

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO No. 1987 of 2001 (O&M)
Date of Decision : 12.10.2022**

Swaranjit Kaur and Others

....Appellants

VERSUS

Bhupinder Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.K. Chaudhary, Advocate for
Mr. M.K. Dogra, Advocate for the appellants.

None for respondent nos.1 and 2.

Mr. Sanjiv Pabbi, Advocate
for respondent no.3-Insurance Company.

ALKA SARIN, J. (Oral)

The present appeal has been preferred by the claimants against the award dated 04.11.2000 passed by the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as the 'Tribunal') vide which a total compensation of Rs.4,80,000/- along with interest @ 12% per annum has been awarded to the claimants on account of death of Lt. Col. Rajwant Singh Bajwa (hereinafter referred to as the 'deceased') in a motor vehicle accident with truck bearing registration No.KA-02-3175 (hereinafter referred to as the 'offending vehicle').

The brief facts relevant to the present *lis* are that the claim petition was filed by the claimant-appellants *qua* the accidental death of the deceased. It was averred in the claim petition that on 15.04.1997 the deceased along with his wife and daughter was proceeding from Gurdaspur to Ludhiana in his Maruti car bearing registration No.WAA-7100 which was being driven at a slow speed. When they came in front of Mour Shappian

Wali, the offending vehicle, which was being driven by respondent no.2 herein, coming from the side of Baba Bakala Road at a high speed, struck against the Maruti car being driven by the deceased. The right front tyre of the offending vehicle got separated and went underneath the offending vehicle. On account of this impact the Maruti car of the deceased was badly damaged and the deceased sustained serious injuries. The other occupants of the car were also injured. It was further averred that the deceased died on the way to the hospital. A case was registered. It was averred in the claim petition that the deceased was 56 years of age and was a qualified veterinary doctor. He was engaged in the business of sale of dogs. The deceased also owned 10 acres of agricultural land.

The claim petition was contested by the Insurance Company. It was pleaded in the written statement that the claim petition is not maintainable against the Insurance Company and is bad for mis-joinder and non-joinder of the parties. It was further pleaded that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident and that he was driving the offending vehicle without the consent and permission of its owner. It was also pleaded that the offending vehicle did not have a valid registration certificate, route permit and fitness certificate.

On the basis of pleadings of the parties, the following issues were framed :

1. Whether respondent no.2 caused accident on 15.04.1997 by driving truck no.KA-02-3175

resulting in the death of Lt. Col. Rajwant Singh Bajwa? OPA

- 2. To what amount of compensation the applicant is entitled, if so, from whom? OPA
- 3. Whether the claim petition is not maintainable? OPR
- 4. Whether the claim application is bad for mis-joinder and non-joinder of parties? OPR
- 5. Relief.

On the basis of evidence on record and the pleadings of the parties, the claim petition was allowed by the Tribunal and an amount of Rs.4,80,000/- was granted as compensation along with interest @ 12% per annum from the date of filing of the claim petition till its realization, which was worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.12000
2	Amount after 1/3 rd deduction towards personal expenses	[12000 - 4000] = Rs.8000
3	Annual income of the deceased after applying multiplier of 5	[8000 x 5 x 12] = Rs.4,80,000
	Amount Awarded by the Tribunal	Rs.4,80,000/-

Learned counsel for the appellants would contend that the Tribunal had held that the deceased was self employed post his retirement, which finding has not been challenged by the Insurance Company. It is further the contention that since the deceased was 56 years of age and was

self employed at the time of his death in the road accident, an addition of 10% would have to be made towards future prospects as per the law laid down by the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**. It is further the contention that no amount under the conventional heads was granted to the claimants as per the law laid down by Hon'ble Supreme Court in cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]**, **Pranay Sethi (supra)** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]**. It is further the contention that incorrect multiplier has been applied, which ought to have been '9' instead of '5'.

Per contra learned counsel for respondent no.3-Insurance Company is not in a position to deny the fact that the multiplier has wrongly been applied as '5' and ought to have been applied as '9'. He is further not in a position to deny the fact that no amount has been awarded towards loss of consortium and under the conventional heads. It is further contended that no addition towards loss of future prospects is to be made as the deceased was a retired person.

In the present case the deceased was self employed. The said finding has not been challenged by the Insurance Company. Being a self employed person, as per the law laid down by Hon'ble Supreme Court in **Pranay Sethi's case (supra)**, an addition of 10% would have to be made towards loss of future prospects. As per law laid down in **Sarla Verma's case (supra)**, the multiplier of 9 would have to be applied keeping in view

the age of the deceased. Further, as per the law laid down in the cases of **Sarla Verma (supra), Pranay Sethi (supra) and Magma General Insurance Co. Ltd. (supra) and N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]**, the claimant-appellants would be entitled to Rs.16,500/- towards loss of estate, Rs.16,500/- towards funeral expenses and Rs.44,000/- each towards loss of consortium i.e. loss of spousal and parental.

In view of the above, the modified compensation is re-worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income of the deceased	Rs.12000
2	Amount after 1/3 rd deduction towards personal expenses	[12000 – 4000] = Rs.8000
3	Addition towards Future Prospects @ 10%	[8000 + 800] = Rs.8800
4	Annual income of the deceased after applying multiplier of 9	[8800 x 9 x 12] = Rs.9,50,400
5	<u>Loss of Consortium</u> (i) Parental (ii) Spousal	Rs.44,000 x 2 = 88,000 Rs.44,000 Total Rs.1,32,000
6	Loss of Estate	Rs.16,500
7	Funeral Expenses	Rs.16,500
	Total Compensation	Rs.11,15,400/-
	Amount awarded by the Tribunal	Rs.4,80,000/-
	Enhanced amount	Rs.6,35,400/-

The amount in excess and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% from the date of filing of

the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the appeal filed by the claimant-appellants is allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

12.10.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO