

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

**F.A.O. No.5778 of 2017 (O&M)  
Date of Decision: 22.07.2019**

Suman and others

.....Appellants.

Versus

Rashid Khan and another

..... Respondents.

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr.Sanjeev K. Panwar, Advocate  
for the appellants.

None for respondent no.1.

Mr. Vishal Aggarwal, Advocate  
for respondent no.2-Insurance Company.

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**LISA GILL, J.**

Appellant-claimants, seek enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Faridabad (for short 'tribunal'), vide impugned award dated 18.04.2017, on account of death of Jaivinder.

Appellants-claimants are the widow, minor children and aged father of the deceased.

As per averments in the claim petition filed under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Jaivinder and his cousin Chander, on 04.04.2016, were going to Village Pali, Faridabad, on motorcycle bearing registration no. HR-51-AW-7785. When they reached near S.S.School, Sohna-Ballabgarh Road, District Faridabad, a motorcycle

bearing registration no. HR-51-AV-7855, driven by respondent no.1-Rashid Khan, struck against their motorcycle from behind. As a result thereof, Jaivinder and Chander sustained serious injuries. Two persons were riding the offending vehicle and pillion rider of the same also sustained injuries. Injured were taken to BK Hospital. Jaivinder was referred to Central QRG Hospital but he ultimately succumbed to his injuries. FIR No. 202 dated 04.04.2016, under Sections 279, 337, 304-A IPC, Police Station Sector-55, Faridabad, was registered against respondent no.1, in this respect. Compensation was thus claimed.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Rashid Khan. Said finding of the learned tribunal has attained finality.

Learned tribunal while holding the deceased to be 31 years old, assessed his income as ₹9000/- per month and awarded a total sum of ₹18,70,000/-, which is detailed as under:-

|    |                                     |                     |
|----|-------------------------------------|---------------------|
| 1. | Total income of deceased            | ₹9000/- p.m.        |
| 2. | Deduction                           | 1/ 3 <sup>rd</sup>  |
| 3. | Multiplier                          | 16                  |
| 4. | Loss of dependency                  | ₹11,52,000/-        |
| 5. | Transportation and funeral expenses | ₹30,000/-           |
| 6. | Loss of love and affection          | ₹33,000/-           |
| 7. | Loss of consortium                  | ₹30,000/-           |
| 8. | Medical treatment expenses          | ₹6,25,000/-         |
|    | <b>Total</b>                        | <b>₹18,70,000/-</b> |

Aggrieved therefrom, the present appeal has been filed by the appellants-claimants.

Learned counsel for the appellants vehemently argues that deduction of 1/3<sup>rd</sup> has wrongly been effected by the learned tribunal. Increment on account of future prospects should be afforded in terms of the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009** and compensation under the conventional heads be enhanced as well. It is thus prayed that this appeal be allowed and the compensation awarded to the appellants be enhanced.

Learned counsel for respondent No.2-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 perused the file and heard learned counsel for the parties.

There is no dispute regarding death of Jaivinder, in a motor vehicle accident which took place on 04.04.2016 due to the rash and negligent driving of the offending motorcycle bearing registration No.HR-51-AV-7855 by respondent No.1-Rashid Khan. Though, learned counsel for the appellants submits that income of the deceased has been assessed at a lower rate, I do not find any merit in the same. There is no evidence on record which calls for any increase in the deceased's income. Thus, income of the deceased as assessed by the learned tribunal i.e., ₹9000/-, is upheld.

As the deceased was admittedly about 31 years old at the time of accident, increase in income at the rate of 40% on account of future prospects has to be afforded keeping in view the observations of the Hon'ble Supreme Court in **Pranay Sethi's case (Supra)**. Appellant no.4, is the 80

year old father of the deceased and there is no evidence on record to refute the claim set up by the appellants that he was dependent upon the deceased. Therefore, in terms of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77**, 1/4<sup>th</sup> deduction on account of personal expenses is to be effected instead of 1/ 3<sup>rd</sup> keeping in view the number of dependants i.e. four. Multiplier of 16 has been correctly applied by the learned tribunal.

Instead of ₹30,000/-, towards funeral expenses and transportation, appellants are entitled to ₹15,000/-. Another sum of ₹15,000/- is awarded towards loss of estate. Instead of ₹30,000/-, appellant-no.1-widow of the deceased, is entitled to ₹40,000/- for loss of consortium. Appellants no.2 and 3 i.e., children of the deceased, are entitled to a sum of ₹40,000/- on account of loss of parental consortium and appellant no.4 i.e., father of the deceased, is held entitled to ₹40,000/- on account of loss of filial consortium. Reference in this regard can gainfully be made to the judgement 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). Compensation on account of expenses incurred on medical treatment as awarded by the learned tribunal is upheld.

Appellants-claimants, are, thus, entitled to compensation which is reworked as under:-

| Sr. No. | Heads of Claim       | Amount               |
|---------|----------------------|----------------------|
| 1.      | Income               | ₹9000/- p.m.         |
| 2.      | Loss of income after | ₹9000 + (9000 x 40%) |

|     |                                                                 |                                    |
|-----|-----------------------------------------------------------------|------------------------------------|
|     | addition at the rate of 40% on account of future prospects      | = ₹12,600/-                        |
| 3.  | Deduction of 1/ 4 <sup>th</sup> on account of personal expenses | ₹12,600 – (12,600 x 1/4) = ₹9450/- |
| 4.  | Loss of dependency after applying a multiplier of 16            | (₹9450 x12 x 16) = ₹ 18,14,400/-   |
| 5.  | Loss of estate                                                  | ₹15,000/-                          |
| 6.  | Funeral and transportation expenses                             | ₹15,000/-                          |
| 7.  | Consortium to widow of the deceased                             | ₹40,000/-                          |
| 8.  | Parental consortium to appellants no.2 and 3                    | ₹40,000/-                          |
| 9.  | Filial consortium to appellant no.4                             | ₹40,000/-                          |
| 10. | Medical treatment expenses                                      | ₹6,25,000/-                        |
|     | <b>Total</b>                                                    | <b>₹25,89,400/-</b>                |

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 of compensation at the rate of 7.5% per annum from the date of filing of the petition till realization. Manner of disbursement as determined by the learned Tribunal shall remain the same.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

22.07.2019  
s.khan

[LISA GILL]  
Judge

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