

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

F.A.O No. 2901 of 2010

Date of decision:- 21.11.2019

Bhupinder Kumar Kapoor and anr.

...Appellant

Versus

Fulla Singh & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sham Lal Bhalla, Advocate
for the appellants

Ms. Madhu Sharma, Advocate
for respondent No. 3-Insurance Co.

RITU BAHRI J. (Oral)

1. The present appeal has been preferred by the claimants-appellants, seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib (for short, 'the Tribunal') to the tune of Rs.01,10,000/- vide impugned award dated 10.08.2009 on account of death of Miss Radhika Kapoor.

2. As per claimants, on 24.04.2006, Radhika Kapoor (since deceased) along with her friend Nancy Kaushal was going to their school Kinetic Honda bearing No. PB-23-C-4101. The said vehicle was driven by Radhika Kapoor. When they reached near traffic Lights Mandi Gobindgarh, then bus No. UA-07-A-6517 came there from behind being driven by respondent No. 1 in a rash and negligent manner and struck against the kinetic honda of the deceased. She fell down on the road and the rear tyre of the bus ran over her head. She died on the spot and Nancy Kaushal received grievous injuries. F.I.R No. 65 dated 20.04.2006 was registered under

Sections 279/337/304-A IPC at P.S. Mandi Gobindgarh against respondent No. 1.

3. While assessing compensation, the Tribunal took the income of the deceased at Rs.6000/- per annum and applied the multiplier of 16. Rs.14,000/- were awarded towards funeral expenses and last rites. The total compensation awarded to the claimants was Rs.01,10,000/-.

4. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, as no future prospects have been awarded. Further the income has been taken on the lower side.

5. On the other hand, the learned counsel for the respondent-Insurance Co. has vehemently opposed the present appeal.

6. I have heard learned counsel for the parties and perused the record.

7. It is not in dispute between the parties that the accident had taken place, as the accident had been duly proved by the claimants/appellants.

8. Further the parents are also entitled for compensation of Rs.40,000/- each under the head of loss of consortium, in view of judgment of Hon'ble the Supreme Court of India in a case of ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram, 2018 (4) RCR Civil 837***.

9. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition***

(Civil) No. 25590 of 2014, decided on October 31, 2017 wherein the issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.

15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”.

10. In the present case, the compensation is being reassessed by taking the income of the deceased of a skilled labourer i.e Rs.3500/- per month as she was doing final year of B.A.

Sr. No.	Heads	Calculations
(i)	Income	Rs.3500/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.3500+Rs.1400=Rs.4900/- per month
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.4900-Rs.2450=Rs.2450/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.2450 X 12 X 18= Rs.05,29,200/-
(v)	Conventional heads (Loss of estate, funeral expenses)	Rs.30,000/-
(vi)	Loss of fillail consortium (parents)	Rs.80,000/- (Rs.40,000/- each)
	Total Compensation awarded	Rs.06,39,200/-
	Enhanced amount of compensation	06,39,200-01,10,000=Rs.05,29,200/- (rounded off to Rs.5,29,000/-)

11. The enhanced amount of compensation of Rs.05,29,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% per annum in view of judgment of Hon'ble the Apex Court in Civil Appeal No. 4528-2019 titled as *Dara Singh @ Dhara Banjara vs. Shyam Singh*

Varma and ors, decided on 01.05.2019. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

12. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

21.11.2019
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No