

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 4238 of 2015 (O&M)
Date of Decision: December 09, 2019

Kaushalya 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.

Mr. Subhash Goyal, Advocate
for respondent no.3-insurance company.

LISA GILL, J.

This appeal has been filed seeking enhancement of 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 Jagmal 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 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 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 Jagmal to be 60 years old assessed his income to be Rs.4,000/- per month and awarded a sum of Rs.5,07,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	4,000 x 12 = 48,000 per annum
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	32,000/- p.a.

3.	Dependency after applying multiplier of 9	32,000 x 9 = 2,88,000/-
4.	Loss of consortium to claimant no.1	1,00,000/-
5.	Loss of love and affection to claimants no.2 to 4	50,000 x 3 = 1,50,000/-
6.	Funeral expenses	25,000/-
	Total	Rs.5,63,000 /-
	Grand total after deducting 10% on account of contributory negligence	5,63,000 – 56,300 = 5,06,700/- (rounded off to Rs.5,07,000 /-)

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

Learned counsel for the appellants argues that income of Rs.4,000/- per month has been wrongly assessed and increment towards future prospects has not been afforded by the learned Tribunal. Moreover, deduction of 1/3rd has been incorrectly effected. It is, however, fairly stated that compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court in **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**. 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 Jagmal, aged 60 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. Learned Tribunal has assessed income of the deceased as Rs.4,000/- per month while considering the deceased to be an unskilled labourer. It is to be noted that minimum wage of an unskilled labourer in the State of Haryana at the time of accident was Rs.4,967/- p.m. Learned Tribunal, in this view of the matter, has erred in assessing income of the deceased to be Rs.4,000/- per month while observing that he was 60 years old, therefore, he may not be able to earn the minimum wage. Such a presumption in the absence of any evidence on record to indicate that the deceased was not in a position to work, is uncalled for. The claimants have in fact pleaded that the deceased was hale and hearty at the time of his death and in receipt of Rs.15,000/- per month. Income of the deceased is thus assessed as Rs.5,000/- per month.

Keeping in view the number of dependents, deduction on account of personal expenses should have also been 1/4th instead of 1/3rd. However learned counsel for the appellants is unable to deny that even in case, the compensation is re-worked in terms of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**, the total compensation awarded to the claimants is not liable to be enhanced.

No other argument has been addressed.

Appeal is accordingly dismissed with no order as to costs.

December 09, 2019.

Sunil

(LISA GILL)
JUDGE

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