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

**FAO-2477-2005 (O&M)
Date of decision : 13.01.2020**

Ram Kala Devi and others

... Appellants

Versus

Ashok Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Mayank Gupta, Advocate
for the appellants.

Mr. Sanjiv Pabbi, Advocate
for respondent No.3/Insurance Company.

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ALKA SARIN, J.

CM-24579-CII-2019

This is an application for early hearing of the main appeal. For the reasons stated therein, the application is allowed and the main appeal is taken on board and heard with consent of the counsels.

FAO-2477-2005

1. The present appeal has been preferred by the claimants against the Award dated 22.03.2005 passed by the Motor Accident Claims Tribunal, Rewari (in short 'the Tribunal'), whereby a sum of ₹4,13,200/- has been awarded as compensation along with interest @ 6% per annum from the date of filing of the petition till realization.

2. The brief matrix of the facts relevant to the present case are as under:-

3. It is a case set up by the claimants that on 17.03.2004 at about

9 p.m., the deceased Desh Raj was returning on motorcycle bearing Registration No.HR-36F-1669, from his working place near Dharuhera to his native village Kaluwas, after performing his duties at DHVPN Dharuhera, where he was working as Driver. When he reached near Village Khaliyawas on National Highway 8 near the bridge of Shabi river at a very slow speed, a truck bearing Registration No.HR-29D-3017 came speeding from the side of Dharuhera, which was being driven in a very rash and negligent manner and struck against the motorcycle of the deceased from the back. Due to the impact, the deceased fell down and received multiple fatal injuries. The eye-witness to the accident noted down the registration number of the offending truck. The heirs of deceased Desh Raj filed the claim petition.

4. The written statement was filed jointly by the driver and owner, who contested the petition on the ground that the claim petition was not maintainable in the present form and the claimants have no cause of action. In the alternative, it was pleaded by the driver and owner that in case the Court comes to the conclusion that the accident took place due to the rash and negligent driving of respondent No.1, then in that case, respondent No.3/Insurance Company would be liable to satisfy the claim.

5. Respondent No.3/Insurance Company also filed a separate written statement raising preliminary objection to the effect that the claimants were guilty of concealment of true and material facts and were not entitled to the compensation claimed. The Insurance Company also took the stand that driver of the offending truck was not holding a valid and effective driving licence. On merits, it was denied that the deceased was struck by the offending truck which was being driven in a negligent and rash manner.

6. The Tribunal, on the claim petition filed by the claimants, has awarded the following compensation:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹9359/-
2	1/3rd Deduction for personal expenses	₹3119/-
3	Dependency	₹6240/-
4	Less family pension	₹4000/-
5	Total Income	₹2240/-
6	Annual Income	₹2240 x 12 = ₹26,880/-
7	Multiplier '15'	₹26880 x15 = ₹403200/-
8	Funeral Expenses and loss of consortium	₹10000/-
9	Total Compensation	₹4,13,200/-

Plus interest @ 6% p.a. from the date of filing of the claim petition till actual realization.

7. Aggrieved against the said award, the claimants have preferred the present appeal.

8. I have heard learned counsel for the parties.

9. Learned counsel for the appellants has contended that the Tribunal has not awarded any amount towards future prospects, conventional heads and consortium. It has also been contended that the family pension has wrongly been deducted.

10 It has further been contended that instead of deduction of 1/3rd towards personal expenses, the same should have been 1/4th.

11. Per contra, learned counsel for the Insurance Company has contended that a multiplier of '14' instead of '15' ought to have been applied. The amount in fact needs to be reduced and that no ground was made out for enhancement of the amount so awarded by the Tribunal.

12. As per law laid down by the Apex Court in the case of ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(6) Supreme Court Cases 121*** and ***National Insurance Company Ltd. vs. Pranay Sethi and others, (2017)(16) Supreme Court Cases 680,*** I find that instead of multiplier of '15', multiplier of '14' ought to have been applied keeping in mind the age of the deceased-Desh Raj. Also as per the settled law, the claimants would also be entitled to 30% future prospects as well as compensation under the conventional heads and consortium.

13. However, as regards the deduction of family pension, the amount receivable under the family pension is not to be deducted from the amount of dependency payable to the claimants as per the *ratio decidendi* culled out in the case of ***Sebastiani Lakra & Ors. vs. National Insurance Company Ltd. & Anr., reported as 2018 AIR (SC) 5034,*** wherein Their Lordships of the Apex Court, while deciding a matter concerning adjustment of pecuniary advantages, received by heirs, in compensation, have held as under:-

> *"12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to `just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a*

result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. In view of above, I deem it just and appropriate to award the following compensation:-

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly Income	₹9359/-
2	Deduction 1/4th	₹2339/-
3	Future Prospects 30%	₹2106/-
4	Total Monthly Income	₹7020+2106 = ₹9126/-
5	Annual Income	₹9126/- x 12 = ₹109512/-
6	Multiplier '14'	₹109512x14= ₹1533168/-
7	Spousal Consortium	₹40,000/-
8	Parental Consortium (3 Children)	₹120000/- (₹40,000/- each)
9	Loss of Estate	₹15,000/-
10	Funeral Expenses	₹15,000/-
11	**Total Compensation**	**₹17,23,168/-**

14. Thus, the claimants shall be paid the enhanced amount of compensation to the tune of ₹13,09,968/- (₹1723168-413200/-) over and above the amount awarded by the Tribunal along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization.

15. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified, accordingly.

(ALKA SARIN)
JUDGE

13.01.2020
Yogesh Sharma

Whether speaking/reasoned **Yes/ No**
Whether Reportable **Yes/ No**