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

**FAO-1507-2016**
**Date of Decision:24.11.2022**

**Sunita Devi and others** ...... Petitioner(s)

**Versus**

**Mithan Singh Rawat and others** ..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Susheel Gautam, Advocate for the appellants.

Mr. Lalit Garg, Advocate for respondent No.3-Insurance Company.

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**RITU TAGORE, J.**

1. The widow and two minor children of the deceased-Satish Kumar (herein referred to as "the claimants"), have come forward in this appeal to assail the award dated 09.10.2015 as passed by the Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as the "Ld. Tribunal") on the ground of inadequacy in the compensation amount.

**Facts of the case:-**

2. On 23.05.2013, the deceased, namely, Satish Kumar along with Ram Mehar son of Sher Singh was returning from Badri Nath to his village Chhichhrana, District Panipat on Motorcycle bearing No. HR-06R-4269. At about 7.15 a.m., when they reached near Sonala, Karan Prayag, a bus bearing No.UA-11-1001(hereinafter referred to as "the offending Vehicle"), being driven by respondent No.1-driver, in a rash and negligent manner, came from behind and directly hit into the motorcycle of the deceased. As a result, the deceased sustained multiple grievous injuries on his person. He was taken to Govt. Hostpital, Gopeshwar , where he succumbed to the injuries. With respect to the

accident, DDR was registered on 23.05.2013(Ex.P1) and later on FIR No.21, dated 12.08.2013, under Sections 279 and 304-A of IPC (Ex.P2), was also registered against respondent No.1-driver, at Police Station Karan Prayag.

3. According to the averments of the claimants, the deceased was 35 years old. He was doing agriculture work and was also running a milk dairy, thereby, having an income of Rs.25,000/- per month. The claimants were solely dependent upon his income.

4. The driver and owner (respondents no. 1 and 2 respectively ) filed their written statement, denied the accident and pleaded their false implication. Besides, they took the averment of the offending vehicle being comprehensively insured with the insurer-respondent no.3 and being driven as per the motor vehicle rules by a duly licenced driver, at the time of the accident.

5. The Insurance Company-respondent no.3 in its averments also denied the accident and false implication of the driver and the offending vehicle. The plea of violation of the terms and conditions of the policy by the owner and driver was also taken . The claimants were also asked to prove their averments.

**Findings of the Ld. Tribunal**:-

6. The Ld. Tribunal framed the issues. On the assessment of the evidence, the Ld. Tribunal held the driver-respondent No.1 as responsible for causing the accident by driving the offending vehicle in a rash and negligent manner, leading to the death of Satish Kumar. The Tribunal held the age of the deceased to be of 32-1/2 years at the time of the accident and the claimants being fully dependent upon the earnings of the deceased for their livelihood. By taking the deceased as a skilled laborer, his income was taken at Rs.5602/- per month, on the basis of minimum wages, as prevalent in the year of the accident as claimants failed to prove the claimed income of the deceased. Accordingly, the Ld. Tribunal granted the following compensation:-

| **Sr. No.** | **Heads** | **Amount** |
|---|---|---|
| **1.** | **Monthly income of the deceased** | **Rs.5602/-** |
| **2.** | **Personal and living expenses of deceased Satish Kumar i.e.1/3rd of Rs.5602** | **Rs.1867/-** |
| **3.** | **Monthly loss to family:** | **Rs,5602-1867=Rs.3,735/-** |
| **4.** | **Annual loss to family** | **Rs.3,735X12=44,820/-** |
| **5.** | **Total loss to family** | **Rs.44,820x16=Rs.7,17,120/-** |

7. In addition to the above said amount, the Ld. Tribunal had also granted a sum of Rs.1,00,000/- towards loss of consortium, Rs.50,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Thus, granted , total compensation at Rs.8,92,120/ to the claimants along with interest @ 7.5 % per annum from the date of filing of the petition till its realization with certain directions regarding the disbursal of the awarded amount. All the respondents were made jointly and severally liable to pay the compensation.

**Submissions of the counsels**:-

8. The learned counsel for the claimants urged that keeping in view the law laid down in ***National Insurance Company Ltd. vs. Pranay Sethi, (2017) 16 SCC 680***, ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Churu Ram and others (2018) 18 SCC 130***, ***and*** ***The New India Assurance Co. Ltd Vs. Smt. Somwati and others, 2020(3) Apex Court Judgment (SC) 598***, the claimants were entitled for 50% increase in the actual income of the deceased towards the future prospects. However, learned Tribunal erred in not applying 50% addition in the income of the deceased towards the future prospects. It was contended that accordingly, the income of the deceased be assessed and

deduction towards $1/4^{th}$ of the personal living expenses of the deceased be made and loss of income be assessed.

9. The learned counsel for the claimants next urged that the Ld. Tribunal, while passing the impugned award, failed to grant compensation under the head of 'loss of consortium' to each of the claimants and prayed to re-assess the compensation, accordingly.

10. *Per contra*, learned counsel for the respondent-Insurance Company submitted that the deceased was 36 years and 09 months old at the time of the accident as per his DL (Ex.P10) , containing his date of birth as 09.08.1976. The learned tribunal wrongly held the age of deceased at 32 years. The multiplier of 15, instead of 16 as applied by the Ld. Tribunal, needs to be applied in the present case, to determine the loss of income to the claimants by making deductions to the extent of $1/3^{rd}$ from the total income of the deceased towards his personal maintenance and living expenses, keeping in view the dependents upon the deceased. By applying the ratio of the judgments referred above, the learned counsel for the respondent-insurance company contended that the compensation on the conventional heads be re-consider as the learned Tribunal faulted in granting the same, contrary to the directions given in the aforesaid precedents.

