

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

FAO-7786-2015
Decided on : 01.06.2022

Harbhajan Kaur and another

..... Appellants

Versus

Sahil Kapoor and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Munish Gupta, Advocate
for the appellants.

Service of respondents No.1 and 2
is dispensed with vide order dated 23.08.2016.

Mr. Ankur Gupta, Advocate
for respondent No.3-Insurance Company.

None for respondents No.4 to 6.

Manjari Nehru Kaul, J.(Oral)

Instant appeal has been filed by the claimants-appellants have impugn the award dated 23.07.2015 passed by Motor Accident Claims Tribunal, Hoshiarpur (hereinafter called as 'the Tribunal') in claim petition under Section 166 of Motor Vehicles Act wherein the following compensation was assessed and awarded to the appellants on account of the death of Sajjan Singh in a road accident, which took place on 26.05.2013:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.25,475/-
2	Deduction towards personal expenses (1/3 rd)	Rs.8,492/-
3	Dependency of claimants 2/3	Rs.16,983/-
4	Multiplier	9
5	Total dependency (16983 x 12 x 9)	Rs.18,34,164/-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
6	Loss of consortium	Rs.1,00,000/-
7	Funeral expenses	Rs.25,000/-
8	Transportation charges	Rs.10,000/-
9	Total compensation	Rs.19,69,164/-

The Tribunal while passing the impugned award held that it was a case of contributory negligence on the part of the deceased and the driver of the offending vehicle in the ratio of 30 : 70 respectively. As such, respondent Nos.1 to 3 were held liable to pay the compensation only to the extent of Rs.13,78,415/- jointly and severally.

Brief facts of the case as pleaded in the claim petition may be noticed as thus; On 26.05.2013 Sajjan Singh (hereinafter referred to as 'deceased') was driving Toyota Qualis bearing registration No.HR-01-L-3190 (hereinafter referred to as 'Toyota Qualis') and going towards Rajasansi Airport, Amritsar to drop one Gurprit Singh, who was scheduled to catch a flight on 26.05.2013. Malook Singh and Joginder Singh were also travelling along with the deceased in his vehicle. At about 1.30 am when they reached the area of Chowk Fatehgarh Churian Road bypass, Amritsar, a car bearing registration No.PB-02-BQ-Temp-6399 (hereinafter referred to as 'the offending vehicle') came in a rash and negligent manner being driven by respondent No.1-Sahil Kapoor from Amritsar side. Respondent No.1 was unable to control the offending vehicle, as a result of which, it collided with the Toyota Qualis from its right side. The deceased, as a result of the collision, was sandwiched between the offending vehicle and his own car i.e. Toyota Qualis. Toyota Qualis was fully damaged in the accident in

question. The deceased was removed to the hospital, however, on 28.05.2013 he succumbed to his injuries. It was claimed that the deceased, who had retired from the Defence Services, was 58 years old and drawing a pension of Rs.29,398/- per month. Further, it was also claimed that the deceased was earning Rs.16,000/- per month by plying the Toyota Qualis as a taxi.

Learned counsel for the appellants has primarily challenged the impugned award on the following grounds:

- (i) that the Tribunal erred in holding that both the drivers i.e. deceased as well as respondent No.1 were negligent and hence, it was a case of contributory negligence.
- (ii) that even though it had come during evidence that the deceased was plying his Toyota Qualis as a taxi, however, the Tribunal erred in not including his income as a taxi driver and assessed only his pension while calculating his income.
- (iii) that under the conventional heads, the amount awarded was inadequate and not in consonance with the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & ors., 2017(4) RCR (Civil) 1009 and Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333.***

On the other hand, learned counsel for the insurance company while opposing the submissions made by the counsel opposite submits that

the Tribunal had rightly assessed the monthly income of the deceased by taking only his last drawn pension i.e. Rs.25,475/- into account. He submits that no cogent evidence was led by the claimants in support of their claim that the deceased was plying the Toyota Qualis as a taxi. He further submits that the Tribunal had rightly held that it was a case of contributory negligence as the deceased was driving his vehicle rashly and negligently. Learned counsel submits that it had come in evidence that the deceased was in a hurry to reach his destination i.e. Rajasansi Airport, Amritsar as one of the passengers, who he was transporting in the Toyota Qualis was to board a flight from Amritsar Airport. Learned counsel also submits that the Tribunal rightly rejected the claim of the appellants qua the income of the deceased in the sum of Rs.16,000/- per month as a taxi driver as he did not have any requisite permission from the Transport Department in the said regard.

