

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

F.A.O. No. 529 of 2006 (O&M)

Date of Decision: 19.10.2019

Kallo Rani and others

.....Appellants.

Versus

Balbir Singh and another

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: None for the appellants.

None for respondent no.1.

Ms. Vandana Malhotra, Advocate
and Ms. Monika Jhangra, Advocate
for respondent no.2-Insurance Company.

LISA GILL, J.

Appellant-claimants, seek enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Panipat (for short 'tribunal'), vide impugned award dated 12.09.2005, on account of death of Dharampal.

Today, there is no representation on behalf of the appellants. The insurance company whose liability is not in dispute is duly represented. The appeal is of the year 2006.

Though, the appeal can be dismissed in default, however, the said course is not being adopted as the present is an appeal filed by the claimants seeking enhancement of the compensation awarded on account of death of Dharampal in the motor vehicle accident, which took place on 18.09.2003. It is considered just and expedient to decide the matter on merits rather than dismiss the same for non-appearance of the learned counsel for the appellants. Available file has been perused and learned counsel for the Insurance Company, heard.

As per averments in the claim petition under Section 166/140 of the Motor Vehicles Act (for short 'Act'), Dharampal (deceased) along with his brother Lachhman and one Remal Dass son of Hari Chand, were going to their house on tractor trolley bearing registration no. HNR-5161. Dharampal was driving the tractor trolley, whereas Lachhman and Remal Dass were sitting in the trolley. At about, 8.00.p.m., due to heavy rush on one side of the road, Dharampal stopped his tractor trolley on the side of the road to turn towards Barsat Road. In the meanwhile, a truck bearing registration no. HRW-975 being driven by respondent no.1-Balbir Singh in a rash and negligent manner came from Delhi side and struck into the tractor trolley from behind. As a result thereof, Dharampal fell on the road from the driver seat and received fatal injuries on his head. He was taken to General Hospital, Panipat, by his brother Remal Dass from where he was referred to PGIMS, Rohtak. However, he succumbed to his injuries on the way and he was taken to Prem Hospital, Panipat instead of PGIMS, Rohtak. FIR under Sections 279 and 304 IPC, was registered in this respect.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle i.e. truck bearing registration no. HRW-975 by respondent no.1-Balbir Singh. Said finding of the learned tribunal has attained finality.

Income of the deceased was assessed as ₹2400/- per month. Deduction of 1/ 3rd was effected. Multiplier of 16 was applied by the learned tribunal. A sum of ₹10,000/- was awarded towards funeral expenses. Learned tribunal awarded a sum of ₹3,17,200/- along with interest @ 6% per annum from the date of filing of the claim petition till realisation of the

amount to the claimants.

There is no dispute regarding the death of Dharampal in a motor vehicle accident which took place on 18.09.2003. Claimants are the widow, minor children and parents of the deceased.

Perusal of the file reveals that the claimants pleaded that the deceased-Dharampal was working with a gas agency and earning a sum of ₹10,000/- per month therefrom. He also used to collect and supply dyed yarn from industry and was earning another sum of ₹6000/- per month therefrom. Learned tribunal has however concluded that there is no evidence on record to indicate that he was indeed employed with the gas agency or engaged in collection and supply of dyed yarn from industry. In this view of the matter, the deceased was considered to be an unskilled labourer and learned tribunal assessed income of the deceased to be ₹2400/- per month.

Vadhu Ram, aged father of the deceased, has testified before the learned tribunal as PW-3 and has deposed regarding the vocation and income of the deceased. Though, it is a matter of record that specific documentary evidence has not been produced by the claimants, either to indicate the employment of the deceased with the gas agency or the collection and supply of dyed yarn from the industry as pleaded, the deceased can nevertheless be considered to be a skilled worker at the time of his death on the basis of the evidence on record. Accordingly, income of the deceased is assessed as ₹2610/- per month with reference to the minimum wage available to a skilled labourer as on 01.03.2002 in the State of Haryana. The accident in question, admittedly took place on 18.09.2003.

Learned tribunal has considered the deceased to be in the age

group of 35 to 40 years while observing that as per the postmortem report, age of the deceased is recorded to be 40 years. The eldest son of the deceased is disclosed to be 15 years old and Vadhu Ram-PW-3, father of the deceased has disclosed the age of his son-Dharampal (deceased) to be 35 years at the time of his death. A perusal of the statement of PW-3 reveals that he has specifically deposed the deceased to be 35 years old at the time of the accident. Vadhu Ram-PW-3, was 68 years old at the time of recording of his testimony. Younger brother of the deceased, who is the propounder of the FIR, has revealed his own age to be 32 years. He has deposed that the deceased was elder to him and he has two more brothers, who are younger to him. There is not even a suggestion to PW-3 that age of the deceased was not 35 years old at the time of the accident. Thus in the given factual matrix, the deceased is held to be 35 years old at the time of the accident. Therefore, increment on account of future prospects at the rate of 40% is afforded in view of the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009.**

Learned tribunal has effected a deduction of 1/3rd, which is patently incorrect keeping in view the fact that there are eight dependents in this case i.e., the widow, five minor children and the aged parents of the deceased. Accordingly, deduction of 1/ 5th has to be applied. Learned tribunal has rightly applied multiplier of 16 in view of the age of the deceased i.e. 35 years at the time of accident. Instead of a sum of ₹10,000/- awarded towards funeral expenses, the claimants are entitled to a sum of ₹15,000/- each for funeral expenses and loss of estate. Claimant no.1-widow

of the deceased, is entitled to a sum of ₹40,000/- on account of loss of consortium. Appellants no. 2 to 6 are held entitled to a sum of ₹40,000/- on account of loss of parental consortium and appellants no.7 and 8 are also entitled to a sum of ₹40,000/- towards loss of loss of filial consortium in terms of the judgement of Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333**, as well as **decision dated 14.03.2019 of this Court in FAO No.2110 of 2018, titled Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others.**

Compensation towards the claimants on account of death of Dharampal, is thus re-worked as under:-

1.	Total income of deceased	₹2610/- p.m
2.	Total income after addition of future prospects at the rate of 40%	₹2610/- (₹2610/-+ ₹1044/-) i.e. ₹3654/-
3.	Deduction of 1/5th on account of personal expenses	₹3654/- (₹3654*1/5=₹731/-) = ₹2923/-
4.	Annual dependency after applying multiplier of 16	₹2923/- x 12 x 16= ₹5,61,216/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Loss of consortium to appellant no.1	₹40,000/-
8.	Parental consortium to appellants no.2 to 6	₹40,000/-
9.	Filial Consortium appellants no.7 and 8	₹40,000/-
	Total Compensation =	₹7,11,216/-

Claimants shall be entitled to interest on the entire compensation amount at the rate of 7.5% instead of 6% per annum from the date of filing of petition till realization. Needless to say that the amount, if any, already disbursed to the claimants shall stand deducted. Directions of

the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

Copy of the order be conveyed to the appellants at the address available on the file. In case of any grievance, the appellants are at liberty to move an appropriate application within two months of receipt of a copy of this order.

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

19.10.2019

s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.

[LISA GILL]
Judge