IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2983 of 2017 (O&M)
Date of Decision : 16.05.2019

Parmali and another .....Appellants

Versus

Gopi Chand and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Harish Mehla, Advocate
for the appellants.

Mr. Vipan Sharma, Advocate
for respondents no. 1 and 2.

Mr. Punit Jain, Advocate
for respondent no. 3.

Surinder Gupta, J. (Oral)

Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide award dated 23.11.2016 allowed compensation of ₹7,68,000/- for death of Mukesh Kumar (later referred to as 'the deceased') in a motor vehicle accident with tralla bearing registration No.HR-61C-7171 (later referred to as 'the offending vehicle').

2. As the only relief pressed in this appeal is for enhancement of compensation as awarded by Tribunal, detailed facts of the case are being skipped for the sake of brevity.

3. The compensation awarded by the Tribunal was computed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Mukesh Kumar

(ii)	Age of the deceased	25 years
(iii)	Date of accident	30.10.2015
(iv)	Marital status	Unmarried
(v)	Income of the deceased	₹4000 per month
(vi)	50% of (v) above added towards loss of future prospects	(₹4000+ ₹2000) = ₹6000 per month
(vii)	½ of (vi) above deducted towards personal expenses	(₹6000- ₹3000) = ₹3000 per month
(viii)	Compensation calculated after applying the multiplier of 18	(₹3000X12X18) = ₹648000
(ix)	Compensation towards loss of love and affection	₹100000
(x)	Compensation towards funeral expenses.	₹20000
Total		**₹768000**

4. Learned counsel for appellants has argued that the deceased was an agriculturist and was also doing dairy farming business, thereby earning ₹10,000/- per month. Claimants being illiterate could not produce any documentary evidence with regard to income of the deceased but the Tribunal has taken the same as ₹4000/- per month. Referring to notification dated 21.10.2015 issued by Government of Haryana, he has argued that minimum wages of the deceased, even if he is considered as an unskilled labourer, could be taken as ₹7600/- per month. He has further argued that addition in income of the deceased and multiplier be applied as per law settled by Apex Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others*, 2017 (4) RCR (Civil) 1009** .

5. Learned counsel for respondent no. 3 has argued that the deceased was stated to be 28 years of age and ignoring plea of claimants to this effect, the Tribunal has assessed the age of deceased as 25 years as per entry in postmortem report, which has no authenticity. Taking age of the deceased as 28 years, the multiplier attracted in this case is 17 and claimants are entitled to 40% addition in income of the deceased towards loss of future prospects and ₹30,000/- under the conventional heads. On the question of

income of the deceased as assessed by the Tribunal, he has argued that the same was taken as ₹4000/- per month in the absence of any evidence produced by claimants that the deceased was owning any agricultural land or cattle for running dairy farming business. Regarding notification dated 21.10.2015 issued by Government of Haryana, he has argued that minimum wages were fixed w.e.f. 01.11.2015 while in this case the accident took place on 30.10.2015 resulting in death of deceased-Mukesh Kumar, as such, the minimum wages as prescribed by State of Haryana are not applicable in this case.

6. Firstly, I take the question of age of the deceased as raised by learned counsel for respondent no. 3. The Tribunal has taken note of pleadings and observed that claimants alleged age of the deceased as 28 years. In view of specific pleading of claimants regarding age of deceased the Tribunal could not assess it on the basis of entry in relevant column of postmortem report describing it as 25 years. I am of the considered opinion that the Tribunal has gone wrong while assessing age of the deceased. Parents of the deceased are best persons to disclose age of their son. At the time of postmortem, doctor records age of deceased by estimation without carrying out any test or looking into any evidence, as such, age as mentioned in postmortem report could not be given any precedent over his age as described by his parents. I take age of the deceased as 28 years instead of 25 years as assessed by the Tribunal.

7. Learned counsel for the appellants has relied on notification dated 21.10.2015 issued by Government of Haryana whereby daily wages of scheduled employees i.e. unskilled, semi skilled, skilled and other categories of labourers were assessed w.e.f. 01.11.2015. The accident had taken place

on 30.10.2015 resulting in death of deceased-Mukesh Kumar. Keeping in view proximity of date 01.11.2015 with date of accident i.e. 30.10.2015, I am of the opinion that minimum wages prescribed for unskilled labourers can be made basis while assessing income of the deceased and same is assessed as ₹7600/- per month. Claimants are also entitled to 40% addition in income of the deceased towards loss of future prospects and compensation of ₹30,000/- under the conventional heads.

8. In view of above, compensation to which claimants-appellants are entitled, is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Mukesh Kumar
(ii)	Age of the deceased	28 years
(iii)	Income of the deceased	₹7600 per month
(iv)	40% of (iii) above added towards future prospects	(₹7600+ ₹3040)= ₹10640 per month
(v)	½ of (iv) above deducted towards personal expenses	(₹10640- ₹5320) = ₹5320 per month
(vi)	Compensation calculated after applying the multiplier of 17	(₹5320X12X17) = ₹1085280
(vii)	Compensation towards loss of estate	₹15000
(viii)	Compensation towards funeral expenses	₹15000
	Total	**₹1115280 (rounded off to ₹1115300)**

9. As a sequel of my discussion above, this appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of **Mukesh Kumar** is enhanced from **₹7,68,000/-** to **₹11,15,300/-**. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realization. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants-appellants in their bank account or pay the same through demand draft. The enhanced amount of

compensation shall be shared by claimants as per award.

11. In the event of demise of any of the claimant(s) before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimant.

May 16, 2019 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*