

FAO No. 6575 of 2016

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

FAO No. 6575 of 2016

Date of Decision: October 16, 2019

Premo and others

..... Appellants(s)

Versus

Gurjeet and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.K. Agnihotri, Advocate
for the appellants.

Mr. Arun Gupta, Advocate for
Mr. Rajesh Bansal, Advocate
for respondents no.1 and 2.

Mr. Sanjeev Kodan, Advocate
for respondent no.3.

LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the claimants vide award dated 17.05.2016, passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal).

Appellants-claimants, who are the widow, two children and aged father of the deceased, filed a petition under Sections 166 and 140 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Jai Kumar, due to the injuries suffered by him in the motor vehicle accident,

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which took place on 26.01.2015, due to the rash and negligent driving of the offending Scorpio bearing registration No. HR-06-AA-1266, by its driver Gurjeet - respondent no.1. Deceased was claimed to be 47 years old, doing agricultural work besides running milk dairy and thereby earning Rs.20,000/- per month.

Learned Tribunal on considering the evidence on record concluded that Jai Kumar died due to the injuries received by him in the motor vehicle accident, which took place on 26.01.2015, due to the rash and negligent driving of the offending Scorpio bearing registration No. HR-06-AA-1266, by its driver Gurjeet - respondent no.1. While assessing the income of the deceased to be Rs.8,100/- per month with reference to the minimum wage of an unskilled labourer in the State of Haryana at the time of the accident and assessing the age of the deceased to be 50 years old, learned Tribunal awarded a sum of Rs.10,58,400/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income 8,100 x 12	97,200/- per annum
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	97,200-32,400 = 64,800/-
3.	Income after applying multiplier of 13	64,800 x 13 = Rs.8,42,400/-
4.	Loss of consortium to petitioner no.1 - widow	1,00,000/-
5.	Loss of love and affection to petitioner no.4 - father	1,00,000/-
6.	Funeral expenses	11,000/-
7.	Transportation charges	5,000/-
	Total	10,58,400/-

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Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants argues that meagre compensation has been afforded by the learned Tribunal, which deserves to be enhanced. It is submitted that age of the deceased has been wrongly assessed as 50 years whereas the deceased was 47 years old as per the postmortem report. It is submitted that the increment on account of future prospects and the multiplier be afforded accordingly. Moreover, the deceased, it is submitted, was an agriculturist owning 12 Kanals 8 Marlas of land, therefore, his income has been incorrectly assessed as Rs.8,100/- per month. It is thus prayed that the present appeal be allowed and the total compensation awarded to the claimants be enhanced.

Learned counsel for the insurance company, however, refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. It is submitted that the learned Tribunal has in fact erred in assessing the income of the deceased to be Rs.8,100/- per month with reference to an order issued by the Deputy Commissioner, Kanal whereas the minimum wage under the payment of Minimum Wages Act, 1948, was Rs.5,812/- per month for an unskilled labourer, Rs.5,942/- per month for semi-skilled labourer and Rs.6,536/- per month for a highly skilled labourer. Excessive compensation under the conventional heads, it is submitted, have been afforded. It is, thus, prayed that this appeal be dismissed.

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I have heard learned counsel for the parties and have gone through the record with their able assistance.

So far as, death of Jai Kumar, due to the injuries received by him in the accident in question, which took place on 26.01.2015, due to the rash and negligent driving of the offending Scorpio bearing registration No.HR-06-AA-1266, by its driver Gurjeet - respondent no.1 is concerned, is not in dispute. Though learned counsel for the appellants has vehemently argued that age of the deceased has been wrongly assessed as 50 years whereas the deceased was 47 years, as per the postmortem report, I do not find any merit in this argument for the simple reason that as per the Voter I.D. card produced by the claimants themselves, the deceased was 29 years old as on 01.01.1994. As per the ration card Ex.P-1 i.e. another document produced by the claimants themselves and admittedly prepared in the year 2005, the deceased was 45 years old. The accident in question has taken place on 26.01.2015. Therefore, I do not find any infirmity in the finding of the learned Tribunal that the deceased was 50 years old at the time of the accident, in the given factual matrix.

So far as the income of the deceased is concerned, it is a matter of record that a copy of the Jamabandi for the year 2002-2003 regarding the agricultural land owned by the deceased was produced at the time of arguments before the learned Tribunal. It is observed by learned Tribunal that share of deceased Jai Kumar even as per the said Jamabandi worked about to 12 Kanals 8 Marlas i.e. little over 1 acre. Learned counsel for the appellants is unable to deny that as per the Minimum Wages Act, 1948, the

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minimum wage available to a highly skilled labourer in the State of Haryana at the relevant time was Rs. 6,536/- per month. In so far as an agriculturist is concerned, it is a settled position that the claimants are entitled to loss of managerial skills. Therefore, in the given facts of the case, income of the deceased as assessed by the learned Tribunal to be Rs.8,100/- per month, is maintained.

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*, 10% increment has to be afforded on account of future prospects. Deduction of 1/3rd was correctly effected by learned Tribunal. Multiplier of 13 was also correctly applied by learned Tribunal. Instead of a sum of Rs.1,00,000/- awarded by the learned Tribunal on account of loss of consortium, appellant no.1 is entitled to a sum of Rs.40,000/- on account of loss of spousal consortium. Appellants no.2 and 3 are also entitled to a sum of Rs. 40,000/- towards loss of parental consortium. Instead of a sum of Rs.1,00,000/- awarded by the learned Tribunal on account of loss of love and affection, appellants no.4 is entitled to a sum of Rs.40,000/- towards loss of filial consortium. Reference in this regard can gainfully be made to 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*, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, title *Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others*. A sum of Rs.11,000/- has been awarded by the learned

Tribunal towards funeral expenses and a sum of Rs.5,000/- awarded towards transportation charges. In view of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**, the appellants are entitled to the total sum of Rs.15,000/- towards funeral expenses and another sum of Rs.15,000/- towards loss of estate.

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

Sr. No.	Heads	Calculations
1.	Income 8,100 x 12	97,200/- per annum
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	97,200 - 32,400/- (1/3) = 64,800/-
3.	Total income after addition at the rate of 10% on account of future prospects	64,800 + 6,480 (64,800 x 10%) = 71,280/-
4.	Dependency after applying multiplier of 13	71,280 x 13 = 9,26,640/-
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 and 3	40,000/-
9.	Loss of filial consortium to appellant no.4	40,000/-
	Total	10,76,640/-

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 at the rate of 7.5% per annum on the

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entire amount, from the date of filing of the claim petition till realization.
Ratio of apportionment as well as manner of disbursement of compensation
amongst the claimants as determined by the learned Tribunal shall remain
the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

October 16, 2019.

Sunil

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