

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

FAO No. 383 of 2015 (O&M)

Date of decision : March 26, 2019

Sheena and others

.....Appellants

Versus

Juber Khan and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.K. Agnihotri, Advocate
for the appellants.

Mr. Adarsh Jain, Advocate and
Ms. Kamaldeep Kaur, Advocate
for respondents No. 1 and 2.

Mr. Chandan Deep Singh, Advocate
for respondent No. 3.

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal') on account of death of Sunil Kumar vide award dated 14.07.2014.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow and parents of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Sunil Kumar on 01.02.2013 in a motor vehicle accident caused due to rash and negligent driving of the offending vehicle Truck bearing registration No. HR-74-6477 by respondent No.1.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 01.02.2013 due to rash and negligent driving of the offending Truck bearing registration No. Truck bearing registration No. HR74-6477 by respondent No. 1. Learned Tribunal awarded a sum of ₹9,80,000/- with interest at the rate of 7.5% per

annum from the date of filing of the claim petition till date of actual realisation of the award. Learned Tribunal while holding the deceased aged 24 years, to be an unskilled labourer, assessed his income to be ₹4,000/- per month. 50% increment was afforded on account of future prospects. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 18 was applied as the deceased was 24 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of ₹16,000/- on account of funeral expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants argues that income of the deceased has been wrongly assessed as ₹4,000/- per month as even the minimum wage in the State of Haryana at the relevant time for an unskilled labourer was much more. It is, however, submitted that there is no objection in case increment on account of future prospects and conventional heads is re-worked in terms of judgments of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009** and **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333**. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed, thus, impugned award dated

14.07.2014 be upheld.

I have heard learned counsel for the appellants and have gone through the available file.

There is no dispute that Sunil Kumar lost his life in a motor vehicle accident, which took place on 01.02.2013 caused due to the rash and negligent driving of Truck bearing registration No. HR74-6477 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality.

Learned Tribunal has concluded the deceased to be an unskilled labourer whereas claimants averred that he was a driver. PW2 Suresh Kumar has been examined by the claimants to prove that the deceased was employed as a driver with him, on a salary of ₹14,000/- per month. PW4 Mahinder Singh stated that he had given 9½ acres of land on lease to the deceased, for cultivation. There is, however, no documentary evidence to show that the land in question was being tilled by the deceased. Statement of PW2 Suresh Kumar claimed to be the owner of Swami Tempo Transport Sector 25, Transport Nagar, Panipat cannot be accepted in toto to hold that the deceased was working as a driver with him on a salary of ₹14,000/- per month in the absence of any categorical documentary evidence. However, at the same time, the deceased cannot be treated to be an unskilled worker as held by the learned Tribunal. Though not an exhibit, it is not disputed by learned counsel for the insurance company that the deceased was holding a valid driving licence. Therefore, the deceased is entitled to at least minimum wage for a skilled labourer in the State of Haryana at the relevant time. Minimum wage for a skilled labourer at the time of accident was about ₹5,650/- per month. Thus, income of the deceased is assessed as ₹5,650/-

per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 40% (instead of 50%) (₹2260/-) is afforded, as the deceased was 24 years old at the time of accident, which takes income of the deceased to ₹7910/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Sarla Verma** (supra), deduction of $\frac{1}{3}^{\text{rd}}$ is to be applied as number of dependants is three (3), thereby rendering income of the deceased to be ₹5273/-(7910-2637). Applying a multiplier of 18, dependency of the claimants is assessed as ₹11,38,968/- (₹5273x12x18). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹16,000/-) and loss of estate besides the claimant widow is entitled to ₹40,000/- (instead of ₹1,00,000/-) on account of loss of consortium. Appellants No. 2 and 3 are entitled to a sum of ₹40,000/- for loss of filial consortium. Reference in this respect can gainfully be made to the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others.**

Claimants are, thus, entitled to total compensation of ₹11,98,640/- detailed as under:-

Loss of dependency (₹5273x12x18)	₹10,88,640/-
Loss of spousal consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹11,98,640/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. 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.

March 26, 2019
rts

(Lisa Gill)
Judge

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