11. I have considered the submissions made by the learned counsel for the parties, perused the paper-book as well as the records.

12. The liability of the insurance Company is not disputed.

**Analysis**:-

13. The findings of the Ld. Tribunal on the cause of the accident, attributing sole negligence and rashness upon the driver-respondent No.1 and consequently leading to the death of the deceased on account of injuries sustained as such are not in dispute. No appeal or cross-objections have been filed by the respondents (Driver, owner and insurer of the offending vehicle). The claimants to prove the

accident, relied upon the testimonial evidence of Ram Mehar PW-1, an eye-witness, who substantiated the facts leading to the accident, alleging the driver–respondent no.1, as solely responsible for causing the accident. Further, reliance was placed on DDR dated 23.05.2013 (Ex.P1), which was written soon after the accident, detailing the manner of the accident and involvement of the offending vehicle. The contents of the DDR are further corroborated by the copy of the FIR (Ex.P2), copy of the final report under Section 173 Cr.P.C. (Ex.P4) and Copy of the postmortem report (Ex.P7) observing that fatal injuries were sustained by the deceased in the accident. As evident from the findings of the Ld. Tribunal, the respondents led no evidence to rebut the evidence of the claimants. Therefore, the Ld. Tribunal has rightly relied upon un-rebutted evidence of the claimants. Thus, nothing has been brought on record by the respondents to hold that the findings of the Tribunal on the aspect of the accident having caused by respondent No.1 with his rash and negligent driving has any illegality or infirmity in the same. Accordingly, the said findings are upheld.

14. The perusal of the record would show that the claimants led no positive evidence to show the claimed occupation and earnings of the deceased. Ld. Tribunal by placing reliance on Ex.P11, the certificate given by the Dairy Development, Haryana, considered the deceased as a 'skilled labourer' and by relying upon the minimum wages as prevalent in the State of Haryana in the year 2013, took the income of the deceased at Rs.5,602/- per month.

15. On the aforesaid aspect of the matter, to my mind, the Ld. Tribunal rightly took the income of the deceased at Rs.5,602/-. However, the Tribunal has flawed in taking the age of the deceased as 32-1/2 years. In the post mortem report, (Ex.P7), the age of the deceased has been mentioned as 36 years. The driving licence of the deceased (Ex.P10), contains his date of birth as 07.08.1976.. It can be assumed that the aforesaid date of birth was given by the deceased himself. Therefore, the same is considered. In view thereof, the age of

the deceased at the time of the accident, comes at 36-1/2 years and multiplier of 15 needs to be taken, while assessing the loss of income, by relying on judgment in the case of ***Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Another*, (*2009) 6 SCC 121*.**

16. The Ld. Tribunal also erred in calculating the loss of income to the claimants, for not having added loss of future prospects on the basis of observations made in ***Magma General Insurance Co. Ltd. case (supra)***. In the present case, 40 % needs to be added in the income of the deceased towards future prospects. However, the Ld. Tribunal has rightly made the deduction of 1/3$^{rd}$ from the income of the deceased towards his personal and living expenses, keeping in view the number of dependents were three upon him. The argument of the learned counsel for the claimants that 1/4$^{th}$ deduction should have been made towards personal expenses, cannot be accepted. The Ld. Tribunal has also erred while granting and omitting to grant compensation under the conventional heads in accordance with the directions made in above referred to judicial precedents.

17. Following the ratio of law laid down by Hon'ble Supreme Court in the aforementioned precedents, the compensation is re-assessed as under :-

| **Sr. No.** | **Heads** | **Calculation/compensation** |
|---|---|---|
| 1. | Income | Rs.5,602/- (per month) |
| 2. | 40% increase towards future prospects | Rs.5602x40/100=2240/- per month |
| 3. | Total income per month( Sr. No1+2) | Rs.7,842/- per month |
| 4 | 1/3 deduction towards personal expenses and living | Rs.7842/3=Rs.2614/- per month |
| 5 | Total income after deduction | Rs.7842-2614=Rs.5228/- per month |
| 6. | Compensation applying multiplier of 15 on basis of age 36 -1/2 years | Rs.5228 x 12 x 15 |

| | | |
|---|---|---|
| | | = Rs.9,41,040 /- |
| 7. | Funeral expenses | Rs.16,500/- (15,000+1,500 by adding 10% increase per authority ***'N. Jayasree and ors. vs. Cholamandlam MS General Ins. Co. Ltd.' 2021 ACJ 2685) by reducing the amount as granted by the Ld. Tribunal at Rs.25,000/-*** |
| 8. | Loss of consortium- spousal and parental | Rs.1,20,000/- (Rs.40,000/-each for three claimants) per authority ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others' (2018) 18 SCC 130***. |
| 9. | Loss of estate | Rs.16,500 (15,000 + 1,500) as per authority ***'N. Jayasree and ors. vs. Cholamandlam MS General Ins. Co. Ltd.' 2021 ACJ 2685)*** |
| 10. | Total compensation | Rs.10,94,040/- |
| 11. | Enhanced compensation | **Rs.2,01,920/-**<br>(10,94,040 – 8,92,120=2,01,920) |

18. Resultantly, the enhanced amount of compensation of **Rs.2,01,920/-** shall be payable to the claimants along with the rate of interest as granted by the learned Tribunal, from the date of filing of the claim petition till its realization, within a period of two months from the date of receipt of certified copy of this judgment, with the Learned Tribunal. The remaining conditions of disbursal of amount as given by the learned Tribunal shall remain unaltered. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

19. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

20. Pending miscellaneous application, if any, stand disposed of.

**(RITU TAGORE)**
**JUDGE**

**24.11.2022**
Anjal

Whether speaking : Yes/No

Whether reportable : Yes/No