

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

FAO No. 2751 of 2010 (O&M)
Date of decision: 26.8.2019

Darshana Devi and others

...Appellants

Versus

Vinod Kumar and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashok Bector, Advocate,
for the appellants.

Mr. R.K. Bashamboo, Advocate,
for the Insurance Company.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 6.3.2009 passed by the Motor Accident Claims Tribunal, Rupnagar, wherein the appellants herein have been allowed compensation of ₹13,25,000/- on account of death of Darshan Kumar.

In brief, the facts are that on 17.10.2007 deceased Darshan Kumar was returning to his village Upperla Dabkhhera after finishing his duty on his motorcycle bearing registration No. PB-16C-0782 and when he reached a little ahead of the bus stand Brahmpur at about 10.45 p.m., he was hit by a truck bearing registration No. HP-20C-0372 being driven by respondent No.2 in rash and negligent manner, as a result of which, Darshan Kumar fell down on the road, received multiple injuries and ultimately died on the spot. It was alleged that the accident took place due to the rash and negligent driving of respondent No.2 and consequently FIR No. 126 dated

18.10.2007 under Sections 279, 337, 304A IPC came to be lodged with the Police Station Nangal. With these averments, claim petition was filed by the widow and the children of the deceased claiming that they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was working as Assistant Lineman in the Punjab State Electricity Board and his monthly income was ₹20,000/-.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action had accrued etc. Issues were framed and thereafter evidence was led by the parties in order to substantiate their respective claims.

After scrutiny of the evidence brought on record, the Tribunal held that the accident was the result of rash and negligent driving of respondent No.2 and on assessment of the facts and evidence produced before it, allowed compensation of ₹13,25,000/- which has been now challenged in the instant appeal.

Learned counsel for the appellant submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the same deserves to be enhanced. It is submitted that the monthly income of the deceased ought to have been assessed at ₹15,000/- as claimed by Darshna Devi (PW-2) in her evidence. It is further submitted that the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased, whereas the deceased had a large family to support and therefore, and as per the settled law 1/4th ought to have been deducted towards personal and living expenses. It is further submitted that no amount of compensation has been awarded towards future prospects. It is further

submitted that inadequate amount of compensation has been granted under the conventional heads.

On the other hand, learned counsel appearing on behalf of respondent No.3—Insurance company submits that adequate amount of compensation has been awarded by the Tribunal and as such no interference is called for in the appeal by this Court. It is also submitted that as per settled law a multiplier of 14 ought to have been applied by the Tribunal instead of 15 since the deceased was less than 45 years of age at the time of accident.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was less than 45 years of age at the time of accident and was earning ₹11,000/- per month. The Tribunal deducted 1/3rd towards personal and living expenses of the deceased and after applying multiplier of 15 awarded the amount of compensation, as mentioned above. From the salary certificate (Ex. P-3) produced on record, it stands that the deceased was working as Assistant Lineman in the Punjab State Electricity Board, Sub Division, Nangal and was getting salary of ₹11,007/- per month. Therefore, the monthly income of the deceased is assessed at ₹11,007/- Furthermore, since there were five persons dependent on the deceased, deduction of 1/4th towards personal and living expenses ought to have been made. Since as per the date of birth of the deceased, he was less than 45 years of age at the time of accident, the multiplier of 14 should have been applied and thus the Tribunal has gone wrong in applying the multiplier of 15. Further, an increase in income on account of future prospects at the rate of 30% and other conventional heads are also required

to be reckoned, keeping in view the judgment of the Supreme Court in

National Insurance Company Limited Vs. Pranay Sethi and others 2017

(4) R.C.R. (Civil) 1009. Therefore, compensation payable to the appellants is re-worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Darshan Kumar
(ii)	Date of accident	17.10.2007
(iii)	Age of the deceased	45 years
(iv)	Monthly income of the deceased	₹ 11,007/-
(v)	30% of (iv) is to be added towards future prospects	(₹ 11007+₹3302)= ₹ 14309/- per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 14309-₹3577) = ₹ 10732/- per month
(vii)	Compensation calculated after applying the multiplier of 14	(₹10732X12X14) = ₹ 18,02,976/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹18,72,976

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 18,72,976/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

26.8.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No