

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

FAO No.87 of 2010 (O&M)

Date of Decision: November 28, 2019

Anita Chaudhory and others

...Appellants

Versus

Rohtash Kumar and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Shakti Kaushik, Advocate for
Mr. Naveen S. Bhardwaj, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed seeking to challenge the inadequate compensation as awarded by the Motor Accident Claims Tribunal, Bhiwani .

2. In brief, the facts are that an accident took place on 15.08.2005 when Kailash Chaudhary, the deceased, was going from his residence to his office on his Hero Honda motorcycle and he was struck by truck bearing no.HR58-A-0112 being driven by its driver at a high speed, in a rash and negligent manner. On account of the impact, deceased Kailash Chaudhary received multiple injuries and became unconscious. The driver of the offending vehicle fled away from the spot. The injured remained in Rajiv Ortho Centre at Surat from 15.08.2005 to 16.08.2005 from where he was

shifted to Girish Group of Medical Surat, but on 16.08.2005, on account of serious condition shifted to Lilavati Hospital, Mumbai by helicopter where he remained under treatment from 16.08.2005 to 02.09.2005. On 02.09.2005, he succumbed to his injuries. It was claimed at the time of his death, the deceased was 36 years of age and he was serving as Security Officer-cum-Incharge in Reliance Industries Limited, Surat and was also engaged in transport business along with his brother. It was averred that he was getting ₹ 17,925/- per month as salary and also earning ₹ 10,000/- per month from the transport business that was carried on with his brother.

3. The claim petition was contested by the owner and driver of the offending vehicle as well as the Insurance Company. It was submitted by the respondents that no accident had in fact took place and that the FIR had been registered in collusion with the police.

4. The evidence was adduced by the parties. Thereafter, the Tribunal held the driver negligent for the accident in question and the compensation was assessed as ₹ 4,98,000/- payable to the appellants-claimants. Aggrieved against the compensation, the instant appeal has been filed.

5. During the pendency of the appeal, the matter had been referred back to the Motor Accident Claims Tribunal, Bhiwani to submit the report regarding the income and the compensation to be paid. The matter had been remanded back to decide the limited question of income of the deceased as well as the deductions that would have to be statutorily made. In compliance of the order dated 23.05.2015, a report of the Tribunal has been received wherein the Tribunal has taken the salary of the deceased,

inclusive of the allowance, as ₹ 17,925/- and after deductions has held his net income to be ₹ 14,600/- per month and thereafter, has computed the compensation in terms of the judgment rendered in *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009* by allowing 40% of his income to be added for future prospects. Both the claimants and the Insurance Company are aggrieved against the compensation assessed.

6. Counsel appearing on behalf of the appellants would contend that in fact as per the judgment rendered in *Pranay Sethi and others (supra)* the future prospects has to be 50% of his income whereas only 40 % of his added towards future prospects by the Tribunal.

7. On the other hand, counsel for respondent No.3-Insurance Company contends that certain deductions which have to be made, have been allowed by the Tribunal.

8. In the wake of the facts that both the parties are aggrieved of the compensation as allowed by the Tribunal, both the parties are in agreement that compensation has to be recalculated.

9. The salary of the deceased was ₹ 17,925/- per month and taking into account all the deductions of the allowances, which have to be statutorily made, the net salary of the deceased is taken to be ₹ 13,605/- and instead of 40% increase in the income towards future prospects, 50% has to be allowed as the deceased was below the age of 40 years. This court accordingly reassesses the compensation as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
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(i)	Name of the deceased	Kailash Chaudhory
(ii)	Date of accident	15.08.2005
(iii)	Age of the deceased	36 years
(iv)	Monthly income of the deceased	₹ 13,605/-
(v)	50% of (iv) is to be added towards future prospects	(₹ 13,605+₹6802)= ₹ 20,407/- per month
(vi)	Annual income of the deceased	(₹ 20,407x12) = ₹ 2,44,884/-
(vii)	Deduction of tax component	(₹ 2,44,884- ₹32,976) = ₹ 2,11,908 /- per annum
(viii)	1/4 th deduction towards personal expenses	(₹ 2,11,908- ₹52,977) = ₹ 1,58,931/-
(vii)	Compensation calculated after applying the multiplier of 15	(₹1,58,931x15) = ₹ 23,83,965/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹ 24,53,965/-

10. 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 ₹ 24,53,965/- 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.

November 28, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No