

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 9190 of 2014(O&M)

Date of Decision: October 01 , 2019.

Rajpal and another

..... APPELLANT (s)

Versus

Gurmeet Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Manjeet Singh, Advocate for
Mr. Vivek Goyal, Advocate
for the appellants.

Mr. Pradeep Kumar, Advocate for
Mr. Rajesh K.Sharma, Advocate
for respondent No.3 – Insurance company

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by the claimants i.e., the parents of the deceased, seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Kaithal (for short, the 'Tribunal') vide impugned award dated 05.03.2014 on account of death of their son, Ashok Kumar in a motor vehicle accident.

Though there is a written request for adjournment circulated on behalf of learned counsel for the appellants, learned counsel appearing on his

behalf submits that in view of the last order passed in this appeal to the effect that in case arguments are not addressed on the next date of hearing the appeal shall stand dismissed in default, he seeks to address arguments.

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

Brief facts necessary for the adjudication of the case are that, the appellants, alongwith the widow and minor child of the deceased who are arrayed as respondents No.4 and 5 in this appeal, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Ashok Kumar, who lost his life in a motor vehicle accident which took place on 04.02.2013. FIR No.18 dated 05.02.2013, under Sections 279/337/304A IPC, Police Station Civil Lines, Kaithal was registered against respondent No.1-driver. The deceased was pleaded to be 26 years old and working as a Service Advisor with M/s Ekansh Motors Private Limited, Kaithal, earning a salary of ₹9,000/- per month. Compensation was thus prayed for.

Learned Tribunal on considering the facts and evidence on record concluded that Ashok Kumar died due to the injuries received by him in an accident which took place due to the rash and negligent driving of Scorpio vehicle bearing registration No.HR-21D-5313 by respondent No.1-Gurmeet Singh. The deceased was held to be 26 years old at the time of the accident and income of the deceased was assessed to be ₹6,000/- per month on the basis of evidence led by the claimants. A total amount of ₹14,47,000/- was awarded to the claimants. Increase in income at the rate of 50% was afforded towards future prospects. Deduction to the extent of 1/4th was effected. Multiplier of 17 was

applied. ₹50,000/- was awarded to claimant-widow on account of loss of consortium. ₹20,000/- was awarded towards funeral expenses and transportation.

Learned counsel for the appellants argues that income of the deceased has been wrongly assessed as ₹6,000/- per month whereas, he was earning ₹9,000/- per month as is reflected in the record produced by the claimants. It is further contended that the deceased was 24 years old and not 26 years, at the time of the accident. Compensation under the conventional heads, it is submitted, is meagre. It is thus prayed that the amount of compensation awarded to the appellants be enhanced accordingly.

Per contra, learned counsel for respondent No.3-Insurance company refutes the abovesaid averments and prays for dismissal of the appeal. It is submitted that just and reasonable has been awarded by the learned Tribunal, which does not call for any enhancement.

There is no dispute regarding death of Ashok Kumar in a motor vehicle accident which took place on 04.02.2013 due to the rash and negligent driving of the offending vehicle bearing registration No.HR-21D-5313 by respondent No.1-Gurmeet Singh. Finding of the learned Tribunal in this regard has attained finality.

In order to prove the income of the deceased, the claimants examined PW5 Manoj Taneja, Accounts Manager of M/s Eakansh Motors Private Limited, Ambala Road, Kaithal. PW5 Manoj Taneja deposed that the deceased was posted as Service Advisor with the aforesaid company and was in receipt of salary of ₹9,000/- per month. Copies of enrollment (Ex.PE), Salary certificate (Ex.PF) and salary sheet (Ex.PG) were produced on record. Service record in respect of Satish

Kumar i.e., the person who had received injuries in the same accident which took place on 04.02.2013 and who also filed a separate claim petition, was also produced. PW5 Manoj Taneja stated that Satish Kumar was also working as Service Advisor and was getting a salary of ₹6,000/- per month. It is relevant to note that PW5 Manoj Taneja in his cross-examination has admitted that as per Ex.PG i.e., the salary sheet of deceased-Ashok Kumar, his monthly salary is mentioned as ₹6,000/- per month and there is no mention about the incentive of ₹3,000/- alleged to be received by him. It is rightly observed by the learned Tribunal that the mere statement of PW5 Manoj Taneja to the effect that the deceased was getting an incentive of ₹3,000/- every month on a regular basis, is not corroborated from the record produced by him. Therefore, income of the deceased has been correctly assessed as ₹6,000/- per month and is so upheld.

In respect to the age of the deceased, learned counsel for the appellant is unable to deny that age of the deceased is mentioned as 26 years in the claim petition itself. PW2 Raj Pal, father of the deceased as well as PW4 Sunita, wife of the deceased, have clearly mentioned the deceased-Ashok Kumar to be 26 years old at the time of his death, in their respective testimonies. In this view of the matter, there is no question of placing reliance upon the post-mortem report (Ex.PL) to conclude that the deceased was 24 years old at the time of the accident. Accordingly, multiplier of 17 has been correctly applied by the learned Tribunal. Increment on account of future prospects has already been afforded.

Appellants-parents are, however, held entitled to a sum of ₹40,000/- towards loss of filial consortium 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 shall be entitled to interest on the said amount at the rate of 7.5% per annum from the date of filing of the petition till realization. No further enhancement in the amount of compensation is called for.

Appeal is accordingly disposed of.

October 01 , 2019.
'om'

(LISA GILL)
JUDGE

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