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

FAO-2616-2015(O&M)
Date of decision:-27.8.2019

Kiranjeet Kaur and another

...Appellants

Versus

Balwinder Singh and others

...Respondents

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

Present: Mr.Ajay Pal Singh, Advocate
for the appellants.

Ms.Vandana Malhotra, Advocate
for the Insurance Company.

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

On account of death of Paramjit Singh in a motor vehicular accident, which took place on 22.5.2013 at about 10:30 a.m. in the area of near old bus stand, Rogla, statedly on account of rash and negligent driving of Bolero Maxi Truck bearing temporary registration No.PB-11BA(T) 9976 and regular registration No.PB11-BF-5791 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Balwinder Singh, his legal heirs namely his widow – Smt.Kiranjeet Kaur, aged about 40 years and minor son Master Taranjeet Singh, aged about 17 years had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Balwinder Singh – driver, Gurbaj Singh – owner and Tata AIG General Insurance Company Ltd., Chandigarh - insurer of the offending vehicle before Motor Accidents Claims Tribunal, Sangrur (hereinafter referred to as the Tribunal), claiming compensation to the tune of Rs.30 lakhs along with interest.

Notice of the claim petition was given to the respondents, who put in appearance and filed written statements contesting the claim petition. 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 1.12.2014 and compensation of Rs.13,89,800/- along with interest @ 9% per annum commencing after 30 days from the date of death of the deceased till realization payable by all the respondents jointly and severally was awarded. The manner in which the compensation is to be apportioned is also given in the award.

The claimants felt aggrieved by the said award and have approached this Court by way of filing an appeal seeking enhancement of compensation awarded to them. Notice of the appeal was issued to the respondent No.3 - insurance company, which put in appearance through counsel.

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

The Tribunal in light of the facts and circumstances of the case as well as the evidence adduced before it had taken age of deceased to be 45 years as entered in the copy of postmortem report Ex.A9 and his monthly income was assessed to be Rs.8,000/-. The Tribunal has taken note of the fact that though the claimants asserted that the deceased was having five acres of land but as per copy of jamabandi for the year 2007-08 Ex.A14, he was co-sharer to the extent of about 4 ¼ acres of land. Taking judicial notice of the fact that in view of rising prices of agricultural inputs, normally an agriculturist earns Rs.20,000/- to Rs.25,000/- per acre, therefore the monthly income of the deceased was assessed to be Rs.8,000/-. Though the claimants had examined AW1 Pritpal Singh, Accountant, who had deposed that deceased used to sell his agricultural produce through three firms, namely M/s Mohan Lal Puran Chand, Dirba Mandi (Sangrur), Branch Rogla Mandi, M/s Puran Chand Ashok Kumar, Patran Mandi (Patiala), Head Office, Dirba Mandi (Sangrur) and M/s Mohan Lal Rishi Pal, Dirba Mandi (Sangrur) proving copies of J-Forms, but then the Tribunal has found that it could not be taken as conclusive proof of income of the deceased because those forms did not bear signatures of the deceased as a person, who sold the crops vide said J – Forms and even otherwise, the J – Forms, Ex.A2 to A4 and copies of heap register Ex.A5 to A8 showed sale of agricultural crops worth lacs every year by the deceased, which could not be considered to assess income of the deceased since a person owning agricultural land measuring about 4 ¼ acres was not expected to sell the crops worth lacs without taking other land on lease and that there was no evidence to show that the deceased was taking any other land on lease/rent for the purpose of cultivation in addition to cultivating his own land. Furthermore, AW1

Pritpal Singh had stated in his cross-examination that he could not tell as to who had taken the payment of aforesaid J – Forms and on which dates and ledger account of the deceased was not got produced in evidence. Furthermore, the land is still there and has gone to legal heirs of the deceased and efforts of the deceased towards management of the land are to be taken into consideration. The Tribunal has rightly rejected the contention of the claimants that deceased was engaged in avocation of dairy farming and was having income therefrom in absence of any cogent and convincing evidence. I do not see any reason to differ with the Tribunal with regard to age, avocation and monthly income of the deceased.

The Tribunal has allowed 30% addition towards future prospects whereas in terms of the authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was in the age group of 40 to 50 years and was self employed, an addition of 25% is warranted. The Tribunal has been quite liberal with the claimants in that regard. After adding the future prospects, monthly income of the deceased was assessed to be Rs.10,400/-, annual to be Rs.1,24,800/-. Deduction to the extent of 1/3rd was rightly made towards personal and living expenses of the deceased, assessing dependency of the claimants to be Rs.83,200/- and multiplier of 14 was also rightly applied taking the age of deceased to be 45 years and then compensation arrived at Rs.11,64,800/-. The Tribunal has awarded a sum of Rs.1 lakh to applicant No.1 – widow towards loss of consortium, Rs.1 lakh to applicant No.2 for loss of love, care and guidance and Rs.25,000/-

as funeral expenses when in terms of ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.(surpa)***, 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 amount of compensation awarded by the Tribunal comes out to Rs.13,89,800/- and interest @ 9% per annum has been awarded when as per the ratio of authority ***Pranay Sethi's*** case (supra) interest @7.5% per annum was appropriate to be given.

Since the respondents have not filed any cross appeal or cross-objections, I do not find it proper to reduce the awarded amount.

I find that the amount awarded was appropriate and reasonable. The compensation can certainly be not taken to be on lower side and no case for enhancement of the same is made out.

Finding no merits in the present appeal, the same stands dismissed.

27.8.2019 **(H.S.MADAAN)**
Brij **JUDGE**

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

**Whether reportable : Yes/No**