

219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-6190-2013 (O&M)
Decided on : 19.05.2022

Kitabo and another

..... Appellants

Versus

Mohan Lal and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. M.P.S.Chandel, Advocate
for the appellants.

Mr. Sandeep Goyal, Advocate
for respondents No.1 and 2.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3.

Manjari Nehru Kaul, J.(Oral)

CM-25465-CII-2013

Application is allowed as prayed for and delay of 692 days in
refiling the appeal is condoned.

CM-25466-CII-2013

Application is allowed as prayed for and delay of 109 days in
filing the appeal is condoned.

Main case

The appellants-claimants by way of instant appeal are
impugning the award dated 08.03.2011 passed by Motor Accidents Claims
Tribunal, Hisar (hereinafter called as 'the Tribunal') passed in the claim
petition under Section 166 of Motor Vehicles Act whereby following
compensation was assessed and awarded to the appellants on account of

death of Sandeep Kumar in the road accident, which took place on 07.12.2009:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.3,500/-
2	Annual income 12 x 3,500/-	Rs.42,000/-
3	Deduction towards personal expenses	Rs.1,750/-
4	Dependency	Rs.1,750/-
5	Total dependency (Rs.1,750 x 12)	Rs.21,000/-
6	Multiplier	13
7	Total amount	Rs.2,73,000/-
8	Transportation and last rites	Rs.7,000/-
9	Total compensation	Rs.2,80,000/-

The amount of compensation along with interest @ 9% p.a. was ordered to be paid by the respondents jointly and severally. Rs.1,80,000/- out of the total compensation amount was directed to be paid to appellant No.1 and rest of the amount to appellant No.2.

Brief facts of the case as pleaded in the claim petition may be noticed as thus; Sandeep Kumar (deceased), aged 22 years, was stated to be running a computer centre at Hisar as well as pursuing his MBA. The deceased was stated to be a qualified CPA (Certified Professional Accountant) from National Institute of Finance and Accounts (NIFA). On 07.12.2009 at about 9.30 pm, he along with one Banwari Lal was riding his motorcycle bearing registration No.HR-20L-6339 and when they reached near Mahendra Johar on Balsamand road, their motorcycle crashed into a stationary tractor trolley bearing registration No.HR-20P-7802 (hereinafter referred to as 'the offending vehicle'), which was parked negligently on the road without any parking lights. Due to the serious and grievous injuries

suffered, the deceased succumbed to them on the spot. Pillion rider Banwari Lal also received injuries in the accident in question. FIR No.1092 dated 08.12.2009 was lodged at Police Station Sadar, Hisar on the statement of said Banwari Lal.

On being put to notice, respondents put in appearance. Respondents No.1 and 2 i.e. driver and the owner of the offending vehicle in their joint written statement denied the allegations and stated that no accident as alleged had taken place. Respondent No.3 -Insurance Company while filing its separate written statement denied the factum of the accident in question having taken place with the offending vehicle. It was also submitted that the driver of the offending vehicle in question was not holding a valid and effective driving licence and hence, the insurance company could not be fastened the liability to compensate the claimants-appellants.

Learned counsel for the appellants-claimants vehemently submits that the compensation awarded vide the impugned award is grossly inadequate and meagre and deserves to be reassessed and modified on the following grounds:

- (i) Even though the deceased was a highly qualified person and was also running a computer centre, the Tribunal gravely erred in assessing his income at just Rs.3,500/- per month by treating him as an unskilled labourer.
- (ii) That the multiplier applicable in the case in hand would be 18 as the deceased admittedly was 22 years of age on the date of accident, however, an incorrect multiplier i.e.

13 had been applied on the basis of the age of the mother of the deceased.

- (iii) That no compensation was awarded qua future prospects and filial consortium to the claimants.
- (iv) That even qua other conventional heads like loss of estate, funeral expenses, no compensation had been awarded by the Tribunal to the claimants.

On the other hand, learned counsel appearing for the insurance company while opposing the prayer and submissions made by counsel opposite submits that in fact, it was the deceased, who was riding his motorcycle in a rash and negligent manner. He submits that the involvement of the offending vehicle in the accident in question was highly suspect. He therefore submits that the compensation awarded by the Tribunal did not warrant any interference as it was adequate and just.

After hearing learned counsel for the parties and on perusing the case file, this Court is of the opinion that the compensation awarded by the Tribunal requires to be reassessed in consonance with the judgment rendered by the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333***

It has not been disputed that the deceased, aged 22 years, besides pursuing his MBA was also running a computer centre. He was a qualified CPA (Certified Professional Accountant) from National Institute of Finance and Accounts (NIFA). In the aforesaid facts, the Court has no hesitation in treating the deceased as a skilled worker. As per the minimum

wages notified by the State Government in respect of skilled-B category of workers for the relevant period, his monthly income is assessed at Rs.4,434/- (rounded off to Rs.4,400/-). Since the deceased was 22 years of age, the claimants-appellants are also held entitled to compensation @ 40% towards future prospects. The correct multiplier applicable in the case in hand would be 18 as the deceased admittedly was 22 years old on the date of accident. The Hon'ble Supreme Court in *National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270* has quantified the amount in the sum of Rs. 15,000/- each for loss of estate and funeral expenses each in addition to Rs. 40,000/- each for loss of filial consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement qua the above-mentioned conventional heads, as was also re-assessed by the Hon'ble Supreme Court in *Rasmita Biswal and others Vs. Divisional Manager, National Insurance Co. Ltd. and another : 2022(1) RCR(Civil) 344 as per the ratio laid down in Pranay Sethi's case (supra)*. Hence, the amount of compensation under the convention heads stands modified to Rs. 16,500/- each for loss of estate & funeral expenses. Besides this, the claimants-appellants, who are parents of the deceased, are entitled to Rs.44,000/- each, for loss of filial consortium respectively.

Resultantly, the compensation awarded by the Tribunal is reassessed as follows:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.4,400/-
2	Annual income 12 x 4,400/-	Rs.52,800/-
3	Future prospects (40%)	Rs.21,120/-
4	Total income	Rs.73,920/-
5	Deduction towards personal expenses (1/2)	Rs.36,960/-
6	Annual dependency	Rs.36,960/-
7	Multiplier	18
8	Loss of annual future earnings	Rs.6,65,280/-
9	Funeral expenses	Rs.16,500/-
10	Loss of consortium (Rs.44,000 x 2)	Rs.88,000/-
11	Loss of estate	Rs.16,500/-
12	Total compensation	Rs.7,86,820/- (rounded off to Rs.7,87,000/-)

The appellants-claimants are, therefore, entitled to a total compensation of Rs.7,87,000/- along with interest at the rate of 9% per annum from the date of filing of the claim petition till its actual realization.

With the above modifications, the instant appeal stands disposed of.

19.05.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No