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

234 CM-18993-CII-2023 in/&
FAO-561-1995 (O&M)
Date of decision : 21.11.2023

Mam Kaur (Since deceased) through her LRs
.....Appellants

Versus

Balvinder Singh and Others
..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Viney Saini, Advocate for the appellants

Mr. Ram Avtar, Advocate for the Insurance Company

AMAN CHAUDHARY, J.

1. The present appeal has been filed by the claimant-appellants for enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal') vide award dated 01.10.1994, on account of death of Sunder Lal in a motor vehicular accident.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for the last more than 28 years, the counsel for the parties have no objection, in case the same is decided on basis of the available record.

3. Learned counsel for the appellant contends that the deceased, 50 years old at the relevant time, was doing work of a carpenter/milk vendor and earning Rs.3,000/- per month, whereas, the Tribunal assessed his income as Rs.1,500/- per month. The multiplier of 13 should have been applied. The compensation granted is on the lower side and nothing has been awarded towards future prospects of increase in income, loss of consortium, loss of

love & affection and funeral expenses.

4. On the other hand, the learned counsel for the insurance company has opposed the present appeal and states that just and reasonable compensation has already been awarded to the appellants.

5. Heard the learned counsel and perused the record.

6. Admittedly, the death of Sunder Lal occurred in a vehicular accident caused by respondent No.1- driver of the offending truck. So far as the fact of accident and manner of its taking place, as well as liability fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that no challenge to the same has been made and thus, this issue does not warrant any further scrutiny.

7. It may be noticed that the claim petition was filed by the widow of the deceased, however, the sons were arrayed as proforma respondents. The Tribunal did not consider them as dependent, they being major, which is contrary to the law laid down in **National Insurance Company Limited vs. Birender & Ors,** (2020) 11 SCC 356, wherein Hon'ble the Supreme Court had observed that, "It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only… "

8. The finding of the Tribunal to that extent having been found to

be erroneous, is set aside. During the interregnum, the appellant has passed away and accordingly, an application i.e. CM-18993-CII-2023 was filed by her sons, who are arrayed as the proforma respondents Nos. 4 and 5 for being transposed as appellants, being her legal heirs, which is hereby allowed. As a natural corollary of the aforesaid, the appellants would now be entitled to compensation in their own right.

9. Perusal of the award reveals that there being no evidence of income, the Tribunal has rightly considered it to be Rs.1500/- per month. However, with regard to the enhancement of the compensation, this Court can rightly fall back on the law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another,** 2009(3) RCR (Civil) 77, **National Insurance Company Limited vs. Pranay Sethi and others** 2017(4) RCR (Civil) 1009 and **Janabai vs. ICICI Lambord Insurance Co. Ltd.,** (2022) 10 SCC 512 and accordingly holds the appellants entitled to grant of future prospects to the extent of 25%, he being self employed and also for the compensation under the conventional heads i.e. Rs.15,000/- for funeral expenses and Rs.80,000/- (40,000 x2) for loss of love and affection to both sons. The deceased being 50 years, the multiplier of 13 should be applied. Further, there were three dependent at that time, the deduction of 1/3rd ought to be made.

10. Accordingly, the total compensation comes to Rs.2,90,000/- (1500+ 25% (towards future