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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****FAO-442-2015 (O&M)
Date of Decision: 24.08.2022**

Smt.Munesh Devi and others Appellants
Versus
Sonu and Ors. Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Atul Yadav, Advocate for the appellants.
Mr. Raj Kapoor Malik, Advocate
for respondents No.1 & 2.
Mr. Rajesh K. Sharma, Advocate
for respondent No.3.

HARKESH MANUJA, J.

By way of present appeal, the appellants have questioned the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Gurgaon, for short 'the Tribunal', vide its award dated 18.09.2014.

Brief facts of the case are that, accident in the present case took place on 22.01.2014 causing death of Braham Singh involving the offending vehicle i.e. motorcycle bearing registration No.HR-13-G-7119. The appellants being defendants of the deceased filed a claim petition for grant of Rs.50 lacs as compensation along with interest.

Learned Tribunal vide its award dated 18.09.2014 recorded a finding on the issue of negligence in favour of the appellants and against respondent no.1. Further, taking the income

of deceased to be Rs.6000/- per month, being an unskilled labour being 43 years of age at the time of death, the Id. Tribunal awarded a sum of Rs.1207800/- as compensation. The assessment of compensation made by learned Tribunal in the tabulated form is reproduced hereunder:-

1.	<i>Compensation (Rs.6000+30% of 6000/- (6000+1800) = 7800/- less ¼ towards personal expenses = (7800-1950=5850) 5850x12x14 = Rs.9,82,800/-)</i>	9,82,800.00
2.	<i>Funeral Expenses</i>	25,000.00
3.	<i>Medical expenses</i>	Nil
4.	<i>Loss of consortium</i>	1,00,000.00
5.	<i>Love and affection</i>	1,00,000.00
	<i>TOTAL:</i>	12,07,800.00

In the present appeal, the appellants have sought enhancement of compensation.

It has been vehemently contended by learned counsel for the appellants that once the appellants have been able to establish on record through the statements of PW2 (Dharmender Kumar), PW3 (Kumar Gaurav) & PW5 (Balwan Singh) that prior to his death, Braham Singh was employed as Driver with PW2 and in addition he was also cultivating the land taken on lease from PW5-Balwan Singh and used to sell the vegetables on the shop of PW3 Kumar Gaurav, the income of the deceased should have been taken to be not less than Rs.20000/- per month (Rs.10000/-per month as Driver and Rs.10000/- per month by doing agriculture work). It has been further contended that learned Tribunal has gone wrong while assessing the monthly income of the deceased as Rs.6000/- per month being an

unskilled labourer, particularly when he was possessing Driving Licence as well.

On the other hand, learned counsel for respondent No.3-Insurance Company submits that since no documentary evidence to support the oral statements made by the witnesses of the claimants was produced on record, the monthly income of the deceased, as assessed by the learned Tribunal was just and reasonable. He also contends that as the deceased was 43 years of age and was self-employed, addition towards future prospects should have been made @ 25% instead of 30%. The amount awarded under the head of consortium has also been challenged being on the higher side.

After having gone through the paper-book as well as the lower Court record, I am of the considered view that in the facts and circumstances of the present case the learned Tribunal has not been able to appreciate the evidence available on the record in its proper perspective while assessing the monthly income of the deceased correctly.

Learned Tribunal has gone wrong while assessing the monthly income of the deceased as that of an unskilled labourer. The Court below has also ignored that respondent No.3-Insurance Company itself has produced the Driving Licence of the deceased which was taken on record as Mark 'RA' on 17.09.2014, by way of statement made on behalf of the Insurance Company. Though the Driving Licence of the deceased was not exhibited on record, however, once it was the Insurance Company which itself produced

