

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

FAO-4569-2011

Date of decision : 19.05.2022

Joginder and another**..... Appellants****versus****Ashok and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Vaibhav Parashar, Advocate
for the appellants.

Mr. Vikrant Rana, Advocate
for respondents No.1 and 2.

Mr. Abhishek Goyal, Advocate for
Mr. Pardeep Goyal, Advocate
for respondent No.3-Insurance Company.

PANKAJ JAIN, J.

Challenge in this appeal is to the award dated 20.04.2010 passed by learned Motor Accidents Claim Tribunal, Faridabad (hereinafter referred to as 'Tribunal'). Appellants are seeking enhancement of compensation.

2. The present lis has arisen out of an unfortunate accident involving trolly bearing registration No. HR-61-2051 resulting into untimely death of deceased Rajiv Tanwar aged about 25 years (at the time of accident).

3. As per the claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as '1988 Act') on 17.02.2008, one Jai Bhagwan was driving motor cycle No.HR-29 S 2125 alongwith the deceased Rajiv Tanwar as pillion rider. They were going from the side of Iffco Chowk, Gurgaon towards Faridabad. When they reached Iffco Chowk, the offending trolly bearing registration No.HR-61-2051 being driven

negligently and rashly with a high speed and without blowing any horn, struck against the motorcycle. Resultantly, both riders of the motorcycle fell on the road and had received multiple injuries. Rajiv Tanwar-the deceased was immediately shifted to a private hospital and thereafter was taken to Safdarjang Hospital, Delhi. He succumbed to the injuries on the same day i.e. 17.02.2008.

4. The claim petition was contested on merits. Respondents No.1 and 2 filed a joint written statement, whereas a separate written statement was filed by respondent No.3-Insurance Company.

5. On the pleadings of the parties, the learned MACT framed the following issues:-

“1. Whether the respondent no. 1 has driven truck trailer no. HR 61 2052 rashly and negligently on 17.2.2008 in the area of M.G. Road, Gurgaon, in front of Gurgaon Central Building and caused the accident with the Motor Cycle No. HR-29-S-2125 causing death of Rajiv Tanwar son of Joginder and injuries to Jai Bhagwan as alleged, if so, to what effect? OPP

2. Whether the petitioners being LRs of deceased Rajiv Tanwar and being injured Jai Bhagwan are entitled to any compensation, if so, to what amount and from whom? OPP

3. Whether at the time of accident the respondent no. 1 was not holding a valid and effective driving licence as alleged, if so, to what effect? OPR-3

4. Relief.

6. Counsel for the appellants would submit that the finding recorded by the Tribunal vis-a-vis issue No.2 needs modification as the income of the deceased has been wrongly assessed to be Rs. 3,000/- per month whereas cogent evidence has been led to show that Rajiv Tanwar-deceased was

employed with PW-4 Jai Nath as driver and was earning Rs.6,000/- per month. Rs. 3000/- assessed as income by deeming the deceased to be a casual labour is even less than wages notified by the State Government under the Minimum Wages Act which has been notified to be Rs.3586/- per month. He further submits that nothing has been paid for future prospects of the deceased, who was 25 years of young boy. Multiplier of 16 has been applied, whereas it should have been 18 as per law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121**. He further claims that under conventional heads also, the amounts need to be enhanced as per law laid down in **National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680**.

7. Per contra, counsel for respondents No.1 and 2 has argued that apart from a bald statement made by PW-4 that the deceased was employed as driver, no evidence has been led. Even the driving licence of the deceased has not been proved to show that he was capable of being employed as a driver. So far as modification in the multiplier and the conventional heads are concerned, counsel for respondents are not in a position to dispute the assertions made by counsel for the appellants.

8. Having heard counsel for the parties and after perusing the record of the case, this Court is of the considered opinion that the appellants/claimants have not been able to prove the employment of the deceased. Thus, the Court is left with no other option, but to assess him as an unskilled labour for the purpose of calculating the compensation. As per the notification issued by the State Government for the relevant period of time, minimum wages were notified to be @ 3,856/- per month. Thus, the income of the deceased is assessed @ Rs.3,586/- per month. He being 25 years of age at the time of death,

the claimants are entitled for 40% future prospects. Loss of dependency has been rightly calculated by applying a cut of 1/2. Multiplier is modified from 16 to 18. Claimants shall be entitled for Rs.40,000/- each on account of loss of love and affection. Further sum of Rs.15,000/- is awarded under the head of loss of estate and Rs.20,000/- for funeral expenses.

9. As a sequel of the discussion above, the appeal is allowed. The award of the Tribunal is modified. Compensation payable to the claimants shall be worked out as per the amounts modified herein above. As held by the Tribunal, appellants shall be entitled for interest @ 7.5% per annum from the date of filing the petition till the date of actual realization of the amount of compensation. Needless to say any amount already paid shall be set off and adjusted.

(PANKAJ JAIN)
JUDGE

19.05.2022

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Whether speaking/reasoned	Yes
Whether Reportable :	No