IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6439 of 2013
Date of Decision: May 22, 2019

Ram Bhagat and others

...... Appellants(s)

Versus

Dilbag Singh and another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ajay Aggarwal, Advocate for
Mr. Sandeep Goyat, Advocate
for the appellants.

Respondent no.1 already proceed against *ex-parte*
vide order dated 15.01.2015.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for respondent no.2-insurance company.

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<u>LISA GILL, J. (oral)</u>

This appeal has been filed seeking enhancement of the compensation awarded to the claimants vide award dated 30.08.2013, passed by learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal).

Appellants-claimants who are the aged parents, widow and three minor children of the deceased Ram Niwas, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Ram Niwas, due to the injuries suffered by him in the motor vehicle accident, which took place on 02.06.2011. Learned Tribunal while accepting the deceased to be 32 years old, concluded that he died due to the injuries received by him in the motor vehicle accident, which took place on 02.06.2011, due to the rash and negligent driving of the offending Tata Sumo bearing registration No. HR-39-B-0172, by its driver Dilbag Singh-respondent no.1. Learned Tribunal while assessing income of the deceased to be Rs.4,500/- per month, awarded a sum of Rs.6,83,000/- as compensation, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income 4,500 x 12	54,000/- per annum
2.	Income after deducting 1/4th as personal living expenses of the deceased	54,000 - 1/4th = 40,500/-
3.	Dependency after applying multiplier of 16	40,500 x 16 = 6,48,000/-
4.	Funeral expenses	5,000/-
5.	Loss of love and affection and consortium	25,000/-
6.	Loss of estate	5,000/-
	Total	**6,83,000/-**

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants does not raise any challenge to the assessment of the income of the deceased at Rs.4,500/- per month. However, he submits that increment on account of future prospects should be awarded. It is further submitted that compensation under the conventional heads be re-worked in terms of **National Insurance Company Limited v.**

Pranay Sethi and others, ***2017(16) SCC 680*** and ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*. 2018(4) RCR Civil 333**.

Respondent no.1 (driver and owner of the offending vehicle) has been proceeded against *ex-parte* in the present proceedings on 15.01.2015, though he was duly represented before the learned Tribunal.

Learned counsel for respondent no.2-insurance company submits that the insurance company has been exonerated from its liability as the cover note of the insurance policy was cancelled due to non-payment of the premium. There is no appeal by respondent no.1 against the said finding neither has any argument been addressed in this respect by the present appellants. It is thus prayed that this appeal be dismissed qua the insurance company.

I have heard learned counsel for the parties.

There is no dispute regarding death of Ram Niwas in the motor vehicle accident, which took place on 02.06.2011, due to the rash and negligent driving of the offending Tata Sumo bearing registration No. HR-39-B-0172 by its driver Dilbag Singh-respondent no.1. Age of the deceased as well as the income as assessed by the learned Tribunal is also not in dispute. In terms of the judgment of Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others*, *2017(16) SCC 680***, 40% increment towards future prospects has to be afforded. Deduction of 1/4th was correctly effected by learned Tribunal. As the deceased was admittedly 32 years old at the time of the accident, multiplier of 16 was correctly applied by learned Tribunal. Instead of Rs.25,000/-, Rs.5,000/- and Rs.5,000/- awarded by the learned Tribunal towards loss of love and affection, consortium, loss of estate and funeral expenses, respectively, claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate. Appellants no.1 and 2 are entitled to Rs.40,000/- on account of filial consortium, appellant no.3 is entitled to a sum of Rs.40,000/- towards loss of consortium and appellants no.4 to 6 are entitled to consolidated sum of Rs.40,000/- for loss of parental consortium in terms of the judgment of Hon'ble Supreme Court in ***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, titled Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others.

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

Sr. No.	**Heads**	**Calculations**
1.	Income 4,500 x 12	54,000/- per annum
2.	Income after deducting 1/4th as personal living expenses of the deceased	54,000 - 1/4th = 40,500/-
3.	Total income after addition at the rate of 40% on account of future prospects	40,500+16,200 (40,500 **x** 40%) = 56,700/-
4.	Dependency after applying multiplier of 16	56,700 x 16 = 9,07,200/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-

7.	Loss of filial consortium to appellants no.1 and 2	40,000/-
8.	Loss of consortium to appellant no.3	40,000/-
	Loss of parental consortium to appellants no. 4 to 6	40,000/-
	Total	**10,57,200/-**

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 at the rate of 7.5% per annum on the enhanced amount, from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same. The cover note of the policy was cancelled. No evidence was led by the owner-cum-driver of the offending vehicle (respondent no.1) to prove that the premium had actually been paid by him. Evidence of respondent no.1 was admittedly closed by order. Therefore, finding of the learned Tribunal that liability to pay the compensation rests totally on respondent no.1, is upheld.

Appeal is accordingly disposed of with the modification in the quantum of compensation.

May 22, 2019. **(LISA GILL)**
Sunil **JUDGE**

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