IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.1863 of 2003 (O&M)
Reserved on : 15.07.2022
Pronounced on : 29.07.2022

Hari Singh and others **...Appellants**

Versus

Boota Singh and others **...Respondents**

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CORAM: HON'BLE MRS. JUSTICE ARVIND SINGH SANGWAN

Argued by: Mr. Rakesh Dhiman, Advocate (Legal Aid Counsel)
for the appellants.

Mr. Ashwani Talwar, Advocate
for respondent No.2-Oriental Insurance Company Ltd.

None for respondents No.3 to 6.

Mr. Gopal Mittal, Advocate
for respondent No.7-United India Insurance Company Ltd.

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ARVIND SINGH SANGWAN, J.

This appeal for enhancement of compensation is directed against the award dated 15.11.2002 passed by Motor Accident Claims Tribunal, Ludhiana *(for short, 'the Tribunal')* in MACT Case No.167 of 14.12.2020, vide which the claim petition filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 *(for short, 'the Act of 1988')* by the appellants-claimants, was allowed.

Brief facts of the case are that on 23.11.1999 at about 3:30 AM, Tarsem Singh along with his partner Gurmail Singh were coming from Delhi to Moga in Swaraj Majda bearing registration number HR-37-6923, which was driven by Darshan Singh and a Truck bearing registration number PB-04D-9715, being driven by Jagwinder Singh in a rash and negligent manner without blowing horn came from wrong side and struck against their vehicle. Due to the collision, all three of them sustained injuries, Darshan Singh and Gurmail Singh died on the spot, whereas Tarsem Singh was taken to the hospital, but during his treatment he succumbed to the injuries in the C.M.C., Ludhiana, on 30.11.1999. Driver Jagwinder Singh of the offending Truck also died in the accident. The accident was witnessed by one Bharpoor Singh and his wife Jaswant Kaur, but the police in connivance with the relatives of aforesaid Jagwinder Singh, got registered FIR No.100 dated 23.11.1999 under Sections 279, 337, 338, 427 and 304-A IPC, at Police Station Dakha, District Jagraon, on the statement of alleged eyewitness Amar Singh.

Appellants, who are the parents and minor sons of deceased Tarsem Singh, filed a petition under Section 166 read with Section 140 of the Act of 1988, claiming compensation from respondents No.1 and 2 (owner and insurer of Swaraj Majda) and respondents No.3 to 7 (legal representatives of owner offending Truck as well as Insurance Company). The petition was contested by the respondents.

Learned Tribunal held that it is a case of contributory negligence of both the drivers of vehicles in question. Assessing the income of the deceased as Rs.36,000/- per annum, after deducting 1/3rd of the income towards his personal and living expenses and further applying multiplier of '12', the dependency of the appellants was calculated as Rs.2,88,000/-. Allowing Rs.20,000/- as medical expenses and Rs.7,000/- towards funeral expenses, an amount of Rs.3,15,000/- along with interest at the rate of 9% per annum from the date of institution of the claim petition till realization was awarded as compensation to the claimants. All the respondents were held liable jointly and severally for payment of the compensation.

Feeling dissatisfied, the appellants preferred the instant appeal for enhancement of the compensation.

Learned counsel for the appellants-claimants argued that the deceased Tarsem Singh was working as a transporter and being driver-cum-owner of Swaraj Majda, he was earning Rs.15,000/- per month and besides that he was also running a dairy farm and was earning Rs.3,000/- per month, however, the Tribunal has fallen in error in assessing the income of deceased as Rs.3,000/- per month. It is further argued that no addition was made for computing future prospects and the Tribunal erred in deducting 1/3rd of the income towards personal and living expenses of the deceased and the multiplier of '12' was also wrongly applied as the deceased was aged 36 years. Moreover, the amount of compensation awarded under the head of funeral expenses is inadequate, whereas no amount of compensation was awarded to the claimants under the heads of loss of estate as well as loss of love and affection. It is further argued by learned counsel that the interest was awarded at the rate of 9% per annum whereas it should have been awarded at the rate of 12% per annum. He further argued that the Tribunal has wrongly held that it is a case of contributory negligence on the part of drivers of both the vehicles in question, whereas the accident took place due to rash and negligent driving of the driver of offending Truck as he was trying to overtake another Truck and while driving the said Truck in a zigzag manner collided his Truck with Swaraj Majda.

On the other hand, learned counsel for the respondents-Insurance Company argued that there being no documentary evidence on record, the Tribunal, considering the minimum wages as Rs.70 to 80 per day, has rightly assessed the income of the deceased as Rs.3000/- per month and after deducting 1/3rd of the income towards personal and living expenses of deceased, the multiplier of '12' was rightly applied by learned Tribunal as per the age of the parents of the deceased. It is further argued that the amount of compensation awarded by learned Tribunal is adequate and needs no enhancement.

I have heard learned counsel for the parties and have also gone through the findings of the Tribunal.

The deceased was a young person aged 36 years. Though income of the deceased has been claimed to be more than Rs.15,000/- per month but the claimants have failed to prove the income of the deceased by leading any cogent evidence and, thus, considering the minimum wages as Rs.70 to 80 per day, the Tribunal has rightly assessed the income of the deceased as Rs.3000/- per month. At the time of his death, the deceased was aged 36 years and as such the multiplier of '12' has been wrongly applied by learned Tribunal, whereas multiplier of '15' should have been applied while calculating the amount of compensation to be awarded to the claimants. Appellants No.1 and 2 being parents and appellants No.3 to 5 being minor sons were fully dependent on the deceased and, therefore, deduction of $1/3^{rd}$ was wrongly made by the Tribunal, whereas income towards personal and living expenses of the deceased should have been adopted to be $1/4^{th}$ instead of $1/3^{rd}$. Apparently, no addition was made for computing future prospects of the deceased. Therefore, as per law laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170****,* there had to be an addition of 40% to the actual income of the deceased on account of future prospects, which the Tribunal failed to allow. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Annual income (in Rupees)		Rs.36,000/-
2.	Actual age of the deceased		36 years
3.	Increase in future income as per ***Rajesh and others'*** case (supra)		Rs.14,400/-
4.	Dependency		$1/4^{th}$ of Rs.50,400/- = Rs.37,800/-
5.	Multiplier		15
6.	Total		Rs.5,67,000/-

In addition to the amount of Rs.5,67,000/- calculated towards dependency, the claimants are entitled to compensation under conventional heads. The Tribunal has awarded only Rs.7,000/- towards funeral expenses, whereas as per ratio of law laid down in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***, an amount of Rs.2,30,000/- is to be awarded to the claimants under loss of consortium, loss of estate and funeral expenses. As such, the amount of Rs.7,000/- awarded by learned Tribunal is enhanced to Rs.2,30,000/- as the compensation under conventional heads. In the above premise, the appellants-claimants are held entitled to compensation of Rs.7,97,000/- as indicated above. The rate of interest allowed by the Tribunal shall remain the same.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 15.11.2002 passed by the Tribunal is modified.

The appellants-claimants are held entitled to enhanced compensation of Rs.4,82,000/- in addition to the amount of Rs.3,15,000/- awarded by the Tribunal. The enhanced amount of compensation shall be deposited by respondents-Insurance Companies within 45 days from the date of receipt of certified copy of this judgment, failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum.

The apportionment of the amount of compensation amongst claimants shall be in the same ratio as fixed by the Tribunal.

29.07.2022 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*