

FAO No. 4238 of 2012 (O&M)

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

FAO No. 4238 of 2012 (O&M)
Date of Decision: August 28, 2019

Gaurav Taneja and another

..... Appellants(s)

Versus

Tarsem Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arnav Sood, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent no.2-insurance company.

LISA GILL, J. (oral)

This appeal has been filed seeking enhancement of compensation awarded to the claimants vide award dated 05.12.2011, passed by learned Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal) on account of death of Smt. Punita Sharma.

Appellants-claimants who are the husband and minor daughter of the deceased, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Punita Sharma due to the injuries suffered by her in the motor vehicle accident, which took place on 08.09.2007. It is pleaded that the deceased was working as a

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Medical Representative with Himalaya Herbal Health Care at Chandigarh, drawing a salary of Rs.22,947/- per month. She was also looking-after her house as well as providing care to her husband and child.

Learned Tribunal on considering the evidence on record concluded that Punita Sharma died due to the injuries received by her in the accident in question which took place on 08.09.2007 due to the rash and negligent driving of the offending Tata-207 bearing registration No. PB-08-AK-3020, by its driver Tarsem Singh-respondent no.1. The deceased was accepted to be 29 years old at the time of the accident, her date of birth being 26.02.1978, as reflected in her matriculation certificate. Learned Tribunal while assessing the income of the deceased to be Rs.10,000/- per month, awarded a sum of Rs.13,70,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income 10,000 x 12	1,20,000/- per annum
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	1,20,000 - 1/3 rd = 80,000/-
3.	Dependency after applying multiplier of 17	80,000 x 17 = 13,60,00/-
4.	Funeral expenses	10,000/-
	Total	13,70,000/-

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants argues that income of the deceased has been wrongly assessed as Rs.10,000/- per month whereas

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positive evidence on record indicates that she was earning much more. Reference is made to Ex.AW4/A, which contains the terms and conditions of appointment of the deceased. It is further submitted that she was additionally rendering services in her capacity of a wife and a mother besides looking-after her house. It is further contended that increment on account of future prospects should be awarded and compensation under the conventional heads be also enhanced.

Learned counsel for the insurance company, however, refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. Dismissal of this appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record of this case with their able assistance.

There is no dispute regarding death of Punita Sharma in the motor vehicle accident, which took place on 08.09.2007, due to the rash and negligent driving of the driver of the offending Tata-207 bearing registration No. PB-08-AK-3020, by its driver Tarsem Singh-respondent no.1. The deceased has been accepted to be 29 years old at the time of the accident and working as a Medical Representative with Himalaya Herbal Health Care at Chandigarh. As per the terms and conditions of her appointment as reflected in document Ex.AW4/A, which is not disputed, it is mentioned that the deceased would be paid a stipend of Rs.5,500/- per month and other allowances w.e.f. 02.04.2007, which are detailed as under:-

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Rs.2,800/- per month	House Rent Allowance
Rs.190/- per day	While at Head Quarter
Rs.220/- per day	While at Head Quarter for metros
Rs.215/- per day	While at Ex-Head Quarter
Rs.275/- per day	While on tour
Rs.2,500/- per annum	Medical Reimbursement

It is a matter of record that there is no specific evidence on record to indicate as to for how many days the deceased was working either at the metros or was on tour. However, even if it is accepted that she was present at Chandigarh itself on all the working days, she would nevertheless be entitled to at least Rs.190/- per working day. Taking a conservative view, the deceased would be working for five days in a week and the said allowance is thus calculated as $190 \times 20 = \text{Rs.}3,800/-$ per month. The amount of Rs.2,800/- per month as House Rent Allowance is also to be included, which takes the monthly income to be Rs.12,100/- ($5,500+3,800+2,800$).

It is pertinent to note that the deceased was admittedly looking-after her house and providing care for her husband and minor child. Therefore, it is considered just and expedient to add a sum of Rs.3,000/- per month on this aspect, taking her income to be Rs.15,100/- per month i.e. Rs.1,81,200/- per annum. The amount of Rs. 2,500/- per annum as medical reimbursement is also included taking her annual income to be Rs. 1,83,700/-. Keeping in view the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680***, 40% increment has to be afforded on account of future prospects. Deduction of 1/3rd was correctly effected by learned Tribunal. As

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the deceased was admittedly 29 years old at the time of the accident, multiplier of 17 was also correctly applied by learned Tribunal. Instead of a sum of Rs.10,000/- awarded by the learned Tribunal towards funeral expenses, the appellants are entitled to a sum of Rs.15,000/- each towards funeral expenses and loss of estate. Appellant no.1 is entitled to a sum of Rs.40,000/- on account of loss of spousal consortium . Appellant no.2 is entitled to a sum of Rs.40,000/- towards loss of parental consortium. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in *Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.* 2018(4) RCR Civil 333, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, title *Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others.*

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr. No.	Heads	Calculations
1.	Income (181,200+2,500)	1,83,700/- per annum
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	86,400 – (1,83,700 x 1/3 rd) = 1,22,467/-
3.	Total income after addition at the rate of 40% on account of future prospects	1,22,467 + 48,987 (1,22,467 x 40%) = 1,71,454/-
4.	Dependency after applying multiplier of 17	29,14,718/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to appellant no.1	40,000/-
8.	Loss of parental consortium to appellant no.2	40,000/-

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	Total	30,24,718/-
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Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount, from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

August 28, 2019.
Sunil

(LISA GILL)
JUDGE

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