

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

**FAO No.1347 of 2017 (O&M)
Date of Decision : 14.03.2019**

Rani and others

....Appellants

VERSUS

Sat Narain & others

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Pawan Attri, Advocate for the appellants.

B.S. WALIA, JUDGE (ORAL)

CM No.4294-CII of 2017

For the reasons as mentioned in the application, the application for condonation of delay of 82 days in filing of the appeal is allowed subject to all just exceptions.

FAO No.1347 of 2017 (O&M)

1. Appeal has been filed by the widow and three sons of Bikhu who died in a motor vehicular accident on 05.01.2015. Prayer is for enhancement of compensation of ₹8,67,600/- awarded by the learned Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal).

2. Learned counsel contends that income of the deceased assessed at ₹6,000/- was on the lower side since the deceased was a Mason. Secondly, amount awarded on account of future prospects ought to have been awarded @ 25 % of the established income of the deceased since age of the deceased as per the widow was 48 years but was wrongly treated as 50 years by the Tribunal on the basis of postmortem report. Thirdly, deduction towards personal expenses of the deceased @ 1/3rd of the income of the deceased was

wrongly made as against the requirement to make the same @ 1/4th in view of the deceased having left behind 4 dependants.

3. No other point has been argued.

4. I have considered the submissions of learned counsel for the appellants but am unable to agree with the same.

5. Admittedly, no evidence was led by the claimants with regard to the age of the deceased except the bald statement of the widow that the deceased was 48 years of age. Although not borne out from the award yet learned counsel contends that the Tribunal took into account the age of the deceased as 50 years on the basis of postmortem report. In the absence documentary evidence having been led by the appellants with regard to the age of the deceased, assessment of age made as per the postmortem report would prevail. Further, in view of the deceased having left behind three sons aged 28, 24 and 20 besides his widow, it would be reasonable to assess the deceased to be falling in the bracket of 50-60 years for purpose of assessment of future prospects. Consequentially, the appellants are not entitled to taking into account 25 % of the established income of the deceased for award of future prospects in view of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others- 2017(4) RCR (Civil) 1009.**

6. As regards the plea for making deduction @ 1/4th on account of the deceased having left behind 4 claimants it needs mention that despite query, learned counsel for the appellants has not been able to refer to any evidence that the three sons of the deceased aged 28, 24 and 20 were dependent upon the deceased except the bald statement of the widow of the deceased. Thus at best, except for the widow and the youngest son, the other

two sons aged 28 and 24 years cannot be presumed to be dependant on the deceased. Resultantly, deduction made @ 1/3rd of the income of the deceased does not warrant interference.

7. As regards the plea that the income of the deceased as Mason was assessed on the lower side, it needs noticing that no evidence was led before the Tribunal to prove that the deceased was working as a Mason and the Tribunal held that in the circumstances, he could be treated as casual labourer. Thus the deceased was rightly treated as an unskilled labourer. The minimum wages payable to an unskilled worker during the relevant period as per notification issued by the State of Haryana under the Minimum Wages Act was ₹5812.75/- per month for the relevant period whereas the learned Tribunal treated notional income of the deceased as ₹6,000/- per month. Thus the income of the deceased as assessed by the Tribunal also does not warrant interference.

8. In the circumstances, I do not find any ground warranting interference with the well reasoned order passed by the learned Tribunal.

9. Accordingly, finding no merit in the appeal, the same is dismissed in limine.

March 14, 2019
ps

(B.S. WALIA)
JUDGE

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