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

1. **FAO No. 6930 of 2016 (O&M)**
Date of decision : December 17, 2019

Ashok Kumar and others .....Appellants

Versus

Kulbhushan and others ....Respondents

2. **FAO No. 7863 of 2016 (O&M)**

Nisha @ Gagandeep Verma .....Appellant

Versus

Kulbhushan and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Seema Pasricha, Advocate
for the appellants (in FAO No. 6930 of 2016)
for respondents No. 4 and 5 (in FAO No. 7863 of 2016)

Mr. S.K. Biriwal, Advocate for
Mr. Anand Singh, Advocate
for the appellant (in FAO No. 7863 of 2016)

Ms. Sheenu Sura, Advocate
for respondent No. 3 (in FAO No. 6930 of 2016)

Ms. Sonia G. Singh, Advocate
for respondent No. 4 (in FAO No. 6930 of 2016)

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LISA GILL, J.

This judgment shall dispose of FAO Nos. 6930 and 7863 of 2016. Both the appeals emanate from claim petitions arising out of a motor vehicle accident which took place on 18.05.2014. The claim petitions have been decided by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to 'the Tribunal') vide a common award dated 18.02.2016.

Present appeals have been filed by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Gorav vide award dated 18.02.2016.

Brief facts necessary for adjudication of the case are that two claim petitions under Section 166 of the Motor Vehicles Act were filed in respect to death of Gorav Kumar. MACT case No. 30 of 2014 was filed by the parents and brother of the deceased Gorav. MACT case No. 39 of 2014 was filed by the widow of Gorav seeking compensation on account of death of Gorav due to injuries sustained by him in a motor vehicle accident which took place on 18.05.2014, caused due to rash and negligent driving of the offending vehicle, i.e. Car bearing registration No. HE-32E-9390, by respondent No.1. The deceased – Gorav Kumar is claimed to be a performing artist besides organizing DJ and Orchestra in the name and style of 'Gorav G Entertainment, Karnal'.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that Gorav Kumar died in the accident which took place on 18.05.2014 due to rash and negligent driving of the offending Car bearing registration No. HE-32E-9390 by respondent No. 1. Learned Tribunal while assessing the income of the deceased to be ₹8,100/- per month awarded a sum of ₹15,09,377/- (rounded off to ₹15,09,000/-) with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Deduction of 1/3rd was effected. Multiplier of 17 was applied. A sum of ₹1,00,000/- on account of loss of consortium was awarded to claimant – wife of the deceased. A sum of ₹50,000/- on account of loss of love and affection was awarded to the claimants – parents of the deceased. A sum of ₹25,000/- was awarded on account of funeral expenses. A sum of ₹2,32,777/- was awarded on account of medical expenses incurred on the deceased.

Aggrieved of the quantum of compensation, claimants have filed these appeals.

Learned counsel for the appellants – claimants argues that meagre compensation has been afforded. There is sufficient evidence on record to prove that the deceased was in receipt of income much higher than as assessed by the learned Tribunal. It is, however, fairly stated that the compensation under the conventional heads be re-worked in terms of judgments of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009** and **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333.**

Learned counsel for the respondents while refuting the arguments raised by learned counsel for the appellants, 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 18.02.2016 be upheld.

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

The appellants – claimants have categorically pleaded the deceased to be running a DJ Orchestra group, in the name and style of 'Gorav G Entertainment, Karnal'. The claimants have examined PW2 Suba Singh to claim the deceased to be an organizer of 'Dhillo Di and Orchestra, Karnal' besides being an agriculturist, earning a sum of ₹50,000/- per month. PW2 stated that he had offered employment to Gorav in the year 2009 at a sum of ₹25,000/- per month but Gorav had refused to join him as he claimed to be earning more by organizing his own orchestra. The claimants further examined PW4 Kamla, who deposed that she had rented her house to deceased Gorav on a monthly rent of ₹5,000/- per month. Certain documents including NCC certificates (Exs. P79 to P81), certificate Ex.P82 showing participation of the deceased on Independence day celebrations besides CD Mark PB, photographs Mark PD to Mark PF were produced to prove that Gorav was a performing artist. Learned Tribunal has rightly ignored the testimony of PW4 Kamla as there is indeed no evidence on record to indicate that she was the owner/landlord of the house in question. In fact, Ex.P75 the electricity bills reflect the same to be in respect to premises which are owned by Isham Singh. Learned counsel for the claimants are unable to show any connection or relation between Isham Singh and Kamla Rani. Learned counsel for the appellants are unable to deny that there is indeed no evidence on record to indicate the exact income of the deceased. However, at the same time, the deceased is doubtlessly proved to be a performing artist. In this view of the matter, assessment of his income with reference to the monthly income of a daily wager as per the DC rates is unjustified. In the factual matrix of the case, it is considered just and expedient to assess income of the deceased as ₹10,000/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increment on account of future prospects at the rate of 40% (₹4000/-) is afforded, as the deceased was 27 years old at the time of accident, which takes income of the deceased to ₹14,000/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of 1/3rd is to be applied, thereby rendering income of the deceased to be ₹9333/-(14000-4667).

Applying a multiplier of 17, dependancy of the claimants is assessed as ₹19,03,932/- (₹9333x12x17). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹25,000/-) and loss of estate. The claimant widow is entitled to ₹40,000/- on account of loss of consortium (instead of ₹1,00,000/-). 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** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others,** claimants – parents of the deceased are entitled to ₹40,000/- on account of loss of parental consortium. Claimants are, thus, entitled to total compensation of ₹20,13,932/- detailed as under:-

Loss of dependency (₹9333x12x17)	₹19,03,932/-
Loss of spousal consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹20,13,932/-

The amount of compensation already awarded to the appellants (in both the appeals), needless to say, shall stand deducted from the amount calculated as above. Appellants are 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, FAO Nos. 6930 and 7863 of 2016 are disposed of.

(Lisa Gill)
Judge

December 17, 2019
rts

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