

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

**F.A.O. No.3913 of 2009(O&M)
Date of Decision: 14.03.2019**

Jagmati and others

.....Appellants.

Versus

Virender Singh and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Dinesh Arora, Advocate
for the appellants.

Mr.Paritosh Vaid, Advocate
for Mr. Harsh Bungar, Advocate
for respondent no.1 and 2.

Mr. Pradeep Goyal, Advocate
for respondent no.3.

LISA GILL, J.

Appellant-claimants, seek enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Rohtak (for short 'tribunal'), vide impugned award dated 24.03.2009, on account of death of Ishwar Singh.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Ishwar Singh (deceased) along with Bhole Ram and brother of deceased namely Krishan son of Het Ram had gone to Rohtak on 03.12.2007 for purchasing building material, on a tractor bearing registration no. HR-12-G-3083, belonging to Virender Kumar son of Deep Chand. After purchasing building material, the deceased

along with Krishan and Baljeet Singh of Bhole Ram resident of village Katesra were going to Katesra on the same tractor. Respondent no.1-Virender Singh son of Deep Chand suddenly started driving the tractor in a rash and negligent manner. Krishan son of Het Ram and Baljeet son of Bhole Ram asked him to drive the tractor properly at a normal speed but respondent no.1 did not listen to them and continued to drive the said tractor in a rash and negligent manner. As a result thereof, the tractor turned turtle and fell in the roadside pits (khaddas), opposite Anmol Hotel. Krishan son of Het Ram and Baljeet son of Bhole Ram fell on one side and Ishwar Singh died at the spot. Krishan and Baljeet received injuries. Thereafter, a private vehicle was arranged and the deceased brought to PGIMS Rohtak, where the doctor declared him dead. FIR No. 294 dated 04.12.2007 was registered at Police Station Kalanaur, District Rohtak, against respondent no.1 in this respect.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Virender Singh. Said finding of the learned tribunal has attained finality.

Income of the deceased was assessed as ₹4500/- per month. Multiplier of 11 was applied by the learned tribunal. A sum of ₹2000/- each was awarded towards funeral expenses and loss of estate, besides a sum of ₹5000/- was awarded towards loss of consortium. Learned tribunal awarded a sum of ₹4,05,500/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the amount to the claimants.

Recovery rights were afforded by the learned tribunal to

respondent no.3-Insurance Company to recover the compensation from the owner and driver of the tractor, while holding the deceased to be a gratuitous passenger on the offending vehicle.

Learned counsel for the appellants vehemently argues that the evidence on record clearly proves that the deceased was earning ₹15,000/- per month. He was a trained mason, running a flour mill and had three buffaloes as well. Deceased is survived by his widow, and five minor children. Increment on account of future prospects should be afforded in terms 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** and compensation under the conventional heads be enhanced as well. It is thus prayed that this appeal be allowed and the compensation awarded to the appellants be enhanced.

Learned counsel for respondent no.3-Insurance Company, while refuting the above arguments, submits that compensation has been reasonably assessed by the learned tribunal and there is no scope for any enhancement. Learned counsel prays for dismissal of the appeal.

I have perused the file and heard learned counsel for the parties.

There is no dispute regarding the death of Ishwar Singh @ Bhoop Singh in a motor vehicle accident which took place on 03.12.2007 due to rash and negligent driving of a tractor by its driver-respondent no.1-Virender Singh. It is claimed that Ishwar Singh @ Bhoop Singh was working as a mason, running a flour mill in the village and earning some amount from three buffaloes kept by him. It is averred that he was in receipt of ₹15,000/- per month. A perusal of the record reveals that there is no

evidence on record to assess the income of deceased-Ishwar Singh @ Bhoop Singh to be ₹15,000/- per month. At the same time, it is not possible to ignore the electricity bills produced on record especially Ex.P-3 and Ex.P-4 pertaining to the period of 15.07.2007 to 15.08.2007 for a sum of ₹1823/- and 15.09.2007 to 15.10.2007 for a sum of ₹2792/-. There is no evidence on record to indicate that the said bills are forged or fraudulent or not in regard to the electricity connection of the deceased. PW-1-Jagmati, widow of Ishwar Singh @ Bhoop Singh has categorically stated regarding the electricity connection. She specifically deposed that she herself was handicapped and unable to move around without support. The deceased was the sole bread earner of the family, which comprised of the handicapped widow and five minor children. Similar is the statement of PW-2-Krishan, brother of the deceased. It is relevant to note that claimants have examined PW-3-Narender Kumar Arora, Member Panchayat of Gram Panchayat Nigana, who had twice remained Sarpanch of the Gram Panchayat, besides PW-4-Mir Singh, a former Sarpanch of Gram Panchayat Nigana to substantiate their case. Both the said witnesses have deposed in line with the averments in the claim petition.

In this view of the matter, it is highly improbable that a person, who was paying electricity bills to the tune of ₹2000/- per month would be earning only ₹4500/- per month. Learned tribunal has wrongly ignored the electricity bills by simply observing that the same cannot be related to the running of flour mill by the deceased himself. Keeping in view the factual matrix of the case and the evidence on record, it is considered just and expedient to assess income of the deceased to be ₹6000/- per month.

Deceased-Ishwar Singh @ Bhoop Singh was 47 years old at the time of accident. Therefore, future prospects at the rate of 25% are 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**. In terms of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77**, 1/4th deduction on account of personal expenses is to be applied instead of 1/ 3rd keeping in view the number of dependants i.e. six. In terms of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma (Supra)**, multiplier of 13 is to be applied instead of 11 as the deceased was 47 years old at the relevant time. The claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate instead of ₹2000/- each.

Instead of ₹5,000/-, appellant No.1-widow is held entitled to a sum of ₹40,000/- on account of loss of consortium. The deceased is also survived by five (05) minor children, who are entitled to ₹40,000/- on account of loss of parental consortium in terms of the judgement of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) R.C.R (Civil), 333** and decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016 and other connected matters.

Compensation towards the claimants on account of death of Ishwar Singh @ Bhoop Singh, is thus re-worked as under:-

1.	Total income of deceased	₹6000/- p.m.
2.	Total income after additional of future prospects at the rate of	₹6000 (₹6000/-+1500) i.e. ₹7500/-

	25%	
3.	Deduction of 1/ 4 th on account of personal expenses	₹7500/- (₹7500*1/4=₹1875/-) = ₹5625/-
4.	Annual dependency after applying multiplier of 13	₹5625/- x 12 x 13= ₹8,77,500/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Loss of spousal consortium @40,000 to appellant No.1	₹40,000/-
8.	Loss of parental consortium to appellants No.2 to 6	₹40,000/-
	Total Compensation =	₹9,87,500/-

No appeal or cross-objections were filed by the owner. There is no challenge in the present appeal as well to the finding of the learned tribunal in regard to the recovery rights afforded to the Insurance Company neither have any arguments been addressed on this aspect.

Claimants shall be entitled to interest on the enhanced compensation amount at the rate of 7.5% 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.

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

14.03.2019
s.khan

[LISA GILL]
Judge

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