

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

FAO No. 995 of 2015 (O&M)
Date of decision: 2.4.2019

Smt. Kailashi and others

...Appellants

Versus

Surender Kumar and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aditya Yadav, Advocate,
for the appellants.

Mr. Rajbir Singh, Advocate,
for the respondent—Insurance Company.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 3.3.2014 passed by the Motor Accident Claims Tribunal, Rewari, wherein the appellants herein have been allowed compensation of ₹7,92,000/- on account of death of .

In brief, the facts are that on 7.1.2012 deceased Hari Singh, along with one Jitender, was going to Churpura on his motorcycle bearing HR-26BD/7058, which was being driven by Jitender. When they reached near Ganesh Tyre, they were hit by a Dumper fitted with mixing machine bearing RJ-05EA/0420 being driven by respondent No.1 in rash and negligent manner, as a result of which, Jitender fell down from the motor cycle and received grievous injuries and ultimately succumbed to the injuries. It was alleged that the accident took place due to the sole rash and

negligent driving of respondent No.1 and consequently FIR 10 dated 7.1.2012 under Sections 279/337/304A IPC came to be lodged with the Police Station Dharuhera. With these averments, claim petition was filed by the widow and the children of the deceased claiming they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was construction contractor as well agriculturist and he was earning ₹12,000/- per month. Apart from that he was also earning ₹5,000/- per month from the agriculture work.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action has accrued etc. Issues were framed and thereafter evidence was led by the parties. In order to substantiate the claim, appellant No.1 herself stepped into the witness box as PW2 and produced Jitender as PW1 and Sohan Lal as PW3. Learned counsel for the appellants tendered in evidence documents Ex. PWA to Ex. PWE and closed the evidence. On the other hand, respondent No.3—Insurance Company tendered in evidence documents Ex. R1 to Ex. R3 in evidence.

After scrutiny of the evidence brought on record, the Tribunal held that the the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it allowed compensation of ₹7,92,000/- which has been now challenged in the instant appeal.

Learned counsel for the appellant submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the compensation amount awarded to the appellants deserves to be enhanced. It

is submitted that though the deceased was a contractor as well as an agriculturist and was earning ₹17,000/- per month, but the Tribunal treated him as an unskilled labour and assessed as monthly income at ₹4200/-. It is further submitted that even if the deceased is treated as an unskilled labour still ₹4847/- ought to have been assessed as his monthly income, which was the minimum rates of the wages in the State of Haryana at the relevant time.

Per contra, learned counsel appearing on behalf of respondent No.3—Insurance company submits that adequate compensation has been awarded by the Tribunal and no interference is called for in the instant appeal.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 40 years of age and his earning was assessed at ₹4200/- per month being an unskilled labour. The Tribunal deducted 1/4th towards personal expenses of the deceased. In the absence of the documentary evidence with regard to the actual income of the deceased, the Tribunal has rightly treated the deceased as unskilled labour but his monthly income ought to have been assessed as ₹4847/-, which was the minimum rates of wages in the State of Haryana prevailing at the time of occurrence. Therefore, the monthly income of the deceased is assessed at ₹4847/-. The Tribunal keeping in view the nature of the evidence brought on record arrived to the conclusion that the deceased was 40 years of age and thus rightly applied the multiplier of 15. However, increase in income on account of future prospects at the rate of 40% and other conventional heads are required to be reckoned, keeping in view the judgment of the

Supreme Court in **National Insurance Company Limited Vs. Pranay**

Sethi and others 2017 (4) R.C.R. (Civil) 1009. Therefore, compensation payable to the appellants are re-worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Hari Singh
(ii)	Date of accident	7.1.2012
(iii)	Age of the deceased	40 years
(iv)	Monthly income of the deceased	₹ 4847/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 4847+₹1938= ₹ 6785/- per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 6785-₹1696= ₹ 5089/- per month
(vii)	Compensation calculated after applying the multiplier of 15	(₹5089X12X15) = ₹ 9,16020/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹9,86,020

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 9,86,020/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

2.4.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No