

FAO No. 16011 of 2018 (O&M)

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

FAO No. 16011 of 2018

Date of Decision: November 27, 2019

Sheela and another

..... Appellants(s)

Versus

Darshan Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Digvijay Singh Yadav, Advocate for
Mr. Akash Vashisth, Advocate
for the appellants.

Service upon respondents no.1 & 2 dispensed with
vide order dated 30.05.2019.

Mr. Vinod Gupta, Advocate
for respondent no.3-insurance company.

LISA GILL, J.

This appeal has been filed seeking enhancement of compensation awarded to the claimants vide award dated 15.03.2018, passed by learned Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal').

Claimants who are the widow and son of the deceased Suraj Bhan, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Suraj Bhan, due to the injuries suffered by him in the motor vehicle accident, which took place on 04.07.2016. Deceased was claimed to be a driver of heavy vehicle (Trailer)

on a monthly salary of Rs.25,000/-, besides Rs.300/- per day as personal expenses.

Learned Tribunal on considering the evidence on record concluded that Suraj Bhan lost his life due to the injuries received by him in the motor vehicle accident, which took place on 04.07.2016, due to the rash and negligent driving of the offending trailer bearing registration No. PB-03U-9663, by its driver Darshan Singh - respondent no.1. Learned Tribunal while assessing the income of the deceased to be Rs.9,000/- per month by considering him to be a casual labourer, awarded a sum of Rs.10,82,500/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	9,000
2.	Income after deducting 1/2 as personal living expenses of the deceased	$9,000 \times 1/2 = 4,500/-$
3.	Total income after addition at the rate of 25% on account of future prospects	$4,500 + 1125 = 5,625/-$
4.	Dependency after applying multiplier of 15	$5,625 \times 12 \times 15 = 10,12,500/-$
5.	Loss of estate/consortium	40,000/-
6.	Transportation, Funeral expenses etc.	15,000/-
7.	Loss of love and affection	15,000/-
	Total	10,82,500/-

Present appeal has been filed seeking enhancement of the aforesaid compensation.

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Learned counsel for the appellants submits that meagre compensation has been awarded by the learned Tribunal. Deduction of 50% has been wrongly effected. It is stated that compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680** and **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333**. It is thus prayed that compensation be enhanced.

Learned counsel for the insurance company, however, refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. Dismissal of this appeal is prayed for.

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

There is no dispute regarding death of Suraj Bhan in the motor vehicle accident, which took place on 04.07.2016, due to the rash and negligent driving of the offending Trailer bearing registration No. PB-03U-9663, by its driver Darshan Singh-respondent no.1. There is also no dispute regarding age of the deceased as assessed by the learned Tribunal. Appellants have claimed Suraj Bhan to be a driver, engaged by one Ramesh Kumar to drive the Trailer bearing registration No. HR-63-C-5462, getting a salary of Rs.25,000/- per month besides Rs.300/- per day. Learned Tribunal has rightly observed that there is no evidence on record to indicate the exact

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income of the deceased. Neither the owner of the Trailer bearing registration No. HR-63-C-5462 or any other witness has not been examined to prove that the deceased was in receipt of the said salary. Minimum wage of a skilled labourer in the State of Haryana at the time of the accident i.e. 04.07.2016 was about Rs.8,500/- per month. Income of the deceased has thus been rightly assessed as Rs.9,000/- per month. Addition of 25% in the income has been correctly afforded by the learned Tribunal. However, learned Tribunal has erred in applying a deduction of 50% as in the present case, the claimants are the widow and the son of the deceased. Though, the son is 20 years old, there is nothing on record to rebut the appellants' claim that he was dependent upon the father and they were all living together. In this view of the matter, a deduction of $\frac{1}{3}^{\text{rd}}$ instead of $\frac{1}{2}$ has to be applied. Deceased was admittedly 44 years of age, as reflected from his driving license, Ex.P4, therefore, multiplier of 14 instead of 15 has to be applied in this case. Compensation Rs.40,000/- towards loss of consortium and Rs.15,000/- on account of funeral expenses has been rightly afforded by the learned Tribunal. Compensation of Rs.15,000/- towards loss of love and affection be counted as compensation towards loss of estate. Additionally, appellant no.2 is entitled to a sum of Rs.40,000/- towards loss of parental consortium. Reference in this regard can gainfully be made to 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-2110-2016, title ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others.***

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

Sr. No.	Heads	Calculations
1.	Income	9,000
2.	Income after deducting 1/3 as personal living expenses of the deceased	$(9,000 - 9000 \times 1/3) = 6,000/-$
3.	Total income after addition at the rate of 25% on account of future prospects	$6,000 + 1500 = 7,500/-$
4.	Dependency after applying multiplier of 14	$7,500 \times 12 \times 14 = 12,60,000/-$
5.	Loss of consortium to appellant no.1	40,000/-
6.	Funeral expenses	15,000/-
7.	Loss of estate	15,000/-
8.	Loss of parental consortium to appellant no.2	40,000/-
	Total	13,70,000/-

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

Appeal is accordingly disposed of.

November 27, 2019.
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No