

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4657 of 2011 (O&M)

Date of Decision : 13.03.2019

Kalawati and others

.....Appellants

Versus

Jagdish Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None for the appellants.

Mr. Madan Bhandari, Advocate
for Mr. N.K. Manchanda, Advocate
for respondent no. 3.

Surinder Gupta, J.

Motor Accident Claims Tribunal, Yamunanagar at Jagadhari (hereinafter referred to as 'the Tribunal') vide award dated 12.02.2011 allowed compensation of ₹3,84,500/- for death of Shyam Lal (later referred to as 'the deceased') in a motor vehicle accident with truck bearing registration No.HR-58A-3043 (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:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Shyam Lal
(ii)	Age of the deceased	47 years
(iii)	Date of accident	31.08.2009
(iv)	Marital status	Married
(v)	Income of the deceased	₹3600 per month
(vi)	1/3 rd of (v) above deducted towards personal expenses	(₹3600- ₹1200) = ₹2400 per month

(vii)	Compensation calculated after applying the multiplier of 13	(₹2400X12X13) = ₹374400
(viii)	Compensation towards loss of estate	₹5000
(ix)	Compensation towards funeral expenses.	₹5000
Total		₹384400 (rounded off to ₹384500)

4. Deceased-Shyam Lal was 47 years of age. Petition under Section 166 of Motor Vehicles Act was filed by his mother and two minor children. They alleged that deceased was a driver by profession and getting ₹6000/- per month as salary and was earning ₹4000/- per month by selling milk. In order to prove income of the deceased, claimants examined PW-4 Jagtar Singh, who deposed that the deceased was employed with him as truck driver on the monthly salary of ₹6000/-. His statement was, however, discarded by the Tribunal on the ground that firstly, the driving licence of the deceased was not produced to prove that he was holding a valid driving licence for driving a truck; and secondly, due to non-filing of income tax return by PW-4 Jagtar Singh showing payment of salary to the deceased.

5. In order to prove that the deceased was a driver by profession, Rameshwar son of Mangat Ram had appeared as PW-1 and stated that the deceased was a driver on the truck of Jagtar Singh and was getting salary of ₹6000/- per month. His statement is un-rebutted as no suggestion was given to him in cross-examination to the effect that the deceased was not employed as driver with Jagtar Singh. While appearing as PW-4 Jagtar Singh has stated that he is a transporter and registered owner of truck bearing registration no. HR-38E-0943 on which he had employed the deceased as driver at the monthly salary of ₹6000/-. He has stated that the deceased possessed driving licence for driving heavy motor vehicles and he had employed him after seeing his driving licence. This witness was income tax

assessee, however, he had not shown the payment of salary to the deceased in his income tax return. This fact has not been disputed that he owns truck. If a person had not been reflecting the payment of salary to his employee in his income tax return, the lapse on his part cannot be attributed to his employee or dependants of employee. In the year 2009, a driver of truck could easily earn ₹6000/- per month as salary. There is no reason to discard testimony of PW-4 Jagtar Singh that he had employed the deceased after seeing his driving licence, which was valid for driving a heavy transport vehicle.

6. Keeping in view above facts, I am of the opinion that the deceased was drawing salary of ₹6000/- per month. He was 47 years of age and as per law settled by Apex Court in case of **National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, claimants are also entitled to 25% addition in income of the deceased towards loss of future prospects. The accident had taken place in the year 2009 and keeping in view the money value prevailing at that point of time, a lump sum compensation of ₹20,000/- is awarded to claimants under the conventional heads.

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

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Shyam Lal
(ii)	Age of the deceased	47 years
(iii)	Income of the deceased	₹6000 per month
(iv)	25% of (iii) above added towards future prospects	(₹6000+ ₹1500)= ₹7500 per month
(v)	1/3 rd of (iv) above deducted towards personal expenses	(₹7500- ₹2500) = ₹5000 per month

(vi)	Compensation calculated after applying the multiplier of 13	(₹5000X12X13) = ₹780000
(vii)	Lump sum compensation under the conventional heads	₹20000
Total		₹800000

8. 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 claimant for death of **Shyam Lal** is enhanced from **₹3,84,500/-** to **₹8,00,000/-**. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realization. The amount of enhanced compensation shall be shared by claimants as follows:-

Claimant no. 1-mother	40%
Claimants no. 2 and 3 (children)	30% each

9. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand draft.

10. The share of claimants-appellants No. 2 and 3, who are minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and they shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in his names after the date of their attaining majority. The above direction has been issued to save claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after attaining the age of majority. Claimant-appellant no. 1-Kalawati, being grandmother and natural guardian of minor claimants shall be entitled to get interest on the

share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of their upbringing.

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(s).

March 13, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No