

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

Cross-Objc. No.21 of 2020 in/&
FAO-05-2018 (O&M)
Decided on : 12.07.2022

Nirmal @ Nirmala and others

..... Appellants

Versus

Gulshan Kumar and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. R.K.Saini, Advocate
 for the appellants.

 Mr. Lalit Garg, Advocate
 for Insurance Company/Cross-Objectors.

Manjari Nehru Kaul, J.(Oral)

CM-4-CII-2018

Application is allowed as prayed for and the delay of 216 days in
filing the appeal is condoned.

CM-2327-CII-2020

Application is allowed as prayed for and cross-objections filed by
respondent No.3 are taken on record subject to all just exceptions.

Main case

Instant appeal has been preferred by the appellants-claimants,
who are widow, two minor children and the parents of the deceased Sanjay,
who lost his life in a motor vehicular accident, which took place on
01.10.2014. Learned Motor Accident Claims Tribunal, Hisar (hereinafter
called as 'the Tribunal') vide impugned award dated 21.12.2016 in the claim
petition under Section 166 of Motor Vehicles Act awarded the following

compensation to the claimants:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.7,500/-
2	Annual income (Rs.7,500 x 12)	Rs.90,000/-
3	Deduction towards personal expenses	Rs.22,500/-
4	Dependency	Rs.67,500/-
5	Multiplier	17
6	Total amount (Rs.67,500 x 17)	Rs.11,47,500/-
7	Loss of estate	Rs.1,00,000/-
8	Loss of love and affection	Rs.1,00,000/-
9	Transportation and Funeral expenses	Rs.25,000/-
10	Cost of litigation	Rs.25,000/-
	Total compensation	Rs.13,97,500/-

The amount of compensation along with interest @ 7.5% p.a. was ordered to be paid jointly and severally by the respondents.

As per the pleaded case of the claimants, the deceased was hit by the offending vehicle i.e. Innova Car bearing registration No.HR-57/4000 while he was going on his motorcycle from village Mundhal to Sorkhi. On account of the rash and negligent driving of respondent No.1, the deceased received serious and multiple injuries on his person in the accident in question and died at the spot. FIR No.353 dated 02.10.2014 under Sections 279 and 304-A IPC was registered. It was claimed by the claimants that the deceased, who was 28 years of age, was a labourer and earning Rs.20,000/- per month. All the claimants were dependent upon the earnings of the deceased since he was the only earning member.

Learned counsel for the appellants-claimants have impugned the award by urging that the compensation awarded by the Tribunal is inadequate

and not in consonance with the settled law in ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270 and Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333*** and hence, it deserves to be reassessed and modified accordingly.

In the cross-objections filed by the Insurance Company, it has been submitted that the Tribunal has erred in assessing the income of the deceased as Rs.7,500/- per month whereas as per Haryana Government notification for the relevant period, the minimum wages of an unskilled worker had been notified at Rs.5,800/- per month. It has also been argued that under the conventional heads also, the compensation awarded is exorbitant and not in consonance with the various pronouncements of the Hon'ble Supreme Court.

Heard learned counsel for the parties and perused the case file.

The claimants had pleaded that the deceased was earning Rs.20,000/- per month, however, the Tribunal assessed the monthly income of the deceased in the sum of Rs.7,500/- per month. No doubt, the minimum wages notified by the State Government for the relevant period was in the sum of Rs.5,800/- per month, however, this Court is of the considered opinion that the amount assessed as monthly income should be reduced to Rs.6,500/- per month as the claimants failed to adduce any evidence in support of their claim, qua the deceased's income being Rs.20,000/- per month. Since the deceased was 28 years of age on the date of accident, hence, the claimants are entitled to an addition of 40% to the income of the deceased towards future prospects as per the settled law.

The compensation under conventional heads including

compensation towards loss of consortium to the widow of the deceased in the sum of Rs.1 lac admittedly is not in consonance with the settled law. However, at the same time it needs to be observed that no compensation has been granted to the two minor children and the parents of the deceased qua loss of parental and filial consortium. They would be thus, entitled to Rs.40,000/- each for loss of parental and filial consortium as per *Pranay Sethi's case(supra)*. Rs.1 lakh granted to the widow of the deceased for loss of consortium being not in consonance with the settled law would stand reduced to Rs.40,000/-. The claimants would be entitled to Rs.15,000/- each for loss of estate and for funeral expenses, which requires to be modified. Since it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years, 10% enhancement qua the above-mentioned conventional heads would have to be made. 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 wife, two minor children and parents of the deceased, are entitled to Rs.44,000/- each, for loss of spousal, parental and filial consortium respectively.

The compensation is reassessed and modified as follows:

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.6,500/-
2	Future prospectus (40%)	Rs.2,600/-
3	Annual income (Rs.6,500 + Rs.2,600 = 9,100x 12)	Rs.1,09,200/-
3	Deduction towards personal expenses (1/4 th)	Rs.27,300/-
4	Annual Dependency (Rs.1,09,200-Rs.27,300)	Rs.81,900/-
5	Multiplier	17

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
6	Total amount (Rs.81,900 x 17)	Rs.13,92,300/-
7	Loss of estate	Rs.16,500/-
8	Funeral expenses	Rs.16,500/-
9	Loss of consortium (Rs.44,000 x 5)	Rs.2,20,000/-
10	Cost of litigation	Rs.25,000/-
	Total compensation	Rs.16,70,300/-

In the circumstances, the appellants-claimants are entitled to afore-detailed enhanced compensation of Rs.2,72,800/- (Rs.16,70,300-13,97,500) along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its actual realization.

With the above modifications, the instant appeal and the cross-objections stand disposed of.

12.07.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No