

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

**FAO No. 1686 of 2009 (O&M)
Date of Decision: September 05, 2019**

Shri Bhagwan and others Appellants(s)

Versus

A.M. Bhaskar and another Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Service upon respondent no.1 dispensed with vide order dated
24.09.2014.

Mr. T.C.Dhanwal, Advocate
for respondent no.2.

LISA GILL, J.

This appeal has been filed seeking enhancement of compensation awarded to the claimants vide award dated 04.12.2008, passed by learned Motor Accidents Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal).

Appellants-claimants filed a petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of death of Bimla Devi. The claimants are the husband and children of the deceased.

Learned Tribunal on considering the evidence on record concluded that Bimla Devi died due to the injuries received by her in the motor vehicle accident, which took place on 22.09.2005, due to the rash and

negligent driving of the offending MTC bus bearing registration No. TN-01-N-3325 by its driver A.M.Bhaskar-respondent no.1. The deceased Bimla Devi was claimed to be a 62 years old housewife, who was looking after the family and her home. The accident in question took place in the State of Tamil Nadu. Bimla Devi, who was sitting behind the driver seat at the time of accident was thrown out of the window of the bus. She was taken to Apollo Hospital, Chennai, where she remained admitted but was ultimately flown to Delhi from where she was brought to Hisar and admitted in Jindal Hospital. She remained under 'comma' due to injuries received on her head and ultimately died on 15.12.2005 in the hospital.

Evidence was led by the claimants. However, no evidence was led on behalf of the respondents. Respondent no.1, in-fact, did not join the proceedings and was proceeded *ex parte*.

Learned Tribunal while assessing the notional income of the deceased to be ₹15,000/- per annum, awarded a sum of ₹3,60,000/- to the claimants, which is detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Notional income	₹15,000/- per annum
2.	Total dependency after applying a multiplier of 5	₹15,000 x 5 = ₹75,000/-
3.	Deduction	1/ 3 rd
4.	Funeral expenses	₹10,000/-
5.	Medical expenses	₹3,00,000/-
	Grand Total	₹3,60,000/-

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants submits that meagre compensation has been awarded, which should be enhanced. It is submitted that notional income of a housewife has been wrongly assessed to be ₹15,000/- per annum. Furthermore, the complete medical bills, could not be placed before the learned tribunal, which are sought to be proved by way of leading additional evidence before this Court. It is submitted that the application for leading additional evidence be allowed and compensation towards medical expenses should also be enhanced. It is thus prayed that the present appeal be allowed.

Learned counsel for respondent no.2, while refuting the averments submits that reasonable and just compensation has been awarded by the learned tribunal to the appellant-claimants. Compensation towards medical expenses have been given as per the evidence led on record. It is thus prayed that the application as well as the present appeal be dismissed and the compensation awarded by the learned tribunal be upheld.

I have heard learned counsel for the parties and have gone through the file.

There is no dispute regarding Bimla Devi being injured in the accident which took place on 22.09.2005 while travelling in MTC Bus bearing registration No. TN-01-N-3325. It is a matter of record that she remained admitted at Apollo Hospital, Chennai and thereafter was flown to Delhi and ultimately admitted at Jindal Hospital, Hisar. She was operated upon and discharged on 25.10.2005. Thereafter, Bimla Devi, was again admitted in the hospital on 20.11.2005 and discharged on the same day.

Discharge card, was placed on record as Ex.P-1. PW-2-Dr. Vijay Kumar of Jindal Hospital, Hisar has proved the discharge card, Ex.P-1 as well as documents Ex.P-2 to Ex.P-16. PW-6-Ram Kumar (since deceased), testified that a sum of ₹3,00,000/- was spent on the treatment at Madras, ₹1,00,000/- in travelling and ₹50,000/- in Jindal Hospital. He produced on record documents Ex.P-43 to Ex.P-157.

