

FAO No. 3775 of 2016 .

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

FAO No. 3775 of 2016

Date of Decision: October 16, 2019

Jannati and others

..... Appellants(s)

Versus

Islam Khan and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Barjinder Singh, Advocate for
Mr. Arjun Atri, Advocate
for the appellants.

Service upon respondent no.1 dispensed with
vide order dated 29.04.2019.

None for respondent no.2, despite service.

Mr. Satish Jain, Advocate
for respondent no.3.

LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the claimants vide award dated 22.01.2016, passed by learned Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal).

Appellants-claimants, who are the widow, children and aged mother of the deceased, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Umar

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Mohd., due to the injuries suffered by him in the motor vehicle accident, which took place on 23.09.2014, due to the rash and negligent driving of the offending truck bearing registration No. RJ-02-GB-2464, by its driver Islam Khan - respondent no.1. Claimants pleaded that Umar Mohd. lost his life in the said motor vehicle accident, which was caused due to the rash and negligent driving of the offending truck bearing registration No. RJ-02-GB-2464, by its driver Islam Khan - respondent no.1. It is claimed that the deceased was a driver of heavy vehicles, earning a sum of Rs.15,000/- per month. Compensation was accordingly claimed.

Learned Tribunal on considering the evidence on record concluded that Umar Mohd. died due to the injuries received by him in the motor vehicle accident, which took place on 23.09.2014, due to the rash and negligent driving of the offending truck bearing registration No. RJ-02-GB-2464, by its driver Islam Khan - respondent no.1. While assessing the income of the deceased to be Rs.5,550/- per month with reference to the minimum wage of an unskilled labourer in the State of Haryana at the time of the accident and accepting the deceased to be 50 years old, learned Tribunal awarded a sum of Rs.10,00,432/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	5,550/- per month
2.	Income after addition of 30% on account of future prospects.	7,215/- (5,550+1665)

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3.	Income after deducting 1/5 th as personal living expenses of the deceased	5,772/- per month (7215 - 1443)
4.	Income after applying multiplier of 13	5,772 x 12 x 13 = Rs.9,00,432/-
5.	Loss of consortium to petitioner no.1 and loss of love and affection to petitioners no.2 to 9	1,00,000/-
	Total	10,00,432/-

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

Learned counsel for the appellants argues that learned Tribunal has erred in holding the deceased Umar Mohd. to be 50 years old whereas he was about 41 years old at the time of the accident as is reflected in the driving licence Ex.P17. It is further submitted that meagre compensation has been afforded by the learned Tribunal, which should be enhanced, though it is fairly stated that increment on account of future prospects and compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court **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 the present appeal be allowed and the total compensation awarded to the claimants 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

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enhancement. It is submitted that learned Tribunal has rightly concluded the deceased to be 50 years old on the basis of the inquest report Ex.P5. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute regarding death of Umar Mohd. due to the injuries received by him in the accident in question, which took place on 23.09.2014, due to the rash and negligent driving of the offending truck bearing registration No. RJ-02-GB-2464, by its driver Islam Khan - respondent no.1. There is further no dispute regarding income of the deceased to be Rs.5,550/- per month as assessed by the learned Tribunal. Learned Tribunal concluded the deceased Umar Mohd. to be 50 years old while referring to the inquest report Ex.P-5. The claimants while relying upon the driving licence Ex. P17 claim the deceased to be 41 years old at the time of the accident. Learned counsel for the insurance company is unable to deny that there is indeed no basis on account of which the deceased is mentioned to be 50 years old in the inquest report whereas the authenticity of the driving licence has not been doubted. As per the said driving licence, the deceased was 40 years old as on 17.06.2013. Therefore, without doubt, the deceased was 41 years old at the time of the accident, which took place on 23.09.2014. Learned Tribunal has thus erred in holding the deceased to be 50 years old. The deceased is held to be 41 years old at the time of the accident.

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Accordingly, in view of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**, increment of 25% instead of 30% is to be afforded towards future prospects. Deduction of 1/5 was correctly effected by learned Tribunal as there are admittedly 9 dependents. As the deceased has been held to be 41 years old at the time of the accident, multiplier of 14 instead of 13 has to be applied in this case. Appellants are entitled to a sum of Rs.15,000/- towards funeral expenses besides another sum of Rs.15,000/- towards loss of estate. Instead of Rs.1,00,000/- awarded to the claimants on account of loss of consortium and loss of love and affection, appellant no.1 is entitled to a sum of Rs.40,000/- on account of loss of spousal consortium and appellants no.2 to 8 are entitled to a sum of Rs.40,000/- on account of loss of filial consortium. Appellant no.9 is also entitled to a sum of Rs.40,000/- towards loss of parental consortium. Reference in this regard can gainfully be made to the judgment of the 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-2110-2016, title **Shri Ram General Insurance Company 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	5,550 x 12 = 66,600/- per annum

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2.	Income after deducting 1/5 th as personal living expenses of the deceased	66,600 - 1/5 = 53,280/-
3.	Total income after addition at the rate of 25% on account of future prospects	53,280 + 13,320 (42,000 x 40%) = 66,600/-
4.	Dependency after applying multiplier of 14	66,600 x 14 = 9,32,400/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of spousal consortium to appellant no.1 - widow	40,000/-
8.	Loss of parental consortium to appellants no.2 to 8 - ch-ldren	40,000/-
9.	Loss of filial consortium to appellant no.9 - mother	40,000/-
	Total	10,82,400/-

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.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

October 16, 2019.

Sunil

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