

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

(In virtual Court)

CM-5471-CII-2021 in/and
FAO No.1272 of 2006 (O&M)
Date of Decision: 14.07.2021

Charanjit and others

.....Appellants

Versus

Bhupinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Harinder Kumar Aurora, Advocate
for the appellants.

Mr. Paul S.Saini, Advocate,
for respondent No.3-Insurance Company.

RAJBIR SEHRAWAT, J. (ORAL)

CM-5471-CII-2021

This is an application for fixing an early actual date of hearing
in the main appeal.

Notice in the application.

Mr. Paul S.Saini, Advocate, accepts notice on behalf of
respondent No.3-Insurance Company and submits that he has no objection,
if the present application is allowed and the main appeal is taken up for
hearing today.

For the reasons mentioned in the application, the same is
allowed. With the consent of the parties, the main appeal is taken up for
final hearing today itself.

Main Appeal

This is an appeal filed by the claimants against the award dated 08.12.2005 passed by the Motor Accident Claims Tribunal, Hoshiarpur (for short, the Tribunal), challenging the inadequacy of the compensation awarded by the Tribunal and for enhancement of the amount of compensation.

The brief facts, as mentioned in the award of the Tribunal are; that on 05.03.2004 at about 2.00 p.m., Jagjit Kumar was coming from his office on the motorcycle. In the meantime, a truck bearing registration No.UP-07D-1025; being driven rashly and negligently by respondent No.1-Bhupinder Singh, came from the side of Pathankot. The driver of the truck could not control his truck and struck the same against the backside of the motorcycle of Jagjit Kumar, who was driving on the extreme left side of the road. As a result of the impact, the motorcycle fell down along with its driver resulting into grievous injuries to him. The injured was taken to Civil Hospital, Dasuya for his serious injuries. From there, he was referred to D.M.C. & Hospital, Ludhiana. However there he succumbed to the injuries. On account of this accident, an FIR No.35 dated 05.03.2004 under Sections 279, 337, 338, 427 and 304-A IPC was registered at Police Station Dasuya. With these assertions, the dependents/legal heirs of the deceased Jagjit Kumar, filed the claim petition asserting therein that the deceased was employed as Junior Engineer with the Punjab State Electricity Board and was drawing salary of ₹12,455/- per month. The deceased was aged 32 years at the time of his death and he was un-married. Accordingly, the compensation was prayed for, by the claimants.

After taking into consideration the evidence led by the respective parties, the Tribunal assessed the income of the deceased to be ₹9,200/- per month after deducting the allowances being paid to the deceased. The multiplier of 6 was applied by taking the age of the mother of the deceased as the relevant factor. Accordingly, the loss of dependency was calculated by the Tribunal. Still further, an amount of ₹5,000/- was awarded on account of funeral expenses. A total amount of ₹3,36,000/- was awarded as compensation against respondent Nos.1 to 3; along with the interest @ 6% from the date of filing of the claim petition till the date of the award, with a further stipulation that if the respondents failed to deposit the amount within two months, then the claimants shall be entitled to further interest @ 9% per annum from the date of the award till actual realization. However only appellant No.1 was held eligible to get compensation.

Arguing the case on behalf of the appellants, learned counsel for the appellants has submitted that the Tribunal has gone wrong in law in assessing the income of the deceased to be only ₹9,200/- per month. The income of the deceased have been duly proved to be ₹12,455/- per month by producing the relevant record and witness from the government office in which he was working. The Tribunal has wrongly excluded the amount of allowances payable to the deceased. Except the income tax, to which the salary of the deceased was liable, the Tribunal should not have deducted any amount except the deduction on account of personal expenses. Learned counsel for the appellants has further submitted that no benefit of future prospects have been granted by the Tribunal. The appellants are entitled to that benefit, as well. Still further; the age of the deceased has to be taken as

the relevant factor for determining the multiplier and not the age of the claimant. Accordingly, appropriate multiplier in this case would be 16 and not the 6 as has been applied by the Tribunal. Furthermore, nothing has been awarded by the Tribunal on account of loss of consortium and loss of estate. Even, the amount awarded on account of funeral expenses is extremely on lower side. The same deserves to be enhanced at least at the level of ₹15,000/-. Accordingly, the enhancement is prayed for.

On the other hand, learned counsel for respondent No.3- insurance company has submitted that the amount of compensation has rightly been calculated by the Tribunal. The income of the deceased was liable to be reduced on account of income tax, as well as, some personal allowances have to be deducted while calculating the loss of dependency. Learned counsel has also submitted that the Tribunal has rightly applied the multiplier and the compensation awarded by the Tribunal is as per the law, which does not call for any interference by this Court.

Having heard learned counsel for the parties, this Court finds substance in the argument of learned counsel for the appellants. Since, the income of the deceased have been proved to be ₹12,455/- per month, therefore, the gross income of the deceased has to be taken at this level only. As per the judgment of the Supreme Court in the case of National Insurance Company Ltd. versus Pranay Sethi and others, (2017) 16 SCC 680, except the deduction on account of income tax, no deduction is to be made from the salary qua other allowances etc. Hence, the income of the deceased has to be taken to be ₹12,455/- per month minus the applicable income tax. Still further, as per the above said judgment of the Supreme Court, the claimants

are entitled to the compensation on account of loss of future prospects of the deceased @ 50% of the assessed income. The multiplier is also required to be applied as per the age of the deceased. Seen in that context, the applicable multiplier in this case would be 16 and the eligible claimant is entitled to the benefit of future prospects @ 50%. This Court also finds that appellant No.1 is also entitled to ₹40,000/- as compensation on account of loss of consortium. Besides this, the amount of compensation is liable to be enhanced by an amount of ₹15,000/- on account of loss of estate. The funeral expenses have to be enhanced from ₹5,000/- to ₹15,000/-. Accordingly, the eligible appellant is held entitled to the compensation as mentioned below:-

Sr. No.	Head	Amount assessed
1	Income	₹12,455/- per month ₹1,49,460/- per annum
2	Deduction of Income Tax	₹18,892/-
3	Annual income after tax	₹1,49,460 – 18,892 = ₹1,30,568
4	Future prospects @ 50%	₹1,30,568 X 50% = ₹65,284 ₹1,30,568 + 65,284 = ₹1,95,852
5	Deduction @ 50%	₹1,95,852 x 1/2 th = ₹97,926
6	Multiplier	16
7	Total dependency	₹97,926 x 16 = ₹15,66,816
8	Consortium	₹40,000/-
9	Loss of Estate	₹15,000/-
10	Funeral Expenses	₹15,000/-
11	Total	₹16,36,816/-
12	Compensation awarded by the Tribunal	₹3,36,000/-
13	Enhancement	₹16,36,816 – 3,36,000 = ₹13,00,816/-

Hence, the award passed by the Tribunal is modified to that extent and appellant No.1 is now held entitled to a total amount of

compensation of ₹16,36,816/-. Appellant No.1 shall be entitled to interest @ 6% per annum from the date of filing of the petition till its realization on the amount of enhanced compensation of ₹13,00,816/-. The interest awarded on the amount of compensation determined by the Tribunal shall remain as it is.

It is further ordered that the enhanced amount of compensation; along with interest; shall be paid to appellant No.1 in her bank account through RTGS; by the Insurance Company; within a period of six weeks from today.

Learned counsel for the appellants may provide account number of appellant No.1 to learned counsel for the Insurance Company within a period of one week from today.

The present appeal is allowed in the above said terms.

All pending miscellaneous applications, if any, are also disposed of as such.

(RAJBIR SEHRAWAT)
JUDGE

14.07.2021
sandeep

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No