

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

F.A.O. No.2778 of 2015

Date of Decision: 20.03.2019

Sweety and others

.....Appellants.

Versus

Jarnail Singh and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Ravindra Bangar, Advocate
for the appellants.

Mr.D.K.Prajapati, Advocate
for Mr. R.S.Madan, Advocate
for respondent no.3.

Mr. Ankur Gupta, Advocate
for respondent no.5.

LISA GILL, J.

Appellant-claimants, seek enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Kurukshetra (for short 'tribunal'), vide impugned award dated 22.10.2014, on account of death of Sudhir Kumar.

As per the averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Sudhir Kumar (deceased) along with Surjit Singh son of Jagtar Singh (cleaner) and Krishan Lal son of Balati Ram, on 11.09.2010 were proceeded to Machhiwara (Punjab) from Muradabad (U.P) in truck bearing registration no. HR-37-A-5515, which was being driven by Sudhir Kumar at a moderate speed. At about, 7.00.a.m.,

when he reached near village Mohari, he parked his truck on lay-by for taking tea. When, Sudhir Kumar was standing on the road side, the offending vehicle being driven by respondent no.1-Jarnail Singh in a rash and negligent manner came from the side of Shahbad and struck against Sudhir Kumar due to which Sudhir Kumar was sandwiched between the offending truck and truck no. HR-47-6886 parked ahead. As a result thereof, Sudhir Kumar received multiple grievous injuries and succumbed to his injuries at the spot. Postmortem on the dead body of the deceased was conducted at L.N.J.P., Hospital, Kurukshetra. FIR No.335 dated 11.09.2010 was registered at Police Station Shahbad, against respondent no.1 in this respect. Compensation was prayed for by the widow and two children of the deceased.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Jarnail Singh. Said finding of the learned tribunal has attained finality.

Income of the deceased was assessed as ₹15,850/- per month. Deduction of 1/ 3rd was effected. Multiplier of 16 was applied by the learned tribunal. A consolidated sum of ₹1,25,000/- was awarded towards loss of consortium to wife, love and affection to wife and minor children, funeral expenses and loss of estate. Learned tribunal awarded a sum of ₹30,30,600/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the amount to the claimants.

Learned counsel for the appellants fairly states that increment on account of future prospects should be awarded at the rate of 40% instead

of 50% in terms of the judgement of the Honble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R. (Civil) 1009**. However, it is submitted that income of the deceased has been wrongly assessed as ₹15,850/- per month on the basis of the instalments which were being paid in respect to the truck owned by the deceased who was infact earning much more. Sudhir Kumar (deceased) at the time of accident is proved to be the owner-cum-driver of truck bearing registration no. HR-37-A-5515. He used to drive the truck himself. In-fact, at the time of the accident, he was in transit. It is thus prayed that this appeal be allowed and the compensation awarded to the appellants be enhanced.

Learned counsel for respondent no.3-Insurance Company, however submits that there is no evidence on record to indicate the exact income being earned by the deceased. Merely, because monthly instalments of ₹15,848/- are proved to be remitted by the deceased till his death, is not a ground to assess his income at a rate higher than as assessed by the learned tribunal. Excessive compensation has already been awarded by the learned tribunal in this case. Learned counsel prays for dismissal of the appeal.

I have perused the file and heard learned counsel for the parties.

It is not in dispute that Sudhir Kumar (deceased) lost his life in a motor vehicle accident which took place on 11.09.2019 due to rash and negligent driving of the offending truck by its driver-respondent no.1-Jarnail Singh. It is a matter of record that Sudhir Kumar was 34 years old at the time of the accident. He is survived by his widow and two minor children. FAO No. 842 of 2015 filed by the Insurance Company stands dismissed by this Court on 29.01.2015. It is claimed that Sudhir Kumar was the owner-cum-

driver of the truck bearing registration no. HR-37-A-5515 and used to earn a sum of ₹35,000/- per month. Registration certificate and driving license of the deceased are on record as Mark 4 and Ex.P-6. Claimants have examined PW-4-Gagandeep Singh, Senior Executive, Legal Magma Fincorp Limited, to prove that a loan of Rs.5 lakh had been taken by Sudhir Kumar on 27.12.2007 for purchasing the abovesaid truck. The loan amount was repayable in 41 monthly installments of ₹15,848/-. PW-4 has proved the statement of account as well as photocopy of the loan documents Ex.P-10.

It is borne out from the evidence on record that Sudhir Kumar was a driver of the heavy motor vehicle. He had purchased truck bearing registration no. HR-37-A-5515 by taking a loan of ₹5 lakhs from Magma Fincorp Limited. A perusal of the said statement of account Ex.P-8 reveals that monthly installments of ₹15,848/- were being regularly deposited by the deceased. In this view of the matter, learned tribunal has clearly erred in assessing income of the deceased to be ₹15,850/- per month i.e. monthly installments being paid in respect to the loan. It is not denied that Sudhir Kumar had a family comprising of his wife and two minor children. It is a matter of common sense that to sustain himself and his family, he would necessarily be earning something over and above the amount being deposited towards monthly installments for repayment of the loan. In the facts and circumstances of the case and applying a rule of thumb, it is considered appropriate to assess income of the deceased as ₹25,000/- per month.

Deceased-Sudhir Kumar was 34 years old at the time of accident. Therefore, future prospects at the rate of 40% instead of 50% are

afforded in view of the judgement of the Hon'ble Supreme Court in **Pranay Sethi's** case (**Supra**). Deduction of 1/ 3rd is correctly applied by the learned tribunal. Multiplier of 16 was also correctly applied by the learned tribunal. However, instead of a consolidated sum of ₹1,25,000/- towards loss of consortium, love and affection, funeral expenses etc., the claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. Appellant No.1-widow is held entitled to a sum of ₹40,000/- on account of loss of consortium. The deceased is also survived by two (02) minor children who are entitled to a sum of ₹40,000/- for loss of parental consortium in terms of the judgement of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others (supra)** and decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016 and other connected matters.

Compensation towards the claimants on account of death of Sudhir Kumar, is thus re-worked as under:-

1.	Total income of deceased	₹25,000/- p.m.
2.	Total income after additional of future prospects at the rate of 40%	₹25,000 (₹25,000/-+₹10,000) i.e. ₹35,000/-
3.	Deduction of 1/ 3 rd on account of personal expenses	₹35000/- (₹35000*1/3=₹11,667/-) = ₹23,333/-
4.	Annual dependency after applying multiplier of 16	₹23,333/- x 12 x 16= ₹44,79,936/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Loss of spousal consortium @40,000 to appellant No.1	₹40,000/-
8.	Loss of parental consortium to appellants No.2 and 3	₹40,000/-
	Total Compensation =	₹45,89,936/-

Claimants shall be entitled to interest on the enhanced compensation amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say that the amount, if any, already disbursed to the claimants shall stand deducted. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

20.03.2019
s.khan

[LISA GILL]
Judge

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