Learned counsel for the appellants submits that the bills pertaining to the expenditure incurred at Apollo Hospital, Chennai, could not be tendered before the learned tribunal and are sought to be placed on record by way of CM-8751-CII of 2009 i.e., bill for the amount of Rs. 76,604/- (Annexure A-2) and another bill for the amount of Rs. 1,03,0341/- (Annexure P-3). No reply to this application has been filed despite various opportunities. However, it is to be noticed that this is a case, the file of which had been burnt in the fire which took place on the premises of this Court in January 2011. This Court on 02.02.2016, has observed that the original papers have been burnt, therefore the petitioner is required to file copies of all the documents which were filed before the learned Courts below, on the basis of which medical expenses were computed, as it was considered necessary to examine whether the additional evidence is in reference to any additional expenses or it already stands covered through the bills filed before the learned tribunal. No such exercise has been undertaken on behalf of the appellants since February 2016, till date.

It is relevant to note that the learned tribunal in the impugned award dated 04.12.2008, has observed in para no. 9 thereof that bills from

Apollo Hospital, Madras (Chennai), along with bills of the hospital at Hisar, are on record. The observation has come-forth while overruling the objection in respect to the admissibility of the document Ex.P-43 to Ex.P-157. Therefore, in the factual matrix of the case, it is not possible to hold at this stage that the bills now sought to be placed on record were not before the learned tribunal and therefore, additional compensation is required to be awarded under the said head. Application i.e. CM-8751-CII of 2009, is accordingly dismissed.

In view of the discussion as above, compensation of ₹3,00,000/- awarded by the learned tribunal towards medical expenses including the air travelling from Madras to Delhi, is upheld. Appellants, are however entitled to an additional amount of ₹20,000/- towards attendant charges, which necessarily would have been required for the period from the date of accident i.e., 22.09.2005 till her death on 15.12.2005. Claimants are entitled to a sum of ₹5000/- for further transportation charges. It bears reiteration at this stage, that finding of the learned tribunal that Bimla Devi, died due to the injuries received by her in the accident which took place on 22.09.2005, has attained finality.

In my considered opinion, learned tribunal has erred in assessing the notional income of the deceased to be ₹15,000/- per annum even while considering her to be a housewife. It is a settled position that services rendered by a house-wife cannot be equated with that of a daily wager. Services rendered by a housewife are multifarious. She renders

invaluable services in her various facets/roles in a home. This Court in **FAO No.3395 of 2015** has assessed the income of a housewife to be ₹7,000/- per month in respect to an accident which took place in the year 2011. In the present facts and circumstances of the case where the accident in question took place in September 2005, it is considered appropriate to assess the notional income of the deceased to be ₹3,000/- per month.

In view of the Division Bench judgment of this Court in **Paramjit Singh and another v. Dilbagh Singh @ Bagga and others, 2014(4) RCR (Civil) 895**, no deduction is to be effected in the compensation to be awarded in the case of death of a house-wife. Age of the deceased was 62 years at the time of the accident, therefore, multiplier of 7 instead of 5, is to be applied as per the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77**. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018**, the appellant no.1 is entitled to ₹40,000/- on account of loss of spousal consortium and appellants no.2 and 3 are entitled to ₹40,000/- each for loss of parental consortium. ₹15,000/- each is awarded towards funeral expenses (instead of ₹10,000/-) and loss of estate.

Appellants-claimants are, thus, entitled to compensation which is reworked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
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1.	Income	₹3000 p.m. i.e. ₹36,000/- per annum
2.	Total dependency after applying a multiplier of 7	(₹36,000/- x 7) = ₹2,52,000/-
3.	Funeral expenses	₹15,000
4	Loss of estate	₹15,000/-
5.	Loss of consortium to the husband of the deceased	₹40,000/-
6.	Loss of parental consortium to the children of the deceased	₹40,000/-
7.	Medical expenses	₹3,00,000/-
8.	Attendant charges	₹20,000/-
9.	Transportation charges	₹5000/-
	Grand Total	₹6,87,000/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

September 05, 2019
s.khan

(LISA GILL)
JUDGE

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