

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

FAO No. 851 of 2016 (O&M)

Date of decision : January 08, 2019

Devender Singh and others

.....Appellants

Versus

Biresh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rahul Deswal, Advocate for the appellants.

Mr. Ajay Singla, Advocate for respondent No. 3.

LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal') on account of death of Sandeep vide award dated 25.11.2013.

Brief facts necessary for adjudication of the case are that the claimants i.e. father, widow and daughter of the deceased filed a petition under Section 166/140 of the Motor Vehicles Act seeking compensation on account of death of Sandeep on 24.04.2011 in a motor vehicle accident caused due to driving of the offending vehicle Truck bearing registration No. HR-67-A-1826 by respondent No.1 in a rash and negligent manner. It was averred that Sandeep alongwith respondent No. 1 was coming in Truck bearing registration No. HR-67-A-1826 from Yamuna Nagar side. The truck was being driven by respondent No. 1 at a very high speed in a rash and negligent manner. When they reached near Chopal of Prajapat in the area of village Kalsora, because of rash and negligent driving of respondent No. 1, he could not control the vehicle and same turned turtle in Johar of village.

The accident took place due to sheer rash and negligent driving of the driver

of the offending truck. Sandeep sustained injuries and succumbed to them at the spot.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 24.04.2011 due to rash and negligent driving of the offending Truck bearing registration No. HR-67-A-1826 by respondent No. 1. Learned Tribunal awarded a sum of ₹9,44,928/- 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. Income of the deceased was assessed as ₹5,000/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 18 was applied as the deceased was 25 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of ₹1,00,000/- on account of loss of care and guidance besides a sum of ₹25,000/- on account of funeral expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Sole argument raised by learned counsel for the appellants is that increment on account of future prospects has not been afforded while calculating the loss of dependancy. Deceased Sandeep was 25 years old at the time of the accident, thus, in terms of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increment on account of future prospects at the rate of 40% should be afforded. It is further submitted that the appellants have no objection in case the compensation under the conventional heads is re-worked in terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus**

Nanu Ram Alias Chuhru Ram and others (Civil Appeal No. 9581 of 2018). It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company is unable to deny that increment on account of future prospects has not been afforded. It is, however, vehemently argued that compensation under the conventional heads as afforded to the claimants is excessive and should be reduced.

Heard learned counsel for the parties and have gone through the available file.

There is no dispute that Sandeep lost his life in a motor vehicle accident, which took place on 24.04.2011 caused due to the rash and negligent driving of Truck bearing registration No. HR-67-A-1826 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality. It is not disputed that the deceased was 25 years old at the time of the accident.

There is no dispute regarding income of the deceased to be ₹5,000/- per month as assessed by the learned Tribunal. Income of the deceased, as assessed by the learned Tribunal, is thus upheld as ₹5,000/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 40% (₹2000/-) has to be afforded, as the deceased was 25 years old at the time of accident, which takes income of the deceased to ₹7000/- per month. Deduction of 1/3rd has been correctly applied, thereby rendering income of the deceased to be ₹4667/-(7000-2333). Applying a multiplier of 18, dependency of the claimants is, therefore, assessed as ₹10,080,72/-

(₹4667x12x18). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited** (supra), appellant No. 3 i.e. daughter of the deceased is entitled to ₹40,000/- on account of loss of parental consortium and appellant No. 1 to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹11,58,072/- detailed as under:-

Loss of dependency (₹4667x12x18)	₹10,080,72/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹11,58,072/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be 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, present appeal is disposed of.

(Lisa Gill)
Judge

January 08, 2019
rts

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