

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

FAO No.1037 of 2002

Date of Decision: 09.02.2023

Kailasho Devi and others

.....Appellants

Versus

Rishi Pal and others

.....Respondents

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Ms. Rahish Pahwa Dudeja, Advocate
for the appellants.

Service of notice upon respondents No.1 and 2
dispensed with vide the order dated 01.02.2023.

Mr. Rishabh Jain, Advocate appearing for
Mr. Suman Jain, Advocate
for respondent No.3-Insurance Company.

MEENAKSHI I. MEHTA, J.(Oral)

Feeling aggrieved and dis-satisfied with the Award dated 03.08.2001 as passed by learned Motor Accident Claims Tribunal, Kaithal (for short 'the Tribunal'), whereby the appellants-claimants (here-in-after to be referred as 'the claimants) have been awarded compensation to the tune of Rs.2,78,800/-, along-with interest thereon @ 9% per annum from the date of institution of the claim petition till its realization, on account of the death of Baljeet Singh in a motor vehicular accident, they (claimants) have preferred the instant appeal for seeking the enhancement of the amount of compensation.

2. Bereft of unnecessary details, the facts, leading to the filing of the present appeal, are that the claimants being the wife, mother and four minor children of the above-named deceased, filed a petition against the respondents, the respective driver, owner and insurer of the Truck bearing registration No.HR-39-7135 (for short 'the offending vehicle') for seeking compensation of Rs.25 lac, while averring that on 28.08.2000, the deceased and one Raghbir were going on the Scooter having registration No.HR-16B-3536. When they reached near Lakhan Majra Chowk, the offending vehicle, which was being driven by respondent No.1 in a rash, negligent and zig-zag manner, came from the back side and it hit their Scooter. Resultantly, both the scooterists sustained grievous injuries in this accident and succumbed to the same.

3. Respondents No.1 and 2 filed their joint written statement and respondent No.3-Insurance Company filed its separate written statement contesting the claim, as set-forth by the claimants in their petition, on various grounds. Then, the Tribunal put the parties to the trial by framing the issues. After appreciating and evaluating the evidence as led by the parties on the record and hearing their learned counsel, the Tribunal passed the impugned Award, granting compensation to the claimants, as already indicated in the opening para of this judgment.

4. I have heard learned counsel for the appellants-claimants as well as learned counsel appearing for respondent No.3-Insurance Company in this appeal and have also perused the file carefully.

5. Learned counsel for the appellants-claimants contends that the

Tribunal has not granted any compensation to the claimants on the score of future prospects and moreover, the compensation, as awarded to them towards the funeral expenses, loss of estate and the loss of consortium, is also quite inadequate and in these circumstances, the claimants are entitled to the enhancement of the amount of compensation as awarded to them by the Tribunal.

6. Per contra, learned counsel appearing for respondent No.3- Insurance Company argues that the Tribunal has already awarded sufficient amount to the claimants as compensation and it being so, they do not have any occasion to ask for any further enhancement in the same.

7. At the very outset, it is pertinent to mention here that though, in the impugned Award, the claim petition is shown to have been moved under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') but in para No.14 therein, the Tribunal has discussed this aspect and has concluded that the said petition has been filed by pleading the factum of negligence, as required under Section 166 of the Act and therefore, mere mentioning of the afore-said Section in the heading of the petition would be immaterial and further, in para No.2 thereof, it has also been mentioned that respondent No.1 was alleged to be driving the offending vehicle rashly and negligently. Keeping in view the facts that in their claim petition, the claimants have made categoric averments qua the rashness and negligence on the part of respondent No.1 in driving the offending vehicle and thereby, having caused the above-said accident and that issue No.1, as framed by the Tribunal, is also based on these averments, this Court does not find any

cogent or valid reason to arrive at a conclusion, contrary to the one as arrived at by the Tribunal, as discussed above.

8. The Tribunal has assessed the monthly income of the deceased at Rs.2100/- and it goes undisputed between the parties that the deceased was 38 years old at the time of his death in the afore-mentioned accident. Accordingly, in view of the verdict as rendered by the Constitution Bench of Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017(16) SCC 680**, an amount equivalent to 40% of the above-assessed income of the deceased, i.e Rs.840/-, has to be added therein towards the future prospects and on so adding, his monthly income comes out to be $(2100+840)=Rs.2940/-$.

9. Further, the Tribunal has awarded compensation to all the six claimants by considering them to be the dependents of the deceased and therefore, $1/4^{th}$ share of his (deceased's) afore-said income, i.e Rs.735/-, is to be deducted therefrom on the score of his living and personal expenses, leaving the balance amount of Rs.2205/- to be counted towards the monthly dependency of the claimants. Their annual dependency, thus arrived, would be $(Rs.2205 \times 12)=Rs.26,460/-$.

10. Keeping in view the above-mentioned age of the deceased and in the light of the observations made by Apex Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(6) SCC 121**, the multiplier of '15' would be applicable for calculating the amount of compensation and when so applied, the said amount comes out to be $(26,460 \times 15)=Rs.3,96,900/-$.

11. Besides the afore-said amount, the claimants are also granted a sum of Rs.16,500/- towards the funeral expenses and another amount of Rs.16,500/- for the loss of estate and claimant No.1-wife, claimant No.2-mother and claimants No.3 to 6-the children of the deceased, shall also be entitled to a sum of Rs.44,000/- each towards the loss of spousal, filial and parental consortium, respectively.

12. Accordingly, the net enhanced amount of compensation, as shall be payable to the appellants-claimants, is worked out as under:-

Head	Compensation awarded by the Tribunal	Compensation awarded by this Court	Enhancement
Dependency	Rs.2,68,800/-	Rs.3,96,900/- (Rs.26,460x15)	Rs.1,28,100
Funeral expenses	Rs.2000/-	Rs.16,500/-	Rs.14,500/-
Loss of estate	Rs.2500/-	Rs.16,500/-	Rs.14,000/-
Loss of Consortium	Rs.5000/- (in lump-sum, funeral expenses, loss of estate and loss of consortium have been rounded off as Rs.10,000/-)	Rs. 44,000/- to each of the six claimants, i.e (44,000x6) Rs.2,64,000/-	Rs.2,59,000/-
Total enhancement	Rs.2,78,800/-	Rs.6,93,900/-	Rs.4,15,100/-

13. As a sequel to the fore-going discussion, the appeal in hand is hereby allowed to the effect that the appellants-claimants are entitled to the net enhanced compensation amounting to **Rs.4,15,100/-**, over and above the amount of Rs.2,78,800/-, as already awarded to them by the Tribunal

and the said enhanced amount shall carry the interest @ 7.5% per annum from the date of the filing of the claim petition till its actual realization and shall be payable to the claimants in terms of the impugned Award.

February 09, 2023
pooja

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>