

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

F.A.O. No. 599 of 2006

DATE OF DECISION :- September 04, 2019

Smt. Parwari Devi and others

...Appellants

Versus

Ramesh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Tara Chand Dhanwal
and Mr. Davinder Pal Soni, Legal Aid Counsel for the appellants.

Mr. Gagan Bajaj, Advocate for respondent No. 1.

Mr. Suvir Dewan, Advocate for respondent No. 2.

On account of death of Tara Chand son of Kundan Lal, in a motor vehicular accident which took place on 29.11.2001, in the area of about 4 kms away from Premi Hotel, G.T. Road, village Kharkhara, statedly on account of rash and negligent driving of Truck bearing registration No. HR-46-7751 by respondent No. 1 Ramesh Kumar, legal representatives of deceased namely his widow Smt. Parwari Devi, minor sons Kalu Ram and Ramesh Kumar as well as minor daughter Sulochana had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Ramesh Kumar-owner and driver of Truck bearing registration No. HR-46-7751 and The New India Assurance Co. Ltd, Hisar-insurer of Truck bearing registration No. HR-46-7751 (hereinafter referred to as the offending Truck), claiming compensation to the tune of Rs. 10 lacs.

On notice, both the respondents appeared and filed written statements contesting the claim petition. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

Then after hearing arguments advanced by learned counsel for the parties, the Motor Accident Claims Tribunal, Hisar vide Award dated 22.10.2005 accepted the application and awarded compensation of Rs.3,67,000/- with interest at the rate of 6% per annum to the claimants payable by both the respondents jointly and severally besides cost of the petition. Out of the said amount of compensation Rs.3,62,000/- was ordered to be shared equally by all the petitioners, however, an amount of Rs.5000/- would go to widow on account of loss of consortium.

The claimants felt aggrieved by the amount of compensation awarded to them by the Tribunal and have approached this Court by way of filing an appeal, seeking enhancement of compensation. Notice of the appeal was given to the respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on the basis of evidence produced before it had taken the age of the deceased to be 36 years as entered in his post mortem report. His income was assessed to be Rs.3,000/- per month, though as per version of the claimant Parwari Devi, her husband was driving his own four wheeler earning Rs.5,000/- per month and in addition to that he was earning Rs.2,000/- per month from agriculture pursuits. PW1 Smt. Parwari Devi-claimant, wife of the deceased had specifically deposed in that regard. The claimants had tendered in evidence copy of jamabandi Ex.P-3 and copy of Khasra Girdawari Ex.P-4 to show the land holding of the deceased. Under the

circumstances, I find that the income of the deceased assessed by the Tribunal is some what on the lower side and it would be proper and appropriate if the same is taken to be Rs.4,000/- per month. Further more, the Tribunal has not added any amount towards future prospects. In terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' where age of the deceased was below 40 years an addition of 40% of the established income is to be made. Doing that the monthly income of the deceased is worked out to be Rs.5600/- (4000 + 1600). The Tribunal has deducted 1/3rd of the amount from the income of the deceased towards personal and living expenses of the deceased, however, in view of judgment "*Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77*" by the Apex Court when the deceased was married and number of dependent family members is 4 to 6, the deduction should be 1/4th. Doing that the dependency of the claimants is worked out to Rs.4200/- per month (5600 – 1400). The annual dependency comes out to Rs.50,400/- (4200 x 12). The Tribunal has rightly applied multiplier of 15 keeping in view the age of the deceased. Doing that the total compensation comes out to Rs.7,56,000/- (50,400 x 15). The Tribunal has awarded a sum of Rs.2000/- on account of transportation charges and Rs.5000/- to claimant No. 1 Smt. Parwari Devi on account of loss of consortium. This amount is also on the lower side. In terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' the claimants are entitled to get Rs.15,000/- under the Head loss of estate, Rs.40,000/- under Head loss of consortium and Rs.15,000/- towards funeral expenses. Doing that total amount under

conventional Heads comes out to Rs.70,000/-. Then adding the said amount the total compensation is worked out to Rs.8,26,000/- (7,56,000/ + 70,000). The interest awarded by the Tribunal at the rate of 6% is on the lower side. As such the appeal is accepted and compensation of Rs.3,62,000/- awarded by the Tribunal to the claimants is enhanced to Rs.8,26,000/-. Resultantly, the claimants would be entitled to get additional compensation of Rs.4,64,000/- (8,26,000 - 3,62,000) over and above awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of filing of the appeal till actual realization besides cost of the appeal. The share of claimant No. 1 be paid to her in cash to be deposited in her bank account and she would be free to withdraw it without there being any rider preventing her from withdrawal of amount for a particular period as has been done by the Tribunal in the award. Shares of other claimants in the enhanced compensation be also deposited in their bank accounts. However, on furnishing of proof to the effect that they have attained majority, their shares may be released to them otherwise those would be deposited in a nationalized bank in the form of fixed deposit for the period till they attain majority. Accordingly, the appeal is allowed.

(H.S. MADAAN)
JUDGE

September 04, 2019
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No