IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7504 of 2014(O&M)

Date of Decision: August 21 , 2019.

Munni Devi and others ...... APPELLANT (s)

Versus

Sanjay Kumar and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ajay Aggarwal, Advocate for
Mr. Sandeep Goyat, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.3 – Insurance company

*****

LISA GILL, J.

CM No.1851-CII of 2019

Prayer in this application is for restoration of the appeal which was dismissed in default on 15.01.2019.

Heard.

For the reasons mentioned in the application, which is duly accompanied by an affidavit of the learned counsel, besides, the arguments addressed, order dated 15.01.2019 is recalled. Appeal is, accordingly, restored at its original number.

With the consent of learned counsel for the parties, the main appeal is taken up for final hearing today itself.

Application is accordingly allowed.

FAO No.7504 of 2014

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Hisar (for short, the 'Tribunal') vide impugned award dated 18.01.2014 on account of death of Anand Kumar in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants, who are the widow, minor children and aged mother of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Anand Kumar, who lost his life in a motor vehicle accident which took place on 28.05.2012. FIR No.487 dated 29.05.2012, under Sections 279/337/304A IPC, Police Station City Hisar was registered against respondent No.1-driver in respect to the incident. Deceased-Anand Kumar was claimed to be 42 years old, engaged in the business of supplying building material and earning a sum of ₹20,000/- per month. Compensation was thus claimed.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of JCB vehicle bearing registration No. HR-39B-4628 by respondent No.1-Sanjay Kumar. Deceased was accepted to be 42 years old at the time of the accident and a supplier of building material on the basis of the evidence on record. Learned Tribunal while assessing his income to be ₹1,19,860/- per annum, awarded a total amount of ₹19,47,089/- to the claimants. Increase in income at the rate of 30% was afforded towards future prospects. Deduction to the extent of 1/4th was effected. Multiplier of 14 was applied. ₹11,000/- was awarded on account of transportation and funeral expenses, besides, ₹1,00,000/- each to the claimant-widow, minor children and mother of the deceased on account of loss of consortium, love and affection.

Learned counsel for the appellants argues that the learned Tribunal has erred in ignoring the income tax return (Ex.P1) for the financial year 2012-2013, admittedly filed by the deceased prior to his death. Income of the deceased as per the said income tax return is ₹1,82,560/- per annum. A sum of ₹62,700/- has been wrongly deducted on the ground that source of the said income was not disclosed. It is however fairly stated that increment on account of future prospects and the compensation under the conventional heads may be reworked in terms of the judgments of the 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 the amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent No.3-Insurance company, per contra, submits that the income tax return has been rightly ignored. Learned counsel for the Insurance company, however, does not deny that the said income tax return (Ex.P1) for the financial year 2012-2013 was indeed filed by the deceased prior to the accident, in which Anand Kumar lost his life. It is further submitted that excessive compensation has already been awarded to the claimants under the other heads. Dismissal of the 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 Anand Kumar in a motor vehicle accident which took place on 28.05.2012 due to the rash and negligent driving of the offending vehicle bearing registration No.HR-39B-4628 by respondent No.1-Sanjay Kumar. Finding of the learned Tribunal in this regard has attained finality.

PW1 Munni Devi, widow of the deceased, specifically deposed that her husband was earning a sum of ₹20,000/- per month from the business of supplying building material. He was conducting his business in the name and style of Hari Om Building Material at Hisar. It is specifically stated that he was an income tax payee. Learned counsel for the Insurance company is not able to point out any evidence to dispute the same. In this view of the matter, income of the deceased is assessed as ₹1,82,560/- per annum with reference to the said income tax return (Ex.P1).

Claimants are, however, entitled to increase in income on account of future prospects at the rate of 25% instead of 30% in terms of the judgment of the Hon'ble Supreme in **Pranay Sethi** (supra). Deduction to the extent of 1/4th has been correctly effected. Multiplier of 14 has been rightly applied as well. Instead of ₹11,000/- towards transportation and funeral expenses, ₹15,000/- each is awarded towards of loss of estate and funeral expenses. Appellant No.1 (widow), appellants No.2 to 4 (minor children) and respondent No.4 (mother of the deceased) are held entitled to ₹40,000/- each instead of ₹1,00,000/- each on account of loss of spousal, parental and filial consortium, respectively, in terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd.** (supra) as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others).

Claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	1,82,560 per annum
2.	Total income after addition at the rate of 25% on account of future prospects	1,82,560 + (1,82,560 **x** 25%) = 2,28,200
3.	Deduction of 1/4th on account of personal expenses	2,28,200 – (2,28,200 **x** 1/4) = 1,71,150
4.	Total dependancy after applying a multiplier of 14	(1,71,150 **x** 14) = 23,96,100
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium to appellant No.1	40,000
8.	Loss of parental consortium to appellants No.2 to 4	40,000
9.	Loss of filial consortium to respondent No.4	40,000
	Grand Total	₹25,46,100/-

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 on the entire amount at the rate of 7.5% per annum instead of 7%, from the date of filing of the petition till realization. Ratio of apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

August 21 , 2019.
'om'

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