

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

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FAO-3843-2016 (O&M)

Date of decision: 02.04.2019

SANTOSH AND ANR

... Appellants

Versus

BALBIR @ BAGGA AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod K. Kanwal, Advocate for the appellants.
Mr. Vinod Gupta, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Pala Ram in a motor vehicular accident that took place on 11.08.2015.

The Tribunal has awarded Rs.8,46,900/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6100/-
2. Multiplier	14
3. Deduction for personal expenses	1/3 rd
4. Loss of dependency	Rs.6,83,200/-
5. Expenses on funeral	Rs.20,000/-
6. Loss of love and affection	Rs.50,000/-
7. Loss of consortium	Rs.20,000/-
8. Medical expenses	Rs.33,700/-
9. Pain and sufferings and transportation etc.	Rs.40,000/-

The sole submission made by counsel for the appellants is that the Tribunal has not allowed addition in income for future prospects. It is further argued that the Tribunal has applied cut of 1/3rd towards personal and living expenses of the deceased but the same should be 1/4th as application for compensation has been filed by the widow, two children and mother of the deceased, dependent upon income of Sh. Pala Ram.

Counsel representing the insurance company, on the contrary, would argue that as the deceased was more than 46 years of age, admissible multiplier should be 13 as against 14. Compensation allowed under conventional heads may be restricted to Rs.70,000/- in the light of

judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034.**

The Tribunal has assessed age of the deceased at 50 years, recorded in the postmortem report. Counsel for the appellants has failed to point out any materials on record, if the deceased was less than 50 years of age. That being so, addition in income for future prospects would be 10%. The multiplier for computing loss of dependency is 13, available for the age group of 46 to 50 years in the light of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77.**

The application for compensation has been filed by the widow, two adult sons and mother of the deceased. The Tribunal has held that claimants No.2 and 3 are not entitle to compensation on the premise that they were not dependent upon income of the deceased. Counsel for the insurance company has failed to point out any materials on record suggestive of the fact that claimants No.2 and 3 were either gainfully employed or otherwise can be denied loss of dependency. As such, deduction for personal and living expenses of the deceased would be 1/4th. In view of the above, loss of dependency is calculated at Rs.7,85,070/- [(6100 x 12 x 13) + (10% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Compensation allowed by the Tribunal with regard to medical expenses, pain and sufferings and transportation etc. is affirmed.

Total compensation is Rs.9,28,770/- and the additional amount is Rs.81,870/- (9,28,770 - 8,46,900), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased.

The Tribunal has allowed right of recovery against the driver and owner of offending vehicle. Indisputably, there is no privity of contract between the driver and insurer, therefore, findings of the Tribunal giving right of recovery against driver of the vehicle cannot be allowed to sustain and accordingly set aside. However, right of recovery allowed against owner shall remain intact.

In view of what has been discussed hereinabove, the appeal is partly allowed in the aforesaid terms.

02.04.2019

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No