Heard learned counsel and perused the relevant material available on record.

No doubt, it has been vehemently argued by the learned counsel for the Insurance Company that in the absence of any cogent evidence qua the factum of the deceased plying Toyota Qualis as a taxi, only his pension should have been, and had been rightly considered by the Tribunal while assessing the monthly income of the deceased, however, this Court does not find any merit in these submissions. It is very strange that on the one hand, the respondent-company is disputing the factum of the deceased earning any income from the Toyota Qualis, which he was stated to be plying as a taxi, however, in the same breath it is their own categorical stand that on the fateful

day, the deceased was rushing to transport some customers to Rajasansi Airport, Amritsar. If that be the case, then in the considered opinion of this Court, even in the absence of any cogent evidence having been produced qua the income of the deceased from plying a taxi, the claimants would be entitled to enhanced compensation by adding the income which the deceased would have been earning as a taxi driver. This Court, is of the opinion that the deceased after his retirement from the Defence Services must have definitely been supplementing his income from other sources. The contentions of the learned counsel that the deceased did not have any requisite permission to ply a taxi, would not come in the way while assessing the compensation under the Motor Vehicles Act. Resultantly, the deceased can be held to be earning the minimum wages of Rs.7028/- as notified by the State Government qua semi-skilled labourer, for the relevant period.

The next challenge by the claimants is to the finding of the Tribunal qua contributory negligence on the part of both the deceased and the driver of the offending vehicle. Once, it is not disputed that the deceased was driving his vehicle on the highway from Jalandhar to Amritsar and it was the offending vehicle, which entered the highway from the left side of Fatehgarh Churian and attempted to cross it towards the intersection, the negligence in the circumstances, would be squarely attributable to the offending vehicle driven by respondent No.1. More so, it is the admitted case of respondent No.1 himself that his vehicle was stationary at the intersection. Still further, even as per the documentary evidence on record i.e. photographs of the damaged vehicle, including Ex.A2, the maximum

damage suffered by the Toyota Qualis was, on its' front right side i.e. the driver's side, whereas there was no damage on the left side of the Toyota Qualis, which establishes that the accident in question took place on account of the negligence of respondent No.1. The driver of the offending vehicle was evidently negligent while entering the busy highway without assessing whether he would be in a position to cross over or not, and thereafter abruptly stopping at the intersection. Since the deceased was on the highway and was going straight towards Amritsar, he cannot be faulted with, at all in contributing to the accident in question. The findings of contributory negligence recorded by the Tribunal are thus, set aside.

After hearing learned counsel for the parties and on perusing the evidence on record, this Court is of the opinion that the compensation awarded by the Tribunal requires to be modified and reassessed. 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. 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. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimants, who are widow and daughter of the deceased respectively are entitled to Rs.40,000/- each alongwith 10% enhancement, for loss of spousal and parental consortium respectively. Still further, the minimum wages of semi-skilled worker as notified by the State Government

for the relevant year was Rs.7028/-. The monthly income of the deceased, therefore, shall stand modified accordingly to Rs.32,503/- (Rs.25,475/- (pension)+ Rs.7,028/-) per month (rounded off to Rs.32,500/-). The deceased being a 58 years old man and being a government pensioner shall also be entitled to 15% as future prospects besides 1/3rd deductions towards personal expenses as the claimants include his widow and unmarried daughter.

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

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.32,500/-
2	Annual income 12 x 32500/-	Rs.3,90,000/-
3	Future prospects (15%)	Rs.58,500/-
4	Total income	Rs.4,48,500/-
5	Deduction towards personal expenses (1/3)	Rs.1,49,500/-
6	Annual dependency	Rs.4,48,500/- (-) Rs.1,49,500/- = Rs.2,99,000/-
	Multiplier	9
7	Total dependency	Rs.26,91,000/-
8	Funeral expenses	Rs.16,500/-
9	Loss of estate	Rs.16,500/-
10	Loss of consortium(spousal and parental) (Rs.44,000 x 5)	Rs.2,20,000/-
11	Transportation charges	Rs.10,000/-
12	Total compensation	Rs.29,54,000/-

The appellants-claimants are, therefore, entitled to a total compensation of Rs.29,54,000/- along with interest at the rate of 9% per annum from the date of filing of the claim petition till its actual realization. The compensation shall be apportioned to claimants-appellants in the same ration as directed by the Tribunal.

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

01.06.2022
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No