up)	₹13,67,152/-
Enhanced Compensation = Compensation awarded by High Court (-) Compensation awarded by MACT	₹5,55,152/- {₹13,67,152/- (-) ₹8,12,000/-}	

The enhanced compensation i.e. ₹5,55,152/- shall be payable alongwith interest at the rate of 6% p.a. from the date of claim petition till realization. Needless to observe that the State shall be liable only to the extent of 50%, as ordered by the Motor Accident Claims Tribunal.

In view of what has been observed above, the present appeal stands disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

31.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No