

**CM-169-CII-2021 in/and
FAO No. 3569 of 2011 (O&M)**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-169-CII-2021 in/and
FAO No. 3569 of 2011
Date of Decision: March 02, 2021**

Suman and others Appellants(s)

Versus

Ajay and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rishav Jain, Advocate for the applicant-appellants.

Mr. Sanjeev Pabbi, Advocate
for respondent no.3-insurance company.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

CM-169-CII-2021

This application is for listing the appeal for final disposal. It is submitted that the issues raised therein are squarely covered by various judgments of the Hon'ble Supreme Court as well as of this Court.

Mr. Sanjiv Pabbi, Advocate, learned counsel for respondent no.3-insurance company does not raise any objection if the application is allowed.

At request and with consent of learned counsel for the parties, main appeal is taken up on Board for hearing today itself.

Application is accordingly disposed of.

FAO-3569-2011

This appeal has been filed seeking enhancement of compensation awarded to the claimants vide award dated 17.02.2011, passed by learned Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal).

Appellants-claimants who are the widow, minor son and parents of deceased Kaptan, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Kaptan due to injuries suffered by him in the motor vehicle accident, which took place on 16.06.2009 due to rash and negligent driving of the offending vehicle by its driver Ajay-respondent no.1. Deceased was claimed to be running a shop of sale, repair and service of mobile phones, earning Rs.12,000/- per month.

Learned Tribunal on considering the evidence on record concluded that Kaptan lost his life due to the injuries received by him in the accident in question, which took place on 16.06.2009, due to the rash and negligent driving of the offending Pick Up vehicle bearing registration No. HR-61-7382, by its driver Ajay - respondent no.1. Learned Tribunal while assessing the income of the deceased to be Rs.3,500/- per month by treating him a daily wager, awarded a sum of Rs.3,74,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	3,500 x 12 = 42,000/- per annum

2.	Income after deducting 1/3 rd as personal living expenses of the deceased	42,000 - 1/3 rd 28,000/- per annum =
3.	Dependency after applying multiplier of 13	42,000 x 13 = 3,64,000/-
4.	Loss of love and affection and last rites	10,000/-
	Total	3,74,000/-

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

Learned counsel for the appellants does not dispute the income of the deceased as assessed by the learned Tribunal but seeks increment towards future prospects. It is stated that compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court *in National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680, Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333 and United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur and others, 2020(3) RCR (Civil) 75*. 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. He is, however, unable to deny the guidelines as laid down by the Hon'ble Supreme Court in the above said decisions. 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 Kaptan in the motor vehicle accident, which took place on 16.06.2009, due to the rash and negligent driving of the offending Pick Up vehicle bearing registration No. HR-61-7382, by its driver Ajay-respondent no.1. No dispute has been raised regarding the age of the deceased i.e. 29 years at the time of the accident or of the income of Rs. 3,500/- per month as assessed by the learned Tribunal.

Keeping in view the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680***, 40% increment has to be afforded on account of future prospects. Deduction of 1/4th instead of 1/3rd has to be applied in view of the number of dependents. As the deceased was admittedly 29 years old at the time of the accident, multiplier of 17 instead of 13 has to be applied in this case. Instead of a sum of Rs.10,000/- awarded towards funeral expenses and loss of love and affection, appellants are entitled to a sum of Rs.15,000/- each towards funeral expenses and loss of estate. Appellant no.1 is entitled to a sum of Rs. 40,000/- towards loss of spousal consortium. Appellant no.2 is entitled to a sum of Rs.40,000/- towards loss of parental consortium. Appellants no.3 and 4 are also entitled to a sum of Rs.40,000/- each towards loss of filial 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 and *United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur and others, 2020(3) RCR (Civil) 75.*

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

Sr. No.	Heads	Calculations
1.	Income	3,500 x 12 = 42,000/- per annum
2.	Income after deducting 1/4 th as personal living expenses of the deceased	42,000 - 10,500/- (1/4 th) = 31,500/-
3.	Total income after addition at the rate of 40% on account of future prospects	31,500 + 12,600 (31,500 x 40%) = 44,100/-
4.	Dependency after applying multiplier of 17	44,100 x 17 = 7,49,700/-
5.	Loss of love and affection	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium	40,000 x 4 = 1,60,000/-
	Total	9,39,700/-

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.

March 02, 2021.

Sunil Sehgal

**(LISA GILL)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No