

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

FAO-180-2019 (O&M)

Date of decision : 10.11.2022

Lakhvir Kaur & Ors.

... Appellant(s)

Versus

Parminder Singh & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. RVS Chugh, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

CM-646-CII-2019

This is an application for condonation of delay of 44 days in filing the appeal.

For the reasons stated in the application, delay of 44 days in filing the appeal is condoned.

CM stands disposed off.

FAO-180-2019

The present appeal has been preferred by the claimant-appellants against the award dated 07.07.2018 passed by the Motor Accident Claims Tribunal, Mansa (hereinafter referred to as 'Tribunal').

The facts relevant to the present *lis* are that the claimants, who are the widow and parents of the deceased, had filed the claim petition

stating therein that on 07.08.2015 Tarsem Singh along with his co-villagers, Megha Singh and Baru Singh, was going from Mansa Kenchiyan to village Khiala Kalan on an unnumbered motorcycle. The said motorcycle was driven by the deceased, Tarsem Singh. When they reached village Malakpur at about 8.30 AM, a heavy vehicle (*Trala*) bearing registration No.PB-11-BR-4076 driven by respondent No.1 in a rash and negligent manner came from the opposite side and hit the motorcycle of Tarsem Singh as a result of which Tarsem Singh and both the other persons suffered grievous injuries. Respondent No.1 ran away from the spot. All three injured were taken to the hospital from where they were referred to a bigger hospital. However, Tarsem Singh succumbed to his injuries. FIR No.109 dated 07.08.2015 was lodged under Sections 304-A/279 and 337 of the Indian Penal Code, 1860 at Police Station Sadar Mansa against respondent No.1.

In the claim petition it was averred that the deceased Tarsem Singh was drawing a salary of Rs.8250/- per month with increase of Rs.300/- upwards every three months. Moreover, he would work overtime and that he was also earning an amount of Rs.10,000/- per month by selling milk. Hence, his monthly income was stated to be Rs.20,000/- to Rs.25,000/- per month. The claim petition was contested by the respondents who raised the legal objections of *locus standi* and that the claim petition itself was not maintainable. Respondent No.1 took a stand that he was having an effective and valid driving licence. Respondent No.2 stated that the documents of the vehicle were all valid documents and hence they were not liable to pay any compensation. On merits, the accident was denied stating that the claimants had lodged a false complaint. Respondent No.3, Insurance Company herein,

filed a separate written statement and took a stand that the accident took place due to the negligence of the deceased Tarsem Singh. The income of the deceased was also disputed. Further objections taken by the Insurance Company were that the owner of the truck was not holding a valid permit and policy. On the basis of the pleadings and the evidence on the record, the Tribunal awarded the following compensation and held the respondents jointly and severally responsible to pay the same :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.8000/-
2	Future prospects @ 25%	Rs.10,000/- (8000+2000)
3	Income after 1/3 rd deduction towards personal expenses	Rs.7000/- (10,000-3000)
4	Annual income of the deceased	Rs.84000/- (7000x12)
5	Multiplier 16	Rs.13,44,000/- (84,000x16)
6	Funeral expenses	Rs.10000/-
7	Loss of consortium	Rs.15,000/-
8	Loss of love and affection	Rs.15,000/-
	Grand Total	Rs.13,84,000/-
	Interest	7.5% per annum

Learned counsel for the appellants would contend that the income of the deceased has been taken on the lower side and that he was earning an amount of Rs.20,000/- to Rs.25,000/- per month. It is further the contention of learned counsel for the appellants that the amount awarded under the head of consortium and the conventional heads is on the lower side. In support of his contentions, he has relied upon the **Magma General**

Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors.

[2018 (18) SCC 130]; National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 Supreme Court Cases 680]; Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121] and N. Jayasree & Ors. vs. Cholamandalam MS General Insurance Company Ltd. [2021 (4) RCR (Civil) 642].

Per contra, learned counsel for respondent No.3 has contended that an amount of Rs.8,000/- per month has rightly been assessed as income of the deceased in the absence of any evidence qua the income of the deceased. He has further contended that the amount awarded is just and there is no further scope of any enhancement.

Heard.

In the present case the argument of learned counsel for the appellants that the monthly income of the deceased was Rs.20,000/- to Rs.25,000/- per month cannot be accepted in view of the fact that no evidence whatsoever was led to this effect. In the absence of any evidence, the income of the deceased has rightly been assessed as Rs.8,000/- per month as per the minimum wages applicable at the time of the accident. As per the law laid down by Hon'ble Supreme Court in the cases of **Pranay Sethi** (*supra*) and **Sarla Verma** (*supra*), the deduction of 1/3rd has rightly been applied by the Tribunal and the multiplier of '16' is also correct. Future prospects to the extent of 25% has wrongly been added whereas it should have been 40%. Further, the amount awarded under the conventional heads of loss of love and affection and funeral expenses is on the lower side. In view of the law laid down by Hon'ble Supreme Court in the cases of **Magma General Insurance Company Limited** (*supra*) and **N. Jayasree**

(supra), an amount of Rs.16,500/- is awarded under the head of loss of estate and Rs.16,500/- under the head of funeral expenses. Only an amount of Rs.15,000/- had been awarded by the Tribunal towards love and affection. However, as per the law laid down, the claimant-appellants are entitled an amount of Rs.1,32,000/- under the head of loss of consortium.

In view of the above, the compensation is accordingly worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.8000/-
2	Future prospects @ 40%	Rs.11,200/- (8000+3200)
3	Income after 1/3 rd deduction towards personal expenses	Rs.7,467/- (11,200-3733)
4	Annual income of the deceased	Rs.89,604/- (7467x12)
5	Multiplier 16	Rs.14,33,664/- (89,604x16)
6	Loss of estate	Rs.16500/-
7	Funeral expenses	Rs.16500/-
8	Loss of consortium (i) Spousal : Rs.44000/- (ii) Filial : Rs.88000/- (44000x2)	Rs.1,32,000/-
11	Grand Total	Rs.15,98,664/-
	Difference of compensation	Rs.2,14,664/- (1598664-1384000)

The amount in excess over what has already been awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of the award till the realization of the entire amount.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

10.11.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO