IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7488-2016 (O&M)

Reserved on: 21.10.2022
Pronounced on: October 27, 2022

Kavita Devi and others .... Appellants

Versus

Prem Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Arun Abrol, for the appellants.

Mr.Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate,
for respondent No.3.

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<u>HARKESH MANUJA, J.</u>

1. Present appeal has been filed by the appellants-claimants questioning the adequacy of compensation awarded by the learned Motor Accident Claims Tribunal, Gurdaspur, for short 'the Tribunal', vide its award dated 11.02.2016.

2. Facts in brief are that on 20.12.2014, deceased Rajinder Singh along with his brother Rakesh Singh was going from Jalandhar Batala when their vehicle was hit by a bus bearing no. PB-02-BQ-9944 being driven by respondent No. 1-driver as a result of which Rajinder Singh suffered multiple grievous injuries and subsequently succumbed to them. In claim petition filed by the appellants/ claimants, learned Tribunal held that accident was caused due to rash and negligent driving of Respondent No. 1-Driver and awarded a sum of Rs.10,50,000/-to appellants/ claimants.

3. Present appeal has been filed by the appellants/ claimants questioning the adequacy of compensation awarded by learned Tribunal.

4. The contentions raised on behalf of learned counsel for the appellants in this appeal are very brief that during the trial, appellants/ claimants made very categoric statement that the deceased was working as a Driver of Tata LTV vehicle bearing no PB-19-F-8293 owned by Mr. Amandeep Singh and was also doing part time work of account and was earning Rs. 24,500/- per month. He further contends that learned Tribunal has wrongly considered the salary of the deceased as Rs. 6,000/- which is extremely on the lower side as even the minimum wages at that time for skilled labour was Rs. 8,337/- per month and the deceased being a driver, his income should have been at least taken to be Rs 8337/- per month. He also contends that in view of settled proposition of law by the Hon'ble Apex Court, in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, compensation under conventional heads should have been appropriately awarded.

5. On the other hand, learned counsel for Insurance Company contends that as the age of deceased at the time of accident was 41 years future prospects should have been awarded @ 25%. He further contends that the amount awarded under the head of 'Love and Affection' should be deducted from the compensation awarded by the learned Tribunal.

6. Heard learned counsel for the parties and gone through the paper-book. I find force in the arguments raised by learned counsel

for the appellants. Details provided by CW-1 Kavita Devi regarding the occupation of the deceased were very categoric that he was working as a driver of Tata LTV vehicle bearing no PB-19-F-8293 owned by Mr. Amandeep Singh. As deceased was working in an unorganized sector, appellants/ claimants cannot be burdened to prove his income through documentary proof, considering this, the income of deceased should have been taken, at least as per the minimum wages applicable for a skilled worker at the relevant period of time i.e. 20.12.2014. Reliance in this regard can be placed on judgment of Hon'ble Apex Court in the case of **"Chandra Alias Chanda Alias Chandraram and Anr. v. Mukesh Kumar Yadav and Ors."**, reported as (2022) 1 SCC 198, whereby the Hon'ble Apex court has aptly held that in the absence of a salary certificate, the minimum wages notification along with some amount of guess work that is not completely detached from reality shall act as a yardstick to determine the income of the deceased. As the minimum wages applicable from 01.09.2014 in the State of Punjab for a skilled worker was Rs. 8337/- per month, deceased being a driver, his income should at least have been taken as Rs. 8,500/- (in round figure) per month.

7. Further, in view of **Pranay Sethi's** case (supra), as the age of the deceased at the time of accident was 41 years and he was self-employed, he should have been awarded future prospects @ 25%.

8. Besides this, applying the principle of law laid down by Hon'ble Supreme Court in ***Pranay Sethi's*** *case (supra)*, the claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses, loss of consortium (filial, parental and spousal) is to be

awarded to the tune of Rs.2,20,000/- (44,000 X 5) as there are five dependents and further a sum of Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads.

9. Besides it, award of compensation under the head of loss of love and affection is liable to be set aside in view of the law laid down by the Hon'ble Supreme Court in case of "**Satinder Kaur @ Satwinder Kaur & Others. Versus United India Insurance Co. Ltd.**" reported as 2020(3) R.C.R Civil 75. Relevant Para 8 of abovementioned judgment is reproduced hereinafter:-

> *"The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head."*

10. In view of the discussions made hereinabove, the appellants are entitled to following enhanced compensation, as detailed in the table:-

Sr.No.	*Particulars*	*Amount (Rs.)*
1.	*Annual Income of deceased (Rs.8500x12)*	*Rs.1,02,000/-*
2.	*Add 25% of Future prospects*	*Rs.25,500/-*
3.	*Total Income*	*Rs.1,27,500/-*
4.	*Deduction (1/4)*	*Rs.31,875/-*
5.	*Multiplier of 14 as per age of 41 years (Rs.95,625 x 14)*	*Rs.13,38,750/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium*	*Rs.2,20,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.15,91,750/-*
	Amount Awarded by the Tribunal	*Rs.10,50,000/-*
	Enhanced Amount	*Rs.5,41,750/-*

11. The grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **Puttamma and others Vs. K.L.Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization.

12. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation. However, it is made clear that respondents No.4 & 5 shall only be entitled for the amount of consortium to the extent of their respective shares being parents of the deceased.

13. The present appeal is partly allowed and partly dismissed in the manner, indicated hereinabove.

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

October 27, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*