IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 8204 of 2014

Date of Decision: January 31 , 2019.

Smt. Saroj and others ...... APPELLANT (s)

Versus

Gori Shankar and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sudhir Rana, Advocate
for the appellants.

Mr. Prashant Gupta, Advocate for
Mr. Suman Jain, Advocate
for respondent No.3 – Insurance company

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LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Panipat (for short, the 'Tribunal') vide impugned award dated 16.07.2014 on account of death of Dhirender Kumar @ Dharmender in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Sections 166 and 140 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Dhirender Kumar @ Dharmender, who lost his life in a motor vehicle accident which took place on 24.11.2011. FIR No.302 dated 24.11.2011, under Sections 279/337/338/304A IPC was lodged against respondent No.1 at Police Station Sadar, Sonepat. Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of truck bearing registration No.RJ14-2G-2669 by respondent No.1-Gori Shankar. There is no challenge to the finding of the learned Tribunal in this respect and the same has attained finality.

Learned Tribunal while ignoring the salary certificate (Ex.C10) produced by the claimants, assessed income of the deceased-Dhirender Kumar @ Dharmender to be ₹5,000/- per month taking him to be an unskilled labourer. Deduction to the extent of 1/4th on account of personal expenses was effected. The deceased was aged 43 years at the time of the accident. Multiplier of 14 was applied. A total sum of ₹7,30,000/- as compensation was awarded to the claimants vide impugned award dated 16.07.2014, which is detailed as under:

Loss of dependency	:	Rs.6,30,000/-
Loss of love/affection	:	Rs.30,000/-
Loss of estate	:	Rs.10,000/-
Transportation	:	Rs.10,000/-
Funeral and last rites	:	Rs.10,000/-
Consortium to widow	:	Rs.40,000/-
Total		Rs.7,30,000/-

Learned counsel for the appellants argues that the learned Tribunal has wrongly assessed income of the deceased- Dhirender Kumar @ Dharmender as ₹5,000/- per month, whereas it is proved that he was working as a driver for M/s Diamond Carriers, Ganga Puri Road, Panipat, earning a sum of ₹12,000/- per month. It is further argued that increment on account of future prospects has not been afforded. Moreover, compensation under the conventional heads is meagre. It is thus prayed that the amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent No.3-Insurance company however prays that the impugned award does not call for any enhancement of the compensation as the same is reasonable and just in the facts and circumstances of the case. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record.

There is no dispute regarding death of Dhirender Kumar @ Dharmender in a motor vehicle accident which took place on 24.11.2011 due to the rash and negligent driving of the offending truck bearing registration No.RJ14-2G-2669 by respondent No.1-Gori Shankar. Neither is there a dispute regarding liability of the Insurance company. Age of the the deceased was rightly held to be 43 years at the time of his death.

Appellants have claimed the deceased-Dhirender Kumar @ Dharmender to be employed as a driver with M/s Diamond Carriers, Ganga Puri Road, Panipat driving the Eicher Canter for the said company/firm. CW2 Saroj, widow of Dhirender Kumar @ Dharmender tendered the certificate (Ex.C10) issued by the M/s Diamond Carriers, Baba Gangapuri Road, Panipat to the extent that Dhirender Kumar @ Dharmender (deceased) was working as a driver with the said concern, getting a salary of ₹6,000/- per month, besides, food and night charges. It was further stated in the said certificate that the deceased-Dhirender Kumar @ Dharmender was deputed on the Eicher Canter bearing No.HR67-7465 on 24.11.2011 which met with an accident. The vehicle in question i.e., Canter No.HR67-7465, it was stated, was taken from police custody on Superdari by their employee.

The said certificate, Ex.C10, has been ignored by the learned Tribunal on the ground that none from the said company/firm was examined to prove the same. It is a matter of record that at the time of the accident, deceased

-Dhirender Kumar @ Dharmender was driving the very same Eicher Canter No.HR67-7465 on which he is claimed to be employed as a driver by the concern, namely, M/s Diamond Carriers. In this view of the matter, learned Tribunal has clearly erred in concluding that there is no evidence on record to prove the deceased to be employed with the said concern. There is indeed no evidence on record to rebut the said claim. At the same time, I do not find any merit in the argument on behalf of the appellants that income of the deceased-Dhirender Kumar @ Dharmender should be assessed as ₹12,000/- per month. As per the certificate (Ex.C10), a salary of ₹6,000/- per month was being given to the deceased. His income is, thus, accordingly assessed as ₹6,000/- per month.

The deceased was proved to be 43 years old at the time of his death. Increase in income at the rate of 25% on account of loss of future prospects has to be afforded keeping in view the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Deduction of 1/4th has been rightly effected and multiplier of 14 has been correctly applied as well by the learned Tribunal. The claimants are entitled to ₹15,000/- each on account of funeral expenses and loss of estate instead of ₹10,000/- each on account of loss of estate, transportation and funeral expenses. ₹40,000/- awarded as consortium to appellant No.1-widow is maintained. Instead of ₹30,000/- on account of loss of love/affection, appellants No.2 to 4 are entitled to a sum of ₹40,000/- each towards loss of consortium (parental and filial) in terms of 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***.

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

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	6,000 p.m. i.e. ₹72,000/- per annum
2.	Total income after addition at the rate of 25% on account of future prospects	72,000 + (72,000 **x** 25%) = 90,000
3.	Net income after 1/4th deduction on account of personal expenses	90,000 – (90,000 **x** 1/4) = 67,500
4.	Total dependancy after applying a multiplier of 14	(67,500 **x** 14) = 9,45,000
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium @40,000 to appellant No.1	40,000
8.	Loss of parental consortium @40,000 to appellants No.2 & 3	40,000 x 2 = 80,000
9.	Loss of filial consortium @40,000 to appellant No.4	40,000
	Grand Total	₹11,35,000/-

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 enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

January 31 , 2019.
'om'

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