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

FAO-2060-2013(O&M)
Date of decision:-19.7.2019

Smt.Sudesh Kumari and others

...Appellants

Versus

Tilak Raj and another

...Respondents

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

Present: Mr.Vipin Pal Yadav, Legal Aid Counsel for the appellants.

Ms.Kiranpreet Kaur, Advocate for Mr.Ashish Aggarwal, Advocate for respondent No.1.

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**H.S. MADAAN, J.**

On account of unfortunate death of Kuldip Singh in a motor vehicular accident, which took place on 15.8.2008 at about 3:00 p.m. in the area of village Waryam Nangal, statedly on account of rash and negligent driving of Mahindra Max bearing registration No.HP-73/0764 (hereinafter referred to as the offending vehicle) by Dharam Singh, his legal representatives, namely, Smt.Sudesh Kumari – wife, Baljit Singh and Parminder Singh – sons and Manjit Kaur – daughter had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Tilak Raj – owner and Bajaj Allianz General Insurance Company Ltd., Amritsar – insurer of the offending vehicle before Motor Accidents Claims Tribunal, Fast Track Court, Amritsar (hereinafter referred to as the Tribunal).

On getting notice, both the respondents had appeared and offered a contest. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petition was allowed by the Tribunal vide award dated 4.3.2011 awarding compensation of Rs.3,85,000/- to the claimants payable by both the respondents jointly and severally directing the respondents to pay that amount within two months, failing which, the respondents would be liable to pay interest @ 7% per annum from the date of filing of the petition till realization. The directions with regard to apportionment of the compensation were also given in the award.

Feeling that the compensation awarded was on lower side, the claimants have approached this Court by way of filing an appeal, notice of which was given to respondents. However, only respondent No.1 has appeared through counsel.

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

While assessing the quantum of compensation, the Tribunal took the age of deceased to be 45 years. The Tribunal disbelieved the case of claimants that deceased was working as a driver earning Rs.5,000/- per month. The evidence adduced by the claimants in that regard in the form of statement on oath of AW2 Smt.Sudesh Kumari and that of AW3 Tilak Raj owner of Tata Sumo vehicle involved in the accident that deceased was working as driver with him getting Rs.5,000/- per month was discarded. The Tribunal observed that in absence of any documentary evidence, it could not be taken that deceased was working as a driver or earning Rs.5,000/- per month. However, keeping in view the fact that he was an able bodied person and at that time a labourer was earning Rs.100/- per day, monthly income of deceased was assessed to be Rs.3,000/-.

In am of the considered view that the Tribunal fell in error in doing so. The fact that the deceased was driving the Tata Sumo in question at the time of accident thereby pointing out that he was driver was lost sight by the Tribunal. Even otherwise, there was no occasion for AW3 Tilak Raj to come forward and to depose falsely that Kuldip Singh was working as a driver on his Tata Sumo for last six months at monthly salary of Rs.5,000/-. In absence of any rebuttal evidence such evidence deserves to be accepted. Accordingly, I take avocation of deceased as a driver and his monthly income as Rs.5,000/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.5,000 + 1250 = Rs.6,250/-.

Keeping in view the number of dependents, the Tribunal has rightly deducted 1/4th of the amount towards personal expenses in terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77 .*** Doing that the dependency of claimants comes out to Rs.4,688/- per month, annual dependency comes out to Rs.4,688 x 12 = Rs.56,256/-.

The Tribunal has used multiplier of 14, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 56,256 x 14 = 7,87,584/-.

The Tribunal has awarded Rs.2,000/- as funeral expenses and Rs.5,000/- to claimant No.1 on account of loss of consortium. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 7,87,584 + 70,000 = 8,57,584/-.

The Tribunal has awarded compensation of Rs.3,85,000/- along with interest interest as mentioned in the relief clause payable by both the respondents jointly and severally. The same is enhanced to Rs.8,57,584 /-.The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.8,57,584/-, payable by both the respondents jointly and severally. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modifications, the appeal is allowed partly with costs.

19.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**