

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 4588 of 2017

Date of Decision: August 22 , 2019.

Sangeeta and others

..... APPELLANT (s)

Versus

Vijay Sharma and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.K.Agnihotri, Advocate
for the appellants.

Mr. D.R.Bansal, Advocate
for respondent No.3 – Insurance company

LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Karnal (for short, the 'Tribunal') vide impugned award dated 21.01.2017 on account of death of Prince @ Basant Kumar in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants, who are the mother, grandmother and younger brother (minor) of the deceased, filed a petition under Sections 166/140 of the Motor Vehicles Act seeking compensation on account of death of Prince @ Basant Kumar, who lost his life in a motor vehicle accident which took place on 31.03.2016. FIR No.147 dated 31.03.2016, under Sections 279/304A IPC, Police Station Gharaunda,

District Karnal was registered against respondent No.1-driver in respect to the incident. It is pleaded that deceased-Prince @ Basant Kumar, aged 20 years, was doing a private job, earning a sum of ₹19,000/- per month. Compensation was thus prayed for.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of Indica car bearing registration No.HR-26AE-7723 by respondent No.1-Vijay Sharma.

Learned Tribunal while assessing income of the deceased to be ₹4,000/- per month, awarded a total amount of ₹8,18,000/- to the claimants. Increase in income at the rate of 50% was afforded towards future prospects. Deduction to the extent of 50% was effected. Multiplier of 18 was applied. ₹20,000/- was awarded on account of funeral expenses and last rites, besides, ₹1,50,000/- towards loss of love ad affection.

Learned counsel for the appellants argues that income of the deceased has been wrongly assessed as ₹4,000/- per month. Deduction of 50% has also been incorrectly effected. Compensation under the conventional heads, it is submitted, is meagre. It is, however, fairly stated that increment at the rate of 40% instead of 50%, has to be afforded towards future prospects. It is thus prayed that the amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent No.3-Insurance company refutes the abovesaid averments and submits that just and reasonable compensation has been awarded by the learned Tribunal which does not call for any enhancement.

Dismissal of the appeal is prayed for.

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

There is no dispute regarding death of Prince @ Basant Kumar in a motor vehicle accident which took place on 31.03.2016 due to the rash and negligent driving of the offending vehicle bearing registration No.HR-26AE-7723 by respondent No.1-Vijay Sharma. Finding of the learned Tribunal in this regard has attained finality.

Appellants have claimed deceased-Prince @ Basant Kumar to be doing some private job and earning a sum of ₹19,000/- per month. However, there is no evidence on record to substantiate such a claim, except a bald statement of the mother of the deceased, who testified as PW1. In the absence of any evidence on record, learned Tribunal has correctly proceeded to assess monthly income of the deceased by considering him to be an unskilled worker. However, learned counsel for the Insurance company is unable to deny that even the minimum wage available to an unskilled labourer in the State of Haryana at the time of the accident i.e., 31.03.2016, was ₹7976/- per month. Accordingly, income of the deceased is assessed as ₹7976/- per month, instead of ₹4,000/- per month.

Claimants are however entitled to increase in income on account of future prospects at the rate of 40% and not 50%, in terms of the judgment of the Hon'ble Supreme in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**. Learned Tribunal has effected deduction to the extent of 50% in this case. However, it is a matter of record that the deceased is

survived by his widow mother, widow grandmother and a minor brother. He was the sole earning member of the family. In this situation, it is held by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77** that deduction of 1/3rd is to be effected. Accordingly, deduction to the extent of 1/3rd instead of 50%, is effected. Multiplier of 18 has been correctly applied. Instead of ₹20,000/- towards funeral expenses and last rituals, ₹15,000/- each is awarded towards loss of estate and funeral expenses. Appellant No.1 is held entitled to ₹40,000/- on account of loss of filial consortium in terms of the judgment of the 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 (**Shri Ram General Insurance Company Ltd. v. Beant Kaur and others**).

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

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	7,976 per month i.e., 95,712 per annum
2.	Total income after addition at the rate of 40% on account of future prospects	95,712 + (95,712 x 40%) = 1,34,197
3.	Deduction of 1/3 rd on account of personal expenses	1,33,997 – (1,33,997 x 1/3) = 89,331
4.	Total dependancy after applying a multiplier of 18	(89,331 x 18) = 16,07,958
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium to appellant No.1	40,000
Grand Total		₹16,77,958/-

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 on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal.

Appeal is accordingly disposed of.

August 22 , 2019.
'om'

(**LISA GILL**)
JUDGE

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