

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-6287-CII-2019 in/and
FAO No. 3838 of 2006 (O&M)

Date of Decision: 06.05.2019

Dharambir Singh and others

..... Appellants

VERSUS

Pardeep Kumar and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashwani Bakshi, Advocate,
for the appellants.

JAISHREE THAKUR, J.

CM-6287-CII-2019

This is an application that has been filed seeking early
hearing in the main case.

For the reasons mentioned in the application, the same is
allowed.

The appeal is taken up for hearing today itself.

FAO No. 3838 of 2006

1. The instant appeal by Dharambir Singh, being husband,
Sunil and Ashish sons of deceased Sudesh Kumari, who died in a motor

vehicular accident, which took place on 03.04.2004 has been filed for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the 'Tribunal').

2. In brief, facts are that on 03.04.2004 Dharambir appellant No.1 along with his wife Sudesh Kumari and son Sunil Kumar was coming on Scooter No. HR-12D-1896 on Jhajjar – Rohtak Road. When he reached at village Karontha, one truck bearing No. HE-12-0321 driven by respondent No.1 came in a rash and negligent manner and struck against the said scooter. Because of this impact, Sunil and Dharambir received injuries, whereas Sudesh Kumari wife of Dharambir died in the accident. FIR was registered with the police regarding the said accident. Three claim petitions were filed i.e. one each by Sunil and Dharambir on account of the injuries suffered by them and third one by Dharambir and his sons Sunil and Ashish for compensation on account of death of Sudesh Kumari.

3. Respondent Nos.1 and 2 i.e. driver and owner of the offending vehicle in their joint written statement have denied all the allegations while stating that the scooterist himself was negligent in driving the scooter as there were three persons on the scooter against the capacity of two persons. No accident took place on account of the rash and negligent driving of the aforesaid truck by its driver. On the same lines, separate written statement was filed by the Insurance Company. Thereafter, issues were framed and respective evidence

was led by the parties apart from tendering relevant documents. On appreciation of evidence, the Tribunal held that the accident in question occurred due to rash and negligent driving of truck No. HR13-321 by respondent No.1 Pardeep Kumar in which petitioners Dharambir and Sunil suffered injuries and Sudesh Kumari wife of Dharambir died. The Tribunal assessed the income of the deceased at ₹ 6996/- per month and multiplier of 10 was applied since the deceased was more than 25 years of age and 1/3rd deduction was allowed for her own expenses and the total annual dependency came to be ₹ 75,968/-. Accordingly, compensation came to be ₹ 75,968/- x 10 = ₹ 7,59,680/- and another sum of ₹ 10,320/- was allowed towards love and affection. In all, the appellants were allowed compensation at ₹ 7,70,000/-. Aggrieved against the said award, the instant appeal has been filed by the claimants.

4. Learned counsel appearing on behalf of the appellant contends that the compensation awarded for the accident that occurred is not in terms of the judgment rendered by Hon'ble Apex Court of India in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others, Special Leave Petition (Civil) No. 25590 of 2014*** decided on 31.10.2017 as the Tribunal has erred in taking the income of the deceased to be ₹ 6996/- per month despite the fact that her gross salary was ₹ 10,026/- per month, which ought to have been taken into account by the Tribunal. It is also argued that future prospects of the deceased have not been taken into account. It is also argued that

being a lady she was rendering service as house lady and her contribution on that account ought to have been taken into consideration while assessing her income, which was liable to be assessed at ₹ 3,000/-. Learned counsel for the appellants also argues that the Tribunal has erred while applying multiplier of 10 only, however, keeping her age 42 years, multiplier should have been 14 in the light of Pranay Sethi & others case (supra).

5. I have heard learned counsel for the appellants and find that the award that has been passed needs to be modified in terms of the judgment rendered by the Constitutional Bench of the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and others* case (supra).

6. It is not in dispute that the deceased drew a salary of slightly more than ₹ 10,000/- for the month of March, 2004 and as a natural consequence it can be held that she was earning approximately ₹ 1,20,000/- per annum. The Tribunal has taken the net pay of ₹ 6996/- for the month of March, 2004 as her net pay per month which is not sustainable. With a gross salary of ₹ 1,20,000/- for the year 2004, the net pay after standard deductions would amount to ₹ 1,10,000/-. Having three dependents, 1/3rd deduction is to be applied and keeping in view the fact that she died at the age of 42 years, 30% increase towards future prospects is allowed and the multiplier is taken as 14 and consequently, the compensation is re-worked and tabulated as under :-

<i>Sr. No</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Sudesh Kumari
(ii)	Date of accident	03.04.2004
(iii)	Age of the deceased	42 years
(iv)	Monthly income of the deceased	₹ 10,000/-
(v)	30% of (iv) is to be added towards future prospects	(₹ 10,000 + ₹ 3,000) = ₹ 13,000/- per month
(vi)	1/3 rd of (v) above deducted towards personal expenses	(₹ 13,000 - ₹ 4,333) = ₹ 8,667/- per month
(vii)	Compensation calculated after applying the multiplier of 14	₹ 8,667 x 12 x 14 = ₹14,56,056/-
(viii)	Funeral expenses	₹ 15,000/-
(ix)	Compensation for loss of consortium	₹ 40,000/-
(x)	Compensation for loss of estate	₹ 15,000/-
	Total	₹15,26,056/-

7. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 7,70,000/- to ₹15,26,056/-.
8. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellants with interest @ 7.5% per annum from the date of the appeal till realization.
9. The appeal is allowed in the aforesaid terms.

06.05.2019
Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.