

FAO No. 7373 of 2016 (O&M)

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

FAO No. 7373 of 2016 (O&M)

Date of Decision: December 09, 2019

Smt. Kamlesh

..... Appellants(s)

Versus

Sonu and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. K.S. Dhanora, Advocate
for the appellant.

Service upon respondents no.1 & 2 dispensed with
vide order dated 21.11.2019.

Mr. Subhash Goyal, Advocate
for respondent no.3-insurance company.

LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the appellant-claimant vide award dated 29.11.2014, passed by learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal') on account of death of her daughter Kajal in the motor vehicle accident, which took place on 30.07.2012.

In the motor vehicle accident, which took place on 30.07.2012, a number of persons died and many others suffered serious injuries. 37 claim petitions were filed seeking compensation on account of death of

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some of the persons and for the injuries suffered by others. Learned Tribunal consolidated all the 37 claim petitions and decided them vide a common award dated 29.11.2014. It is pleaded in all the claim petitions that the deceased/injured, about 60 persons, all together had gone to Amarpura Dham (Rajasthan) for pilgrimage in an Eicher Canter bearing registration No.HR-64-2433. At about 3:00 AM, on 30.07.2012 they started their journey for returning back to Kalayat (Kaithal) in the above said vehicle, which was being driven by Mahipal son of Om Parkash, on a very moderate speed while observing all traffic rules. When they reached in the area of Sainiwas Railway Crossing on Rajgarh, Hissar Road, the offending truck bearing registration No. HR-58-A-5377, being driven by respondent no.1, in rash and negligent manner came from opposite side at a very fast speed, without blowing its horn. After coming on to the wrong side of the road, it struck against the Eicher Canter bearing registration No. HR-64-2433. As a result thereof, all occupants of the Eicher Canter received multiple, serious and grievous injuries. Gaje Singh, Jagmal, Balwan, Kajal, Mahipal, Rajinder and many other persons succumbed to their injuries at the spot, whereas some other passengers namely Banarsi, Gaurav, Kuldeep, Dhoop Singh son of Inder Singh etc. received multiple serious injuries on their persons. It is pleaded that the accident in question took place due to rash and negligent driving of respondent no.1, while driving the said offending truck. Case FIR No.142 dated 30.07.2012 under Sections 279, 337, 338 and 304-A IPC was registered against respondents no.1 and respondent no.1-A with regard to the said accident.

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After considering the evidence on record, facts and circumstances, learned Tribunal concluded that the accident in question took place due to the rash and negligent driving of the offending truck bearing registration no. HR-58-A-5377 by its driver – respondent no.1 Sonu. It is further concluded by the learned Tribunal that there is an admission on the part of the claimants that there were as many as 70 to 80 passengers travelling in the canter. Wooden rafters were fitted in this canter, thereby converting it into a veritable double decker vehicle. Passengers were sitting on the wooden rafters as well. Due to the impact, the wooden rafters collapsed. Consequently, the passengers who were sitting on the said rafters, fell on the passengers sitting below. This in turn increased the number of casualties. Learned Tribunal held that the act of the passengers in sitting in this fashion amounts to contributory negligence, which was assessed to the extent of 10%. Compensation in varying amounts was awarded in the separate claim petitions as per the facts of each case.

Learned Tribunal in the present matter awarded a sum of Rs.4,50,000/- as compensation to the claimant on account of death of a child aged 10 years. Notional income of the deceased was assessed as Rs.30,000/- per annum. Multiplier of 15 was applied. Amount of Rs.25,000/- each towards funeral expenses and loss of love & affection was awarded. Amount of 10% was deducted from the total amount on account of contributory negligence.

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

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Learned counsel for the appellant contends that the learned Tribunal has erred in assessing the notional income of the deceased to be Rs.30,000/- per annum. He relies upon decision dated 21.09.2017 in FAO No.3964 of 2014 (**Chet Ram and another v. Gautam Kumar and others**) to submit that notional income of the deceased should at least be assessed as Rs.50,000/- per annum. Meagre amount has been awarded under the conventional heads. It is thus prayed that the compensation be enhanced accordingly.

Learned counsel for respondent No.3 vehemently opposes enhancement of the compensation awarded by the learned Tribunal while submitting that just and reasonable compensation has been awarded which calls for no enhancement. It is thus prayed that the impugned award dated 29.11.2014 be upheld.

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

There is no dispute regarding death of Kajal, aged 10 years, in the motor vehicle accident, which took place on 30.07.2012, due to the rash and negligent driving of the offending truck bearing registration No. HR-58-A-5377, by its driver-respondent no.1. In FAO No.3964 of 2014 (**Chet Ram and another v. Gautam Kumar and others**) decided on 21.09.2017, a coordinate Bench while dealing with a similar matter assessed notional income of a deceased student as Rs.50,000/- per annum in respect to an accident which took place in the year 2011. Specific reference was made therein to the judgment of the Hon'ble Supreme Court in the case of

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Krishan Gopal and another v. Lala and others, 2013(4) RCR (Civil) 276, wherein notional income of a ten year old child was assessed to be Rs.30,000/- per annum. Accident in the said case had occurred in the year 1992. Reference was also made to the decision of the Hon'ble Supreme Court in **Lata Wadhwa v. State of Bihar, 2001(4) RCR(Civil) 673** especially with regard to the Second Schedule to Section 163-A of the Act for calculating compensation in case of a victim below 15 years of age.

Keeping in view the factual matrix of the present case, it is considered just and appropriate to assess notional income of the deceased to be Rs.50,000/- per annum instead of Rs.30,000/- per annum as assessed by the learned Tribunal. Multiplier of 15 has been correctly applied by the learned Tribunal in view of the guidelines laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77**. Instead of a sum of Rs.25,000/- awarded by the learned Tribunal towards funeral expenses, appellant is entitled to Rs.15,000/- towards funeral expenses besides a sum of Rs.15,000/- towards loss of estate. Claimant is not entitled to sum of Rs.25,000/- on account of loss of love and affection, however, in terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company L td. v. N anu Ram Alias Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018**, the appellant is entitled to Rs.40,000/- on account of loss of filial consortium.

Learned Tribunal has correctly deducted 10% of the awarded amount on account of contributory negligence.

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	50,000/- per annum
2.	Total dependency after applying multiplier of 15	50,000 x 15 = 7,50,000/-
3.	Funeral expenses	15,000/-
4.	Loss of estate	15,000/-
5.	Loss of filial consortium to appellant	40,000/-
6.	Total	Rs.8,20,000/-
7.	Grand total after deducting 10% on account of contributory negligence	8,20,000 – 82,000 = Rs.7,38,000/-
	Compensation payable to the claimant	Rs. 7,38,000/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. However, the claimant shall not be entitled to any interest for the period of delay in filing of this appeal, which was condoned with this specific rider.

Appeal is accordingly disposed of.

December 09, 2019.

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No