IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1 of 2016
Date of Reserved: 30.11.2022
Date of Decision: 09.12.2022

Kreshni Devi and others ......Appellants

Vs.

Satpal and another ....Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. R.K. Agnihotri, Advocate,
for the appellants.

None for respondent no. 1

Mr. Rajneesh Malhotra, Advocate,
for respondent no. 2-Insurance Company.

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HARPREET KAUR JEEWAN J.

This is an appeal against the Award dated 03.10.2015, passed by the learned Motor Accidents Claims Tribunal, Ambala, for seeking enhancement of compensation awarded by the Tribunal.

2. The brief facts of the case are that on 11.12.2014, Sahab Singh, met with an accident while driving a motor-cycle on being hit by a *'canter'* which was being driven by Satpal (respondent no. 1 herein) in a rash and negligent manner who is the owner and driver of the said *'Canter'* FIR No. 166 dated 11.12.2014, under Sections 279/337/304-A of the IPC, at Police Station Ismailabad, District Kurukshetra, was registered against Satpal regarding the said accident. Appellants being the legal heirs of the deceased, filed a claim petition against respondent No. 1 Satpal and respondent no. 2, who is the insurer of the said *'Canter'*. The Tribunal

calculated the compensation by considering the income of the deceased as Rs. 8,000/- per month, applying multiplier of 15 and considering his age as 40 years. Keeping in view the number of dependents, 1/4th deduction towards his personal expenses was made out of the annual income, in terms of the ratio of the judgment of the Supreme Court in **Sarla Verma and others** vs. **Delhi Transport Corporation and another** 2019 ACJ 1298 SC. The Tribunal further awarded a compensation of Rs. 20,000/- on account of transportation, funeral and last rights of the deceased and a sum of Rs. 20,000/- on account of loss of consortium to Phulo Devi (appellant no. 2). The insurance company was directed to pay the compensation and given the right to recover the same from respondent no. 1, who is the owner and driver of the '*Canter'* observing that he was holding a driving licence whereby authorized to drive only "non-transport vehicle" but at the time of accident he was driving a "heavy goods vehicle". It was further observed that by holding a licence for Light Motor Vehicle, he was not authorized to drive a heavy goods vehicle. Consequently, a total sum of Rs. 11,20,000/- was awarded as compensation to be shared by all the appellants in the specified ratio therein.

3. Upon notice of the present appeal, respondent no. 1 was served but none appeared on his behalf to contest the present appeal. However, respondent no. 2-insurance company contested the present appeal.

4. The learned counsel for the appellants has submitted that the learned Tribunal has erred in considering the income of the deceased as Rs. 8,000/- per month. It has been established that the deceased was an

agriculturalist. J Forms Exs. P-3 to P-14, issued by the trading company have been placed on record. It was further submitted that the Tribunal has not granted any consortium to the children of the deceased. Hence, the appellants are entitled for enhancement of compensation. Even the future prospectus have not been added while calculating the compensation.

5. On the other hand, learned counsel for respondent no. 2 (insurance company) has submitted that the income of the deceased has been rightly assessed by the Tribunal.

6. Considering the evidence on record, it is evident that J Forms Exs. P-3 to P-14 were relied upon by appellants. A perusal of the said J Forms indicate that these were issued on the name of the deceased prior to the date of the accident. Considering the income of the deceased from agricultural pursuits, mentioned in the said J Forms, it can be safely presumed that the deceased was in active cultivation of the land. Even though this fact is to be considered that the agricultural land belonging to the deceased is inherited by his LRs and they can cultivate the said land and draw income but still the income of an agriculturist who is into active self cultivation of the land cannot be equated with a labourer. Keeping in view the totality of the circumstances, the monthly income of the deceased is assessed as Rs. 12,000/- per month.

7. It is further evident that the Tribunal has failed to add any income towards future prospects, which should have been taken into consideration in terms of the ratio of the judgment of the Supreme Court in **National Insurance Company Ltd.** vs. **Pranay Sethi and others** 2017 (4) RCR (Civil) 1009. The future prospectus @ of 25% of the monthly

income are required to be added since the age of the deceased has been assessed as 40 years and he was self-employed. Therefore, the monthly income of the deceased after adding 25% of the future prospects comes to Rs. 15,000/- per month [12,000/- + 3,000/- (25% of 12000)]. Consequently, the annual income of the deceased comes to Rs. 1,80,000/- (15,000 x 12). After deduction of $1/4^{th}$ towards personal and living expenses, the net annual income of the deceased comes to Rs. 1,35,000/- (1,80,000 – 45,000). As already noticed, a multiplier of 15 was rightly applied by Tribunal and therefore; after applying the same, the total income of the deceased comes to Rs. 20,25,000/- (1,35,000/- x 15).

8. In view of the decision by the Hon'ble Supreme Court of India in **New India Assurance Company Limited** vs. **Smt. Somwati and others** (2020) 9 SCC 644. Appellant No. 1, Kreshni Devi is entitled to filial consortium of Rs. 40,000/- being mother of the deceased. Even appellant no. 2, i.e. the widow of the deceased is entitled to a sum of Rs. 40,000/- as consortium instead of Rs. 20,000/- as awarded by the Tribunal. The appellant No. 3 to 5 are the major children of the deceased, but is not a case of pre-mature death of a parent, so they are not entitled to parental consortium. As such the total compensation is calculated as under:-

Sr. No.	**Heads**	**Amount (in Rupees)**
1	Annual dependency of the claimants after deduction of $1/4^{th}$ towards personal and living expenses	Rs. 1,35,000/-
2	Multiplier	'15'
3	Total Loss of Dependency (Rs. 1,35,000/- x 15	**Rs. 20,25,000/-**

Sr. No.	Heads	Amount (in Rupees)
4	Transport, Funeral and Last rites expenses	Rs. 20,000/-
5	Loss of Consortium to appellant No. 2	40,000/-
6	Filial Consortium to appellant No. 1	40,000/-
	TOTAL	**21,25,000/-**

9. The Tribunal has awarded a compensation of Rs. 11,20,000/-, therefore, the appellants would be entitled to get an additional compensation amounting to **Rs. 10,05,000/-** (21,25,000- 11,20,000). The appellants-claimants would be entitled to get the additional compensation in the same ratio as directed by the Tribunal in the impugned Award. They would be entitled interest @ of 7.5% per annum from the date of the filing of the appeal till actual realization. The liability to pay the compensation will remain upon the insurer, however, they will be entitled to recover the same from the owner/driver as per the observations made by the Tribunal, in terms of the original Award.

10. The appeal is thus, partly allowed with the aforesaid modification.

December 09, 2022 **(HARPREET KAUR JEEWAN)**
nitin **JUDGE**

Whether Speaking Yes/No
Whether Reportable Yes/No