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

FAO-79-2008 (O&M)
Decided on : 25.07.2022

Rampati ...... Appellant

Versus

Rajesh Kumar and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. R.A.Sheoran, Advocate
for the appellant.

Service upon respondents No.1 and 2
is dispensed with vide order dated 06.12.2017.

Mr. Suvir Dewan, Advocate
for respondent No.3.

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Manjari Nehru Kaul, J.(Oral)

Instant appeal has been filed by the appellant-claimant, mother of Sandeep (hereinafter referred to as 'deceased'), who died in a motor vehicular accident on 15.01.2003. The appellant was awarded the following compensation by Motor Accident Claims Tribunal, Hisar (hereinafter called as 'the Tribunal') in the claim petition under Section 166 of Motor Vehicles Act on account of death of her son in the aforesaid motor vehicular accident:-

Sr. No.	***Head***	***Amount***
1	Annual income as per II Schedule	Rs.15,000/-
2	Annual dependency	Rs.10,000/-
3	Multiplier	13
4	Total dependency (Rs.10,000 x 13)	Rs.1,30,000/-
5	Transportation and funeral charges	Rs.10,000/-
	Total compensation	Rs.1,40,000/-

As per the pleaded case of the claimant, the deceased was 19 years of age and a bachelor. On the fateful day, deceased alongwith pillion rider Vikrant was returning from Narnaund to Hansi on a scooter bearing No.21-A/6766. An auto-rickshaw (hereinafter referred to as 'offending vehicle') came in a rash and negligent manner from the opposite side and collided with the scooter of the deceased and as a result of which, the deceased died on the spot. The offending vehicle was stated to be carrying goods at the time of accident. It was claimed that the deceased was a florist and earning Rs.8,000/- per month. FIR No.21 dated 16.01.2003 was registered under Sections 279 and 304-A IPC at Police Station Hansi.

Learned counsel for the appellant *inter alia* contends that the Tribunal had awarded inadequate compensation, which was not in consonance with the settled law as laid down in ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270 and Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333*** and hence, the compensation required to be reassessed and modified accordingly. Learned counsel submits that the minimum wages for the relevant period were Rs.2,200/- per month and since the deceased was 19 years of age, 40% addition towards future prospects should have also been awarded. It has also been submitted that besides this, incorrect multiplier has been applied whereas as per the settled law the correct multiplier in the instant case should have been '18'. Furthermore, It has been submitted that no compensation has been awarded under the conventional heads.

Learned counsel for the insurance company while opposing the submissions made by counsel for the appellant submits that the involvement of the offending vehicle in the accident in question was highly suspect. He further submits that even assuming that the offending vehicle was actually involved in the accident in question, its driver was not even holding a valid and effective license and still further, he was plying the offending vehicle by breaching the terms and conditions of the insurance policy as well as the provisions of Motor Vehicles Act.

Heard learned counsel for the parties and perused the case file.

This Court does not find any ground to doubt that the offending vehicle was not involved in the accident in question. An FIR admittedly was registered soon after the accident in question against respondent No.1, who was proceeded against ex parte before the Tribunal. There has been no categoric denial by the respondent-Company that respondent No.1 was not driving the offending vehicle. Insurance Company has just denied that the offending vehicle was not being driven in a rash and negligent manner. Further more, the Company has nowhere disputed the involvement of the offending vehicle in the accident in question. Still further, respondent No.1 did not even step into the witness box to controvert the case of the claimant qua his involvement in the accident in question. Hence, an adverse inference would have to be drawn against the driver of the offending vehicle.

This Court concurs with the submissions made by the counsel for the appellant that since the deceased, who was a 19 year old boy, the monthly income in the sum of Rs.2,200/- per month should have been assessed as per the minimum wages for the unskilled worker notified by the State Government for the relevant year. Further, the appellant-claimant would also be entitled to compensation to the extent of 40% towards future prospects as per the settled law. It needs to be observed that no compensation has been granted to the claimant for loss of filial consortium. She would be thus, also entitled to Rs.40,000/- for loss of filial consortium as per *Pranay Sethi's case(supra)*. The claimant would be entitled to Rs.15,000/- each for loss of estate and for funeral expenses. Since it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years, 10% enhancement qua the above-mentioned conventional heads would have to be made. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimant, who is mother of the deceased, is entitled to Rs.44,000/- for loss of filial consortium.

Accordingly, the compensation is reassessed and modified as follows:

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs. 2,200/-
2	Future prospectus (40%)	Rs.880/-
3	Annual income (Rs.2200 + Rs.880 x 12)	Rs.36,960/-
3	Deduction towards personal expenses (1/2)	Rs.18,480/-
4	Annual Dependency	Rs.18,480/-
5	Multiplier	18
6	Total amount (Rs.18,480 x 18)	Rs.3,32,640/-
7	Loss of estate	Rs.16,500/-
8	Funeral expenses	Rs.16,500/-

Sr. No.	***Head***	***Amount***
9	Loss of consortium	Rs.44,000/-
	Total compensation	Rs.4,09,640/-

In the circumstances, the appellant-claimant is entitled to compensation of Rs.4,09,640/- along with interest at the rate of 8% per annum from the date of filing of the claim petition till its actual realization.

As a sequel to above, the instant appeal stands allowed.

25.07.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No