

FAO No. 4225 of 2015 (O&M)

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

FAO No. 4225 of 2015 (O&M)

Date of Decision: December 09, 2019

Saroj Rani and others

..... Appellants(s)

Versus

Sonu and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Saurabh Bhardwaj, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent no.3-insurance company.

LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the appellants-claimants vide award dated 29.11.2014, passed by learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal') on account of death of Balwan Singh in the motor vehicle accident, which took place on 30.07.2012.

In the motor vehicle accident, which took place on 30.07.2012, a number of persons died and many others suffered serious injuries. 37 claim petitions were filed seeking compensation on account of death of some of the persons and for the injuries suffered by others. Learned Tribunal consolidated all the 37 claim petitions and decided them vide a common award dated 29.11.2014. It is pleaded in all the claim petitions that the

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deceased/injured, about 60 persons, all together had gone to Amarpura Dham (Rajasthan) for pilgrimage in an Eicher Canter bearing registration No.HR-64-2433. At about 3:00 AM, on 30.07.2012 they started their journey for returning back to Kalayat (Kaithal) in the above said vehicle, which was being driven by Mahipal son of Om Parkash, on a very moderate speed while observing all traffic rules. When they reached in the area of Sainiwas Railway Crossing on Rajgarh, Hissar Road, the offending truck bearing registration No. HR-58-A-5377, being driven by respondent no.1, in rash and negligent manner came from opposite side at a very fast speed, without blowing its horn. After coming on to the wrong side of the road, it struck against the Eicher Canter bearing registration No. HR-64-2433. As a result thereof, all occupants of the Eicher Canter received multiple, serious and grievous injuries. Gaje Singh, Jagmal, Balwan, Kajal, Mahipal, Rajinder and many other persons succumbed to their injuries at the spot, whereas some other passengers namely Banarsi, Gaurav, Kuldeep, Dhoop Singh son of Inder Singh etc. received multiple serious injuries on their persons. It is pleaded that the accident in question took place due to rash and negligent driving of respondent no.1, while driving the said offending truck. Case FIR No.142 dated 30.07.2012 under Sections 279, 337, 338 and 304-A IPC was registered against respondents no.1 and respondent no.1-A with regard to the said accident.

After considering the evidence on record, facts and circumstances, learned Tribunal concluded that the accident in question took place due to the rash and negligent driving of the offending truck bearing

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registration no. HR-58-A-5377 by its driver – respondent no.1 Sonu. It is further concluded by the learned Tribunal that there is an admission on the part of the claimants that there were as many as 70 to 80 passengers travelling in the canter. Wooden rafters were fitted in this canter, thereby converting it into a veritable double decker vehicle. Passengers were sitting on the wooden rafters as well. Due to the impact, the wooden rafters collapsed. Consequently, the passengers who were sitting on the said rafters, fell on the passengers sitting below. This in turn increased the number of casualties. Learned Tribunal held that the act of the passengers in sitting in this fashion amounts to contributory negligence, which was assessed to the extent of 10%. Compensation in varying amounts was awarded in the separate claim petitions as per the facts of each case.

Learned Tribunal while accepting the deceased Balwan Singh to be 40 years assessed his income to be Rs.5,000/- per month and awarded a sum of Rs.9,50,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	5,000 x 12 = 60,000 per annum
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	60,000 – 20000 =40,000/-
3.	Dependency after applying multiplier of 15	40,000 x 15 = 6,00,000/-
4.	30% increment on account of future prospects	6,00,000 + 1,80,000 = Rs.7,80,000/-
5.	Loss of consortium to claimant no.1	1,00,000/-

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6.	Loss of love and affection to claimants no.2 to 4	50,000 x 3 = 1,50,000/-
4.	Funeral expenses	25,000/-
	Total	Rs.10,55,000 /-
	Grand total after deducting 10% on account of contributory negligence	10,55,000 – 1,05,000 = 9,49,500/- (rounded off to Rs.9,50,000/-)

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

Learned counsel for the appellants while not raising any objection qua the income as assessed by the learned Tribunal, submits that increment towards future prospects has not been correctly afforded by the learned Tribunal. He submits that increment of 50% should be afforded as deceased was 40 years old. Moreover, deduction of 1/3rd has been incorrectly effected. It is thus prayed that compensation be enhanced.

Learned counsel for the insurance company, however, refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. Dismissal of this appeal is prayed for.

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

There is no dispute regarding death of Balwan Singh, aged 40 years in the motor vehicle accident, which took place on 30.07.2012, due to the rash and negligent driving of the offending truck bearing registration No.HR-58-A-5377, by its driver Sonu-respondent no.1. There is also no dispute regarding the income i.e. Rs.5,000/- per month or age of the

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deceased as assessed by the learned Tribunal, therefore same are upheld.

Keeping in view the judgment of the Hon'ble supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, it is an increment of 25% which has to be afforded on account of future prospects as the deceased was admittedly 40 years old at the time of death. The claimants in this case are the widow, three minor children and the mother of the deceased, therefore, deduction of 1/4th instead of 1/3rd has to be applied. As the deceased was admittedly 40 years old at the time of the accident, multiplier of 15 was correctly applied by learned Tribunal. Compensation under the conventional heads would also have to be reworked 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*.

Learned counsel for the appellants is unable to deny that in case of calculations being carried out as above, there is indeed no scope of any enhancement of compensation awarded to the claimants.

No other argument has be addressed.

Appeal is accordingly dismissed with no order as to cost.

December 09, 2019.

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No