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

**FAO No.913 of 2013(O&M)
Date of Decision: 19.08.2019**

Parminder Kaur @ Parvinder Kaur and others ....Appellants

Versus

Kulwinder Singh @ Kala and others ....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Balraj Singh Dhull, Advocate
for the appellants.

Mr. Arun Gosain, Advocate
for respondents No.1 and 2.

Ms. Madhu Sharma, Advocate
for respondent No.3/Insurance Company.

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RAJ MOHAN SINGH, J.

[1]. Claimants/appellants have preferred this appeal for enhancement of compensation against the award dated 25.07.2012 passed by the Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal').

[2]. Deceased Harwinder Singh died in a vehicular accident. Widow, minor daughter, minor son and parents of the deceased Harwinder Singh filed the claim petition under Section 166 of the Motor Vehicles Act, 1988.

[3]. The Tribunal found that the accident in question took

place due to rash and negligent driving of driver of the offending truck. Claimants were held entitled to compensation under issue No.2. Under issue No.3, it was held that respondents No.1 and 2 have failed to adduce any evidence in respect of valid driving licence possessed by respondent No.1. No such licence was placed on record. In view of that, Insurance Company was not liable to indemnify the insured in view of ratio laid down in ***National Insurance Co. Ltd. Vs. Challa Bharthamma and others, 2004 ACJ-2094***. Issue No.3 was accordingly decided in favour of respondent No.3 and against respondents No.1 and 2. The Tribunal on due consideration found that the claimants were entitled to compensation to the tune of Rs.8,79,000/- along with interest @ 9% per annum from the date of filing of the claim petition till final realisation of the amount. Respondents No.1 to 3 being driver, owner and insurer of truck No.HP-38-6456 were held liable jointly and severally to answer the claim. Insurance Company was directed to deposit the amount of compensation at the first instance with a right to recover the same from the insured by initiating proper proceedings before the executing Court. The amount of compensation was ordered to be apportioned amongst the claimants as per para No.31 of the award.

[4]. Learned counsel for the appellants contended that the

deceased was working as Foreman in M/s Dashmesh Electricals. He was also doing overtime in the said firm and his total monthly income was Rs.7000/-. PW 4 Manjit Singh, partner of M/s Dashmesh Electricals proved salary certificate Ex.P7. The witness had proved the employment of the deceased with reference to aforesaid salary certificate and attendance register of the employees Ex.P10 and Ex.P11. The claimants could not produce any other proof of income of the deceased from the evocation of dairy farming etc. The Tribunal did not rely upon income of the deceased to be Rs.7000/- on the ground that PW 4 Manjit Singh could not prove the salary record and income tax returns of the deceased, but at the same time, income of the deceased was taken to be Rs.6000/- per month to which deduction to the tune of 1/4th was applied towards personal expenses and monthly dependency of the claimants was assessed to be Rs.4500/-. After calculating annual dependency of the deceased to be Rs.54,000/- and after applying multiplier of 16 in view of ratio laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) Recent Civil Reports (Civil) 77,*** the amount of compensation was calculated to be Rs.8,64,000/- to which an amount of Rs.15,000/- was added towards conventional heads i.e. loss of consortium, funeral expenses and loss of estate. In this way, total compensation was assessed to be Rs.8,79,000/-.

[5]. I have heard learned counsel for the parties.

[6]. Even if, income of the deceased is taken to be Rs.6000/- per month as assessed by the Tribunal, increase to the tune of 40% i.e. Rs.2400/- towards future prospects has to be added, thereby making the monthly income of deceased to be Rs.8400/- (6000+2400=8400). Keeping in view the composition of the family, deduction to the extent of 1/4th towards personal expenses of the deceased was just and appropriate. In this way, an amount of Rs.2100/- has to be deducted and after deducting the same, monthly income of the deceased would come out to be Rs.6300/- (8400-2100=6300) i.e. Rs.75,600/- per annum. The deceased was 34 years of age at the time of accident, therefore, in view of ratio laid down in ***Smt. Sarla Verma and others' case (supra)***, multiplier of 16 would be just and appropriate and after applying the same, the amount of compensation would come out to be Rs.12,09,600/- (75,600x16=12,09,600). In view of ratio laid down in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 SCC 1270,*** an amount of Rs.70,000/- has to be added towards conventional heads. In this way, total amount of compensation would come out to be Rs.12,79,600/- (12,09,600+70,000=12,79,600).

[7]. The Tribunal has already awarded an amount of Rs.8,79,000/-, therefore, the aforesaid amount has to be deducted and after deducting the same, the enhanced amount of compensation would come out to be Rs.4,00,600/- (12,79,600-8,79,000=4,00,600).

[8]. The enhanced amount of compensation i.e. Rs.4,00,600/- shall be paid to the claimants/appellants along with interest @ 7.5% per annum from the date of filing of the claim petition till final realisation of the amount. Apportionment of the compensation shall remain the same as awarded by the Tribunal in para No.31 of the award. The liability to pay the enhanced amount of compensation shall remain the same as ordered by the Tribunal.

[9]. With the aforesaid modification, the present appeal stands disposed of.

19.08.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**