

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

FAO No. 7211 of 2015 (O&M)

Date of decision : January 25, 2019

Poonam and others

.....Appellants

Versus

Suresh Kumar and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: None for the appellants.

Ms. Monika Jangra, Advocate for
Ms. Vandana Malhotra, 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, Sonapat (hereinafter referred to as the 'Tribunal') on account of death of Pardeep Kumar vide award dated 23.03.2015.

It is noticed that none had appeared on behalf the appellants on the last two occasions. Today again, there is no representation on their behalf. Though the matter can be dismissed in default, the present being a claimant's appeal, the said course is not adopted as it is considered just and expedient to decide the matter on merits.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, children and parents of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Pardeep Kumar on 30.08.2014 in a motor vehicle

accident caused due to driving of the offending vehicle Canter Make Tata-709 bearing registration No. HR-63A-6133 by respondent No.1 in a rash and negligent manner. It was averred that on 30.08.2014 Pardeep Kumar and his friend Dharmender employed in Motel Gajraj Continental, Bahadurgarh were going from Motel Gajraj Continental, Bahadurgarh to the side of village Jakhoda on foot after completing their duty as they were residing in the rented house at village Jakhoda. As they were walking on kutcha portion of the road, the offending vehicle Canter Make Tata-709 bearing registration No. HR-63A-6133 came from the side of Sampla and struck against Pardeep Kumar. He received multiple grievous injuries and died at the spot.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 30.08.2014 due to rash and negligent driving of the offending Canter Make Tata-709 bearing registration No. HR-63A-6133 by respondent No. 1. Learned Tribunal awarded a sum of ₹10,93,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹6,000/- per month. Deduction of 1/4th was effected, keeping in view the number of dependants. Multiplier of 17 was applied as the deceased was 28 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of ₹25,000/- on account of loss of love and affection besides a sum of ₹25,000/- on account of funeral expenses.

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

In the grounds of appeal, it is mentioned that as per the record,

the deceased was working as Steward in Food and Beverage Department at Motel Gajraj Continental, Bahadurgarh, District Jhajjar earning a sum of ₹7,000/- per month and ₹6,000/- per month as incentives. Salary certificate (Ex.P1) was placed on record but the same has wrongly been ignored and income of the deceased was assessed as ₹6,000/-. It is further prayed that multiplier of 17 has been wrongly applied. Increment on account of future prospects in terms of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, should be afforded. Compensation under the conventional heads is also stated to be meagre.

Learned counsel for the respondent - insurance company, however, 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 23.03.2015 be upheld.

I have heard learned counsel for the insurance company and have gone through the available file.

In order to prove the income of the deceased, PW1 – Smt. Poonam i.e. widow of the deceased produced the salary slip purported to be issued by the management of Motel Gajraj Continental, Bahadurgarh. PW2 Dharmender, who is the eye witness of the accident has stated that he alongwith Pardeep were going from Motel Gajraj Continental, Bahadurgarh to the side of village Jakhoda on feet after completing their duty as they were residing in the rented house at village Jakhoda. PW2 has specifically stated that he was co-employee alongwith Pardeep at Motel Gajraj Continental. Salary certificate (Ex.P1) is available on record. There is

indeed no evidence on record to discredit the evidence of the claimants to the extent that the deceased was earning a sum of ₹7,000/- per month. However, in view of lack of any other specific documentary evidence and evidence of the management of Motel Gajraj Continental, Bahadurgarh, it is not acceptable that the deceased was receiving ₹6,000/- per month as incentives. Income of the deceased is, thus, assessed as ₹7,000/- per month instead of ₹6,000/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 40% (₹2800/-) has to be afforded, as the deceased was 28 years old at the time of accident, which takes income of the deceased to ₹9,800/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Sarla Verma** (supra), deduction of 1/4th is to be applied as number of dependants is five (5), thereby rendering income of the deceased to be ₹7350/-(9800-2450). Applying a multiplier of 17, dependency of the claimants is, therefore, assessed as ₹14,99,400/- (₹7350x12x17). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium. 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**, appellant No. 2 and 3 i.e. children of the deceased are entitled to ₹40,000/- each on account of loss of parental consortium and appellants No. 4 and 5 to ₹40,000/- each on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹16,49,400/- detailed as under:-

Loss of dependency (₹7350x12x17).	₹14,99,400/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium (40,000 x 2)	₹40,000/-
Loss of filial consortium (40,000 x 2)	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹16,49,400/-

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

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.

January 25, 2019

(Lisa Gill)
Judge

rts

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No