

FAO 4995-2017 (O&M)

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

FAO No. 4995-2017 (O&M)

Date of Decision: November, 27th 2019

Satya Devi and Others

.....Appellants

Versus

M/s Hari Om Rice Mill and others

.....Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sushil Saini, Advocate
for the appellants.

Mr. Ankur Gupta, Advocate for
Respondent No. 3-Insurance Company.

JAISHREE THAKUR, J. (ORAL)

This is an appeal that has been filed by the claimants seeking enhancement of compensation as allowed by Motor Accident Claims Tribunal, Gurdaspur.

2. In brief, the facts of the case are that on 23rd March, 2014, deceased Baldev Raj was on his motor cycle bearing Registration No. PB-09-M-3369 and going towards Begowal Town when he was hit by a Truck Canter bearing Registration No. PB-05-R-9491. On account of the accident, the deceased was crushed under the front left side tyre of the offending Canter. The driver stopped the Canter and disclosed his name as Gagandeep Singh son of Yuvraj Singh to Kundan Lal, brother of the deceased and left the area. Baldev Raj died at the spot and an FIR No. 25 dated 23.03.2014 under Sections 304, 279, 427 IPC was registered at Police Station Sri Hargobindpur. On account of the death, a claim petition was filed against the driver, owner and insurer of the Canter. It was stated that the deceased was 46 years of age at the time of

accident and was working as Accountant with the firm M/s. Pardeep Kumar Commission Agent at Begowal, District Kaurthala and was drawing a salary of ₹12,000/- per month.

3. Upon notice, the respondents appeared and denied the factum of the accident while also stating that the offending vehicle was insured with respondent No. 3. The Insurance Company filed a written statement taking objection that the driver of the offending vehicle was not having a valid driving licence and the accident occurred due to rash and negligent driving of Baldev Raj himself.

4. From the pleadings of the parties, issues were framed and evidence were led.

5. In order to prove the case of the claimants, Smt. Satya Devi stepped into the witness box as CW-1 and deposed on the lines of the claim petition. Sh. Kundan Lal, the alleged eye-witness stepped into the witness box as CW-2 and tendered his affidavit as Ex. CW-2/A, stating that the accident took place due to rash and negligent driving of respondent No. 2 and that the deceased died at the spot. He also proved the copy of FIR as EX. C-1. The eye-witness was thoroughly cross-examined, but he did not falter in his testimony. The MACT on the basis of the evidence adduced, held that the deceased died due to rash and negligent driving of respondent No. 2 and in turn assessed the compensation taking the income of the deceased to be ₹ 4,500/- per month as no salary certificate or accounts statement had been produced on the record to support the claim that the deceased was earning ₹ 12,000/- per month. The total compensation was assessed at ₹ 6,61,500/-.

6. Aggrieved against the inadequate compensation, the instant appeal has been filed. Learned counsel appearing on behalf of the claimants would

argue that an incorrect assessment of salary of the deceased has been made while further arguing that they were entitled to future prospects as well, which has not been allowed.

7. Per contra, the counsel appearing on behalf of the Insurance Company submits that the Tribunal has erred in allowing a sum of ₹ 1 lakh towards loss of consortium which is not in consonance with the judgment as rendered by Hon'ble Supreme Court in *National Insurance Company Ltd. Vs Pranay Sethi and others, 2017 (4) RCR Civil 1009*.

8. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case and the compensation as assessed by the Tribunal. Admittedly, there is no salary certificate on the record to show that the deceased was earning ₹ 12,000/- per month as claimed by Smt. Satya Devi CW-1. The Tribunal took his income to be that as a labourer at ₹ 150/- per day which is on the lower side. In fact, his income ought to have been taken as ₹ 6467/- per month as per the minimum wages applicable at the relevant time of the accident i.e. 23rd March, 2014. The Tribunal has also erred in not allowing 25% increase towards the future prospects keeping in view the age of the deceased. Therefore, the compensation is to be recalculated as under:-

Sr. No.	Heads of Claim	Tribunal	High Court
1.	Income	4500/- per month	6467/- per month (according to minimum wages applicable at the relevant time)
2.	Add % of increase	-	25%= 6467+1617 = 8084/- per month
3.	Deduction	1/4=1125 4500-1125=3375	1/4= 8084-2021 =6063/-
4.	Multiplicand (annualized)	13= 3375x12x13 =526,500/-	13= 6063x12x13 =9,45,828/-
5.	Loss of consortium	1,00,000/-	40,000/-

6.	Loss of estate	10,000/-	15,000/-
7.	Funeral expenses	25,000/-	15,000/-
	Total	6,61,500/- 1. Satya Devi (claimant No. 1) ₹ 2,40,375/- 2. Ekta Rani (Claimant No. 2) ₹ 1,12,300/- 3. Rajesh Kumar (Claimant No. 3) ₹ 1,12,300 4. Kaushal (Claimant No. 4) ₹1,12,300/- 5. Sita Wanti (Claimant No. 5) ₹ 84,225/-	₹ 10,15,828/-

9. Claimants would be entitled to increase of compensation in the same ratio as allowed by the Tribunal.

10. The enhanced amount of compensation would be paid along with interest @ 7.5 % per annum from the date of filing the claim petition till disbursement.

11. The appeal is allowed in the aforesaid terms.

NOVEMBER 27, 2019
Ajay Goswami

(JAISHREE THAKUR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No