IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 4177 of 2015(O&M)

Date of Decision: May 09 , 2019.

Shanti Devi and others ...... APPELLANT (s)

Versus

Jaswant Singh and another ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Neeraj Khanna, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.2 – Insurance company

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LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Ropar (for short, the 'Tribunal') vide impugned award dated 11.02.2015 on account of death of Davinder Singh in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Davinder Singh, who lost his life in a motor vehicle accident which took place on 16.08.2014. FIR No.87 dated 17.08.2014 (Ex.P2) was registered at Police Station Anandpur Sahib against respondent No.1-driver.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of Gypsy bearing registration No.CH01-P-0497 by respondent No.1-Jaswant Singh. This finding of the learned Tribunal has attained finality.

Learned Tribunal while assessing income of the deceased to be ₹8,000/- per month, awarded a total compensation of ₹8,52,000/- to the claimants. Deduction to the extent of 1/3rd was effected. Multiplier of 13 was applied. ₹5,000/- each was awarded on account of loss of estate and loss of consortium, besides, ₹10,000/- towards funeral expenses.

Learned counsel for the appellants vehemently argues that income of the deceased has been wrongly assessed by the learned Tribunal as ₹8,000/- per month, which is less than even the minimum wage available to a skilled worker in the State of Punjab at the relevant time. It is submitted that claimant/appellant No.1 testified as PW1 to the effect that deceased-Davinder Singh was working as a Senior Foreman with the Royal Stone Crusher since April 2010. PW3 Rakesh Kumar, Proprietor of Royal Stone Crusher specifically stated that deceased-Davinder Singh was working with Royal Stone Crusher since April 2010 on a salary of ₹15,000/- per month. Salary certificate (Ex.PW3/A) was proved by him. It is thus submitted that income of the deceased should be assessed as ₹15,000/- per month. It is further submitted that increment on account of future prospects be also afforded, apart from enhancement of compensation under the conventional heads. It is thus prayed that the amount of compensation awarded to the appellants be reworked accordingly.

Learned counsel for respondent No.3-Insurance company refutes the abovesaid averments and submits that just and reasonable compensation has been awarded by the learned Tribunal which does not call for any enhancement. It is contended that testimony of PW3 Rakesh Kumar is insufficient to prove that the deceased was receiving a salary of ₹15,000/- per month. PW3 Rakesh Kumar, it is submitted, has not placed on record any documentary evidence to show that he is the proprietor of Royal Stone Crusher, neither has any evidence been produced regarding attendance, salary etc. purportedly being given to deceased-Davinder Singh. It is thus prayed that this appeal be dismissed.

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

There is no dispute regarding death of Davinder Singh in a motor vehicle accident which took place on 16.08.2014 due to the rash and negligent driving of the offending gypsy bearing registration No.CH01-P-0497 by respondent No.1-Jaswant Singh. Neither is there a dispute regarding liability of the Insurance company. It is further not in dispute that deceased-Davinder Singh was 50 years old at the time of the accident. Appellants have claimed Davinder Singh to be working as a Senior Foreman with Royal Stone Crusher. PW1 Shanti Devi, his widow, has deposed to this effect. Rakesh Kumar, proprietor of the said Royal Stone Crusher has testified as PW3 and categorically stated that the deceased was employed by him as stated above, receiving a salary of ₹15,000/- per month. In cross-examination, PW3 Rakesh Kumar stated that he is an income tax assessee and sales-tax number has been issued to his Stone Crusher, but record in respect to the same was not brought by him on the said occasion.

Having perused the evidence on record, I find merit in the argument raised by learned counsel for the appellants that income of the deceased has been wrongly assessed as ₹8,000/- per month. Merely because specific documents in respect to the firm in question were not produced, cannot be a ground to completely discredit the testimony of PW3 Rakesh Kumar, proprietor of Royal Stone Crusher. PW3 Rakesh Kumar has stated that about 4-5 employees are working with him. Employment of deceased-Davinder Kumar as a Foreman with Royal Stone Crusher cannot be disbelieved on the grounds sought to be raised by learned counsel for respondent-Insurance company. However, in the given facts and circumstances, it cannot be conclusively held that the deceased was indeed receiving a sum of ₹15,000/- per month as salary. Hence, income of the deceased is assessed as ₹10,000/- per month.

Deceased-Davinder Singh was admittedly 50 years old at the time of the accident. Claimants are entitled to addition in income at the rate of 10% on account of future prospects in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. One third (1/3rd) deduction towards personal expenses has been correctly effected by the learned Tribunal. Multiplier of 13 is rightly applied as well. Instead of ₹10,000/- and ₹5,000/-, claimants are held entitled to ₹15,000/- each towards funeral expenses and loss of estate, respectively. Appellant No.1 is entitled to ₹40,000/- instead of ₹5,000/-, on account of loss of spousal consortium and both the children are entitled to sum of ₹40,000/- for loss of parental consortium in terms of the judgments of the Hon'ble Supreme Court in Pranay Sethi (supra) and **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 No.2110 of 2016 (Shri Ram General

Insurance Company Ltd. v. Beant Kaur and others).

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

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	10,000 p.m. i.e. ₹1,20,000/- per annum
2.	Total income after addition at the rate of 10% on account of future prospects	1,20,000 + (1,20,000 **x** 10%) = 1,32,000
3.	Income after deduction of 1/3rd on account of personal expenses	1,32,000 – (1,32,000 **x** 1/3) = 88,000
4.	Total dependancy after applying a multiplier of 13	(88,000 **x** 13) = 11,44,000
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium to appellant No.1	40,000
8.	Loss of parental consortium to appellants No.2 and 3	40,000
	Grand Total	₹12,54,000/-

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 on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

May 09 , 2019.
'om'

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