

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

FAO No. 4582 of 2015 (O&M)

Date of decision : May 02, 2019

Jasbir Kaur and another

.....Appellants

Versus

Varinder Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: None for the appellants.

Mr. M.B. Jain, Advocate
for respondent No. 3.

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Pathankot (hereinafter referred to as the 'Tribunal') on account of death of Lakhwinder Singh vide award dated 11.04.2014.

As reflected in order dated 23.02.2016 passed in this appeal, service was complete. The matter was listed for arguments with the record of the Tribunal being called for. Thereafter, none has been appearing on behalf of the appellants. Today again, there is no representation on behalf of the appellants. Though the matter can be dismissed in default but the present being a claimants' appeal, the said course is not adopted as it is considered just and expedient to decide the matter on merits.

There is a delay of 306 days in filing of this appeal. Notice of the application for condonation of delay in filing of the appeal as well as notice of motion in the main appeal was issued on 12.10.2015.

Keeping in view the reasons mentioned in the application, it is

considered just and expedient to condone the delay in filing of the appeal and decide the matter on merits rather than dismiss it on technical considerations of delay. Accordingly, delay of 306 days in filing of this appeal is condoned with a rider that the applicants shall not be entitled to any interest on the period of delay in case of any enhancement of compensation.

Brief facts necessary for adjudication of the case are that the claimants i.e. parents of the deceased filed a petition under Section 166 of the Motor Vehicles Act, seeking compensation, on account of death of Lakhwinder Singh on 01.11.2012 in a motor vehicle accident. As per the pleadings in the petition, the deceased Lakhwinder Singh was employed as a driver-cum-cleaner with Tipper bearing registration No. PB-10-DM-8575. He was getting the tipper loaded while standing at the back of the vehicle on 01.11.2012. In the meanwhile, offending vehicle i.e. another tipper bearing registration No. HP-38-C-0712 driven by its driver – respondent No. 1 dashed against tipper bearing registration No. PB-10-DM-7585 from the rear side. As a result thereof, Lakhwinder Singh was crushed between both the tippers and he succumbed to his injuries at the spot.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that Lakhwinder Singh died in the accident which took place on 01.11.2012 due to rash and negligent driving of the offending tipper bearing registration No. HP-38-C-0712 by respondent No. 1. This finding of the learned Tribunal has attained finality. There is no dispute that the deceased Lakhwinder Singh was 19 years old at the time of the accident. Learned Tribunal while assessing the income of the deceased to be ₹4,500/- per month awarded a sum of ₹4,95,500/- with interest at the

rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. 50% deduction was effected as the deceased was a bachelor. Multiplier of 18 was applied as the deceased was 19 years old at that time. Additionally, a sum of ₹95,000/- on account of general damages was awarded to the claimants.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the respondent - insurance company submits that adequate compensation has been awarded by the learned Tribunal, which calls for no further enhancement. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 11.04.2014 be upheld and this appeal be dismissed.

I have heard learned counsel for respondent No. 3 and have gone through the record with his able assistance.

AW2 Jasbir Kaur, mother of the deceased specifically testified that her son, aged 19 years, was employed as a driver-cum-cleaner for Tipper bearing registration No. PB-10-DM-8575, drawing a salary of ₹6,000/- per month. FIR No. 440 dated 01.11.2012 (Ex.A2) finds mention of the deceased to be present alongwith the tipper in question at the time of the accident. AW3 Shingara Singh, an eyewitness of the accident, has also testified in this regard. Perusal of the evidence reveals that there is nothing on record to disbelieve the version of the claimants that the deceased was employed as a driver-cum-cleaner at the time of his death. However, there is no evidence regarding the exact income being received by the deceased at the relevant time. It is relevant to note that the minimum wages of a driver in the State of Haryana at the time of the accident were ₹5,191/- per month.

Income of the deceased is, thus, assessed as ₹5,191/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**., increase on account of future prospects at the rate of 40% (₹2076/-) is afforded, as the deceased was 19 years old at the time of accident, which takes income of the deceased to ₹7,267/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77, 50% deduction is to be applied as the deceased was a Bachelor, thereby rendering income of the deceased to be ₹3634/-(7267-3634). Applying a multiplier of 18, dependency of the claimants is assessed as ₹7,84,944/- (₹3634x12x18). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others**, appellants i.e. parents of the deceased are entitled to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹8,54,944/- detailed as under:-

Loss of dependency(₹3634x12x18)	₹7,84,944/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹8,54,944/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above.

Appellants are entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization. It is clarified at this stage that the appellants shall not be entitled to any interest for the period of delay in filing of the appeal.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

Copy of this order be conveyed to the appellants at the given address.

May 02, 2019
rts

(Lisa Gill)
Judge

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