

FAO No. 7428 of 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 7428 of 2016

Date of Decision: May 27, 2019

Anita Devi and others

..... Appellants(s)

Versus

Sonu and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Manish Saini, Advocate for
Mr. S.S. Yadav, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for respondent no.3-insurance company.

LISA GILL, J. (oral)

Notice of motion.

Mr. Punit Jain, Advocate accepts notice on behalf of
respondent no.3-insurance company.

Learned counsel for the appellants and respondent no.3 are *ad idem* that liability of the insurance company is not in dispute, therefore, service upon respondents no.1 and 2 be dispensed.

Ordered accordingly.

This appeal has been filed seeking enhancement of compensation awarded to the appellants-claimants vide award dated 18.08.2015, passed by learned Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal).

Appellants-claimants filed a petition under Section 166/140 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Satyapal, due to the injuries suffered by him in the motor vehicle accident, which took place on 30.11.2014, due to the rash and negligent driving of the offending motorcycle bearing registration No. RJ-10-SG-0420, by its driver namely Sonu son of Rajpal (respondent no.1). Learned Tribunal concluded that the accident took place due to the negligent driving of the offending vehicle by its driver. This finding of the learned Tribunal has attained finality. Learned Tribunal while holding the deceased to be 61 years and 11 months at the time of the accident, concluded income of the deceased to be Rs.4,800/- per month and awarded a sum of Rs.3,37,400/- as compensation, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	4,800/- per month
2.	Income after deducting 1/4 th as personal living expenses of the deceased	4,800 - 1/4 th = 3,600/-
3.	Dependency after applying multiplier of 7	3,600 x 12 x 7 = 3,02,400/-
4.	Loss of consortium	25,000/-
5.	Transportation and last rites	10,000/-
	Total	3,34,400/-

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

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Learned counsel for the appellants argues that income of the deceased has been wrongly assessed as Rs.4,800/- per month as even the minimum wage in the State of Haryana at the relevant time was much more. It is further argued that age of the deceased has been wrongly assessed as 61 years and 11 months. It is thus prayed that compensation awarded to the appellants be enhanced.

Learned counsel for the insurance company, however, refutes the above said averments and submits that just and reasonable compensation has already been afforded to the appellants, though, it is not denied that the minimum wage in the State of Haryana at the time of the accident was Rs.5,547/- per month. In respect to the age of deceased it is submitted that the learned Tribunal has rightly relied upon the age as mentioned in the Aadhar Card and the ration card and the voter identity card issued by the Election Commission of India has been rightly ignored. Dismissal of the appeal is prayed for.

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

There is no dispute regarding death of Satyapal in the motor vehicle accident, which took place on 30.11.2014, due to the rash and negligent driving of the offending motorcycle bearing registration No. RJ-10-SG-0420, by its driver Sonu - respondent no.1. Appellants have claimed the deceased to be 40 years old at the time of the accident. It is pleaded that he was an agriculturist and a dairy farmer, earning Rs. 15,000/- per month. As per the ration card (Ex. P-2), the deceased Satyapal was 57 years old at

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the time of the accident and as per the voter identity card (Ex. P-3) issued by Election Commission of India, deceased was 56 years old at the time of accident. Learned Tribunal relied upon Mark R-1, purportedly the Aadhar Card of the deceased wherein his date of birth is mentioned as 01.01.1953. Apart from the fact that the same is a marked document, there is no evidence to show that the documents Ex. P-2 and Ex. P-3 i.e. the ration card and the voter identity card issued by Election Commission of India are fabricated documents. At this juncture, it is relevant to note that age of the widow is mentioned as 38 years in the claim petition and those of the three children of deceased Satyapal to be 21, 19 and 17 years. This fact also points to the probability of the age of the deceased to be about 58 years and definitely less than 60 years at the time of the accident. In the given facts and circumstances of the case, I feel that learned Tribunal has erred in assessing age of the deceased to be 61 years and 11 months as on the day of the accident. Even if the average age of the deceased is taken on the basis of all the three documents on record, his age would be about 58 years at the time of the accident and is so assessed in the factual matrix of the case.

Undeniably, minimum wage in the State of Haryana at the time of the accident was Rs.5,547/- per month. Therefore, income of the deceased is assessed as Rs.5,550/- per month. 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 1/4th was correctly effected by learned Tribunal. Multiplier of 9 instead of 7 is to be applied as

age of the deceased has been assessed as 58 years. Claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate instead of Rs.10,000/- awarded by the learned Tribunal towards transportation and last rites. Instead of a sum of Rs.25,000/- awarded by the learned Tribunal on account of loss of consortium, appellant no.1 is entitled to Rs.40,000/- on this count. Appellants no.2 to 4 are also entitled to a sum of Rs.40,000/- towards loss of parental consortium in terms of the judgment of 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 No.2110 of 2016, titled Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others.

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

Sr. No.	Heads	Calculations
1.	Income 5,550 x 12	66,600/- per annum
2.	Income after deducting 1/4 th as personal living expenses	66,600 - 16,650 = 49,950/-
3.	Income after addition of 10% on account of future prospects	49,950 + 4,995 = 54,945/-
4.	Compensation after applying multiplier of 9	54,945 x 9 = 4,94,505/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to appellant no.1	40,000/-
8.	Loss of parental consortium to appellant no.2 to 4	40,000/-
	Total	6,04,505/-

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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 enhanced 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.

May 27, 2019.

Sunil

**(LISA GILL)
JUDGE**

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