

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

**260**

**FAO-1121-2017**

**Date of decision: 01.12.2022**

Shakuntla and others

.....Appellants

Versus

Rakesh @ Harkesh and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Ashwani Bakshi, Advocate  
for the appellants.

Mr. Lokesh Sharma, Advocate  
for respondent No.1.

Mr. Surinder Gaur, Advocate  
for respondent No.2.

Mr. Sachin Gupta, Advocate  
for respondent No.3-insurance company.

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**MANJARI NEHRU KAUL, J. (ORAL)**

The claimants are in appeal before this Court to impugn the award dated 03.10.2016 passed by learned Motor Accidents Claims Tribunal, Rohtak (for short, 'the Tribunal') wherein they were awarded the following compensation on account of the death of Sudhir (hereinafter referred to as 'the deceased') in a Motor Vehicular Accident which took place on 26.10.2015 :-

| Sr. No. | Head                                                | Amount                                       |
|---------|-----------------------------------------------------|----------------------------------------------|
| 1.      | Monthly Income                                      | Rs.10,900/-                                  |
| 2.      | Income after adding future prospects (50%)          | Rs.16,350/-                                  |
| 3.      | Annual dependency after deducting personal expenses | Rs.14,38,800/-                               |
| 4.      | Love and affection                                  | Rs.3,00,000/- (Rs.1,00,000 to each claimant) |
| 5.      | Funeral expenses                                    | Rs.25,000/-                                  |
|         | Total                                               | Rs.17,63,800/-                               |

Respondent No.3-insurance company was held liable to pay the amount of compensation to the claimants, along with interest @ 9% per annum, from the date of filing of the claim petition till recovery.

Learned counsel appearing for the appellants-claimants has submitted that the income assessed by the Tribunal required to be reassessed as the Tribunal had erred in not considering the fact that the deceased was all set to join a new job from 01.11.2015 wherein his salary would have been Rs.14,000/- per month. Learned counsel submitted that it was on account of the accident in question that the deceased died prior to joining the job, therefore, the Tribunal erred in assessing the monthly salary of the deceased as Rs.10,900/- as per DC rates instead of Rs.14,000/- per month which salary the deceased would have drawn after joining his new job. Learned counsel further submitted that the deceased had also been helping his family in dairy farming and agriculture, thus, on that ground also the income of the deceased needed to be added while assessing his monthly income. Learned counsel still further contended that the Tribunal had erred in applying a split multiplier which was not in consonance with the settled principles of law. He also submitted that deductions for personal expenses were to be applied uniformly to the extent of 1/3<sup>rd</sup> since the claimants who are parents and brother of the deceased were dependent upon his income.

Per contra, learned counsel appearing for the respondent-insurance company opposed the submissions and prayer made by the counsel opposite. Learned counsel appearing for the respondent-insurance company submitted that the income had been wrongly

assessed as per DC rates which instead should have been as per the minimum wages notified by the State Government for the relevant period, hence, the monthly income assessed by the Tribunal required to be scaled down. Learned counsel also opposed the submissions of the learned counsel opposite that monthly income of the deceased be enhanced by adding his income from agriculture and dairy farming. Learned counsel argued that since there was no evidence led qua the same, the monthly income assessed by the Tribunal could not be faulted with. Learned counsel for the insurance company, however, fairly conceded that the Tribunal had erred in applying the split multiplier.

I have heard learned counsel and perused the relevant material on record.

This Court finds no merit in the submissions made by the learned counsel for the claimants appellants qua the income of the deceased having been assessed on the lower side. For the purpose of assesment of monthly income, only the income which the deceased was earning at the time of his death would have to be considered and any income which he could have earned or would have earned in the future cannot be taken into account while assessing monthly income. The Tribunal has, however, erred in taking the minimum wages as per DC rates which instead should have been as per the minimum wages notified by the State Government for the relevant period. Since the insurance company has not impugned the award by way of an appeal, this Court is not inclined to interfere with the income assessed by the Tribunal. Still further, admittedly the claimants did not adduce any evidence in support of the income of the deceased from agriculture and

dairy farming, thus, no addition can be made towards the same.

This Court, however, concurs with the submissions made by the learned counsel for the appellants that the Tribunal had erred in applying split multiplier as well as making varied deductions towards personal expenses. The Tribunal has also erred in making an addition of 50% towards future prospects instead of 40% and even the compensation under the conventional heads needs to be reassessed in accordance with settled ratio of law. The Hon'ble Supreme Court in *Pranay Sethi's case (supra)* has quantified the amount in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- each for loss of 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 per the ratio laid down in *Pranay Sethi's case (supra)*. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants, who are parents and brother of the deceased, are entitled to Rs.44,000/- each, for loss of filial consortium.

As a sequel to the above, the compensation deserves to be reassessed and modified as follows:-

| Sr. No. | Head                   | Amount                                      |
|---------|------------------------|---------------------------------------------|
| 1.      | Monthly Income         | Rs.10,900/-                                 |
| 2.      | Annual Income          | Rs.10,900/- x 12 = Rs.1,30,800/-            |
| 3.      | Future prospects (40%) | Rs.1,30,800/- x 40% = Rs.52,320/-           |
| 4.      | Total annual income    | Rs.1,30,800/- + Rs.52,320/- = Rs.1,83,120/- |

|     |                                          |                                                   |
|-----|------------------------------------------|---------------------------------------------------|
| 5.  | Deductions towards personal expenses (½) | Rs.1,83,120/- (/) 2 = Rs.91,560/-                 |
| 6.  | Loss of annual future earnings           | Rs.1,83,120/- (-) Rs.91,560/- = Rs.91,560/-       |
| 7.  | Multiplier                               | 18                                                |
| 8.  | Loss of future earnings                  | Rs.91,560/- x 18 = Rs.16,48,080/-                 |
| 9.  | Loss of consortium                       | Rs.44,000/- x 3 = Rs.1,32,000/-                   |
| 10. | Funeral expenses                         | Rs.16,500/-                                       |
| 11. | Loss of estate                           | Rs.16,500/-                                       |
|     | Total compensation                       | Rs.18,13,080/-<br>(rounded off to Rs.18,13,100/-) |

The claimants are, therefore, held entitled to a total sum of Rs.18,13,100/- as compensation along with interest @ 9% per annum from the date of filing of claim petition till its actual realization. The compensation amount would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

With these modifications, the present appeal stands disposed of in the above terms.

01.12.2022

Vinay

(MANJARI NEHRU KAUL)  
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No