

212-2

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

**FAO No.5849 of 2013 (O&M)
Date of Decision : 15.03.2022**

Anamika Jain @ Anamika Aggarwal and OthersAppellants

Versus

Surjit Kumar and AnotherRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Padam Kant Dwivedi, Advocate for the appellants.

Mr. Deepak Suri, Advocate for respondent No.2.

None for respondent No.1.

ALKA SARIN, J.

The present appeal has been filed against the award dated 04.03.2013 passed by the Motor Accident Claims Tribunal, Ferozepur (hereafter referred to as the 'Tribunal') whereby compensation of ₹48,00,000/- has been awarded to the claimant-appellants for death of Dr. Vikas Jain (hereinafter referred to as the 'deceased') in a motor vehicle accident with truck bearing registration no.RJ-09-GA-0189 (hereinafter referred to as the 'offending vehicle').

In the present case, the claimants being the widow, two minor daughters and mother of the deceased, Dr. Vikas Jain, who was running his own hospital in the name and style of M/s Jain Eye Hospital at Bazar No.2, Ferozepur Cantt., had filed the claim petition. It was stated in the claim petition that the deceased was an Eye Surgeon and at the time of his death he

was aged about 39 to 40 years and was earning ₹70,000/- per month. On the intervening night of 15.12.2011 and 16.12.2011 the deceased along with his assistant, namely, Parshotam Saini, was returning from Civil Hospital Bagha Purana, District Moga after attending a Free Eye Camp in his own car bearing registration No.PB-05-R-1430 and going towards Ferozepur Cantt. At about 12.15 hours they reached Mahla Chowk Mudki and there a truck bearing registration No.RJ-09-GA-0189 (offending vehicle) came at a high speed from the side of Talwandi without blowing horn, in a rash and negligent manner, and caused the accident with the car of the deceased. The car was dragged to some distance resulting in multiple injuries to the occupants of the car. Some people present at the spot removed the occupants from the car and took them to Guru Gobind Singh Medical College and Hospital, Faridkot. However, Dr. Vikas Jain is stated to have died on the way. His assistant, Parshotam Saini, was admitted in the hospital.

Respondent no.1 herein filed a separate reply stating therein that no accident had taken place and the FIR had wrongly been registered against him and that postmortem documents and the pictorial diagram had been got prepared in connivance with the officials of the Civil Hospital just to extract money from the answering respondent no.1. The respondent No.2-insurance company filed a separate reply taking various pleas including that no accident took place and that the claim petition was based on false facts. It was further stated that though it is not admitted, however, even if the accident did take place it is a case of negligence on the part of the driver of the car who had come in the middle of the road and lost control over it and stuck with some unknown vehicle.

On the basis of pleadings of the parties, the following issues

- (1) Whether the claimants are the legal heirs of Dr. Vikas Jain ? OPP
- (ii) Whether the Dr. Vikas Jain had died due to the injuries with the truck driven by respondent no.1 ? OPP
- (iii) Whether the claimants are entitled to the compensation, if so, at what amount and from whom ? OPP
- (iv) Relief.

In support of their claim, the claimant-appellants examined Anamika Jain as AW-1, Parshotam Saini as AW-2, Shiv Kumar Golyan as AW-3 and Anil Kataria as AW-4.

Respondent no.1 herein appeared himself as RW-1. On behalf of respondent No.2-Insurance Company, copy of the insurance policy of the offending vehicle was tendered into evidence as Ex.R-6.

On the basis of the pleadings of the parties and the evidence on the record, the Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Annual Income	₹ 4,02,154/-
2	Annual dependency of the claimants after deduction of 1/4 th towards personal expenses	₹3,01,500/-
3	Multiplier '15'	₹3,01,500x15 = ₹45,22,500/-
4	Funeral Expenses	₹5,000/-
5	Consortium	₹10,000/-
6	Loss of Estate	₹50,000/-
7	Future Prospects	₹2,12,500/-
8	Total Compensation	₹48,00,000/-

The Tribunal also awarded interest @ 9% per annum from the date of the award till the realization of the entire amount.

Learned counsel for the claimant-appellants would contend that the amount of compensation awarded by the Tribunal is not in consonance with the judgments passed by the Hon'ble Supreme Court in National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 Supreme Court Cases 680], Sarla Verma & Ors. V/s Delhi Transport Corporation & Anr. [2009(6) Supreme Court Cases 121], and Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 Supreme Court Cases 130].

Learned counsel for the claimant-appellants would contend that an amount of ₹10,000/- has been awarded by the Tribunal towards consortium whereas it should be ₹40,000/- each as per the judgment of Hon'ble Supreme Court in the case of "Magma General Insurance Company Ltd. (supra).

Learned counsel for respondent No.2-insurance company has vehemently contended that the compensation awarded to the claimants is far in excess and there is no scope for any further enhancement. It has further been contended by learned counsel for respondent No.2-insurance company that in fact the amount needs to be reduced in view of the fact that amount towards income tax has not been deducted.

I have heard learned counsel for the parties.

The connected appeal filed by the respondent No.2-insurance company being FAO No.4192 of 2013 has been dismissed by a separate order of even date whereby a challenge to the award of the Tribunal on the ground that there was a contributory negligence on the part of the

In the present case, a perusal of the award passed by the Tribunal reveals that the amount of compensation awarded by the Tribunal is not in consonance with the law laid down by Hon’ble Supreme Court in the cases of National Insurance Company Ltd. (supra), Sarla Verma (supra), Pranay Sethi (supra) and Magma General Insurance Company Limited (supra). The Tribunal while awarding the compensation ought to have granted future prospects at the rate of 40% as laid down in the case of Pranay Sethi (supra). Further, the amount awarded towards consortium is also not in consonance with the law laid down by the Supreme Court in the case of Magma General Insurance Company Limited (supra). The argument of the learned counsel for respondent No.2-insurance company qua deduction of income tax is fairly conceded by the learned counsel for the claimant-appellants.

Keeping in view the aforesaid decisions as also the fact that no amount had been deducted towards income tax as per the Income Tax Returns, I deem it appropriate to award the following compensation under the respective heads as stated below :

Sr. No.	Heads	Compensation Awarded
1	Annual Income	₹ 4,02,154/-
2	Deduction as per Income Tax Return (as per IT Return of Financial Year 2010-11)	₹14,787/-
3	Net Income	₹ 3,87,367/-
4	Annual dependency of the claimants after deduction of 1/4 th towards personal expenses	₹ 2,90,525/-
5	Future Prospects @ 40%	₹ 2,90,525+1,16,210/- =₹4,06,735/-
6	Multiplier '15'	₹4,06,735x15 = ₹61,01,025/-
7	Loss of Estate	₹50,000/-

8	<u>Loss of Consortium</u> (i) Parental (2 children) (ii) Spousal (iii) Filial	₹80,000 (₹40,000x2) ₹40,000 ₹40,000 (Total ₹1,60,000/-)
9	Funeral Expenses	₹15,000/-
	Total Compensation	₹63,26,025/-

The amount in excess over what has already been awarded by the Tribunal shall also attract interest @ 9% from the date of the award till the realization of the entire amount. The amount shall be apportioned between the claimant-appellants as directed by the Tribunal.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

15.03.2022
Yogesh Sharma

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO