IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4763-2010(O&M)

Date of Decision-31.10.2022

Maneet Devi and another …Appellants

Versus

Anoop Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vinod Gupta, Advocate for the appellants.

Mr. Rajneesh Malhotra, with Ms Mehar Khanija, Advocate for respondent No.3-Insurance Company.

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HARKESH MANUJA, J.

1. Present appeal lays challenge to an award dated 05.02.2009 passed by the learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'Tribunal'), whereby, a sum of Rs.6,23,665/- has been awarded as compensation in favour of appellants/ claimants along with interest @ 9% per annum.

2. The brief facts which led to the filing of present appeal are that on 05.02.2009 at about 8:30 pm, Vijay pal (deceased) was coming from Hansi to his village Dhandheri while driving motorcycle bearing registration no. HR-21B-4684. When he crossed Samadhi of Peer Baba situated outside city, on Hansi-Hisar highway a truck (Dumper) bearing registration No. HR-15G-4711 (Offending Vehicle), being driven by respondent no. 1 herein in a rash and negligent manner, came from Hansi side and hit against motorcycle of Vijay Pal. As a result, he fell down and received multiple injuries which proved fatal. After causing accident, respondent no.1 ran away from the spot, thereafter, a canter came there and its driver took the injured to General Hospital, Hansi. Later on, he was shifted to Metro Hospital, Hisar where he succumbed to his injuries on 10.02.2009. A

criminal case was registered vide FIR No 74 dated 08.02.2009 against respondent No.1, under Sections 279, 337, and 304-A IPC at Police Station, Hansi.

3. In the claim petition filed by the appellants/ claimants being dependent upon the deceased, learned Tribunal having held that the accident occurred on account of rash and negligent driving of the offending vehicle and awarded compensation in the following manner:

Sr.No.	**Particulars**	**Amount (Rs.)**
1.	Annual income of deceased (3600 x 12)	Rs. 43,200/-
2.	Deduction of 1/3rd on account of personal expenses	Rs.28,800 /-
3.	Multiplier of 15	Rs.4,32,000/-
4.	Funeral Expenses	Rs. 6,000/-
5.	Medical expenses	Rs. 1,85,665/-
	TOTAL COMPENSATION:	Rs. 6,23,665/-

4. Present appeal has been filed by the appellants/ claimants seeking enhancement of compensation as awarded by the learned Tribunal.

5. Learned counsel for the appellants/ claimants contends that learned Tribunal had wrongly assessed income of deceased @ Rs.3600/- per month as minimum rate of wages of a skilled labour. He contends that deceased was graduate and was owning around 3-4 acres of land and a diary consisting of 15/16 buffaloes, thus, he was earning around Rs.25,000/- to Rs.30,000/- per month. He further contends that learned Tribunal wrongly applied multiplier of 15 whereas considering the age of

deceased to be 30 years, multiplier of 17 should have been applied. He also contends that while calculating dependency of deceased, future prospects have not been awarded and nothing has been awarded under conventional heads.

6. On the other hand, learned counsel for respondent No.3-Insurance Company contends that compensation awarded by learned Tribunal is just and fair and thus, does not require any interference.

7. Having heard learned counsel for the parties and gone through record of the case, I find force in the argument raised on behalf of learned counsel for the appellants/ claimants regarding income of the deceased. Apparently, learned Tribunal fell into an error while assessing notional income of the deceased @ Rs. 3600/- per month as that of a skilled labour. As per the claim petition, deceased was having 3-4 acres of agriculture land and was running a diary, in addition, he happened to be a graduate as well and also used to do work of contractor through "The New Dhandheri Cooperative L&C Society Limited, Dhandheri" to which he was holding special power of attorney. As per the claim petition, from these professions, he was earning around Rs. 25,000/- per month. However, learned Tribunal discarded the plea of appellants/ claimants on account of absence of any cogent and relevant evidence with respect to his income.

8. In order to prove the case of claimants, PW-6 Maneet Devi (widow of deceased) herself appeared as witness and deposed that her husband was graduate and holding 3-4 acres of land. She further deposed that he was owning 15/16 buffaloes and used to sell milk to Pera Bhandar of Hansi. She also deposed that deceased was doing the business as a contractor. To corroborate the statement regarding qualification and land holding of the deceased, his graduation certificate as Ex. P53 and copy of

revenue record as Mark-1 was brought on record. To substantiate his work as a contractor, document of ownership of "The New Dhandheri Cooperative L&C Society Limited, Dhandheri", was also brought on record as Mark-B.

9. I have gone through the entire oral as well as documentary evidence. From the copy of the revenue record, It has been sufficiently proved that deceased was owning around 4 acres of land. No doubt, land is still available to the appellants, however, their income and saving from this land would be far less as they would need to engage someone to do the agricultural work. So far as income from dairy business is concerned, considering normal course of activities in rural areas, such business is ancillary to agriculture and therefore expecting documentary proof for such income would be highly unreasonable. Learned Tribunal has neither discussed nor any finding has been recorded with respect to the work of deceased as a contractor. However, a careful reading of document of ownership of "The New Dhandheri Cooperative L&C Society Limited, Dhandheri", brought on record as Mark-B, shows that deceased Vijay Pal was representative of the said society and therefore, it cannot be denied that he must be earning some amount from this work as well.

10. Based on the discussion made hereinabove, I am of the considered opinion that notional income of deceased as Rs.3600/- per month is highly insufficient and on extremely lower side. After taking into consideration the fact that deceased was involved in multifarious income generating activities as discussed above, it would be appropriate to assess the income of the deceased @ Rs.10,000/- per month in the facts and circumstances of the case in hand.

11. Besides this, learned Tribunal applied multiplier of '15' and future prospects have not been considered while calculating dependency of deceased, however, considering the age of deceased to be 30 years, multiplier of '17' should have been applied besides awarding future prospects @ 40% since he was self- employed.

12. Further, besides this, learned Tribunal awarded Rs.6,000/- towards funeral expense. However, applying the principles of law laid down by Hon'ble Supreme Court in **"National Insurance Company Ltd. Vs. Pranay Sethi and others"**, 2017(4) RCR (Civil) 1009, compensation under the said head needs to be enhanced from Rs. 6,000/- to Rs. 16,500/-. Furthermore, the claimants are entitled for Rs.44,000/- each as compensation under the head of loss of consortium (spousal and filial) and Rs.16,500/- towards loss of estate.

13. In view of what has been stated hereinabove, the appellants/claimants shall be entitled for the grant of following compensation:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased*	*Rs. 1,20,000/-*
2.	*Add 40% of Future prospects*	*Rs.48,000/-*
3	*Total Income*	*Rs.1,68,000/-*
4.	*Deduction of 1/3rd*	*Rs. 1,12,000/-*
5.	*Multiplier of 17 (Rs.1,12,000/- x 17)*	*Rs.19,04,000/-*
6.	*Medical Expenses*	*Rs.1,85,665/-*
6.	*Funeral Expenses*	*Rs.16,500/-*

7.	*Loss of Consortium*	*Rs.88,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.22,10,665/-*
	Amount Awarded by the Tribunal	*Rs. 6,23,665/-*
	Enhanced Amount	*Rs.15,87,000/-*

14. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation. Due to the afore-mentioned reasons, the present appeal is disposed of in the above-mentioned terms.

15. All pending applications if any stand disposed of accordingly.

October 31, 2022 **(HARKESH MANUJA)**
anil **JUDGE**

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No