the Driving Licence of deceased, cannot be permitted to state that the deceased was merely unskilled labourer. A person possessing Driving Licence has to be treated under the skilled category. In order to establish that the deceased was employed as Driver, the appellants have produced in evidence, the owner of the vehicle as PW2-Dharmender Kumar. Similarly for the purpose of proving the income of deceased from sale proceeds of vegetables which he was growing over the land taken on lease, the appellants have produced the owner of the land as PW5-Balwan Singh and for the purpose of proving the sale of vegetables, PW3-Kumar Gaurav has been produced. This entire evidence has been discarded by the learned Tribunal merely on the ground that it was not supported by documents and was mere oral. The learned Tribunal has failed to appreciate the observation made by the Hon'ble Supreme Court in case titled as **Chameli Devi and others Vs. Jivrail Mian & others**, 2019 (5) RCR (Civil) 884 and relevant portion of para 2 is reproduced hereunder:-

“...The Tribunal and the High Court held that no proof of income has been produced to show that the deceased was alleged to be a carpenter. We fail to understand what proof a carpenter can lead except to lead oral evidence.”

In view of the observations made by the Hon'ble Supreme court reproduced hereinabove, it appears that the learned Tribunal has failed to take into consideration that the deceased belonged to rural background and was earning by selling vegetables in the market

which was grown over the land taken on lease and it is a matter of common knowledge that in the villages of our country under normal circumstances, no such kind of receipts giving the particulars like father's name & address etc. are prepared or issued to the farmers and as such the learned Tribunal could not have insisted upon any proof in this regard with mathematical certainty. Learned Tribunal has wrongly ignored the carbon copy of the bills produced by PW3-Kumar Gaurav pertaining to the sale proceeds of vegetables as Exs.P-3 to P-7 merely on the ground that those do not contain the father's name and address of the deceased.

In view of the reasoning recorded hereinabove and the documents as well as oral evidence available on record, particularly the statements of PW2 (Dharmender Kumar), PW3 (Kumar Gaurav) & PW5 (Balwan Singh) along with Exs.P3 to P7 as well as the Driving Licence Mark 'RA' on record, it would be reasonable to assess the monthly income of the deceased at the rate of Rs.9000/- per month.

Further, I find force in the argument raised by learned counsel for the Insurance Company to the effect that considering the fact that the deceased was self-employed and 43 years of age, future prospects should have been taken to be @ 25% instead of 30% as awarded by the learned Tribunal.

Besides this, applying the principle of law laid down by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, the claimants are entitled for Rs.16,500/- as compensation under the head of

funeral expenses as against Rs.25,000/- awarded by the learned Tribunal, loss of consortium (spousal and parental) is to be awarded to the tune of Rs.1,76,000/- instead of Rs.1,00,000/- as there are four dependents and Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads as well as under the head of consortium (spouse & parental) as per the law laid down by Hon’ble Supreme Court in ***N. Jayasree and others Vs. Cholamandalam M.S. General Insurance Company Ltd.***, 2021 (4) RCR (Civil) 642.

In view of the discussions made hereinabove, the appellants are entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	Particulars	Amount (Rs.)
1.	Annual Income of deceased Rs.9000/-x 12)	Rs.1,08,000/-
2.	Add 25% of Future prospects	Rs.27000/-
3.	Total Income	Rs.1,35,000/-
4.	Deduction (1/4 th)	Rs.33,750/-
5.	Multiplier of 14 as per age of 43 years (Rs.1,01,250 x 14)	Rs.14,17,500/-
6.	Funeral Expenses	Rs.16,500/-
7.	Loss of Consortium	Rs.1,76,000/-
8.	Loss of Love and Affection	Rs.1,00,000/-
9.	Loss of Estate	Rs.16,500/-
	Total Compensation	Rs.17,26,500/-
	Amount Awarded by the Tribunal	Rs.12,07,800/-
	Enhanced Amount	Rs.5,18,700/-

The appellants shall also be entitled for award of interest of 9% per annum on the amount of compensation awarded to them from the date of institution of claim petition till its realization.

Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

In view of the above, the appeal stands disposed of.

Pending miscellaneous application(s) if any, shall also stand disposed of.

August 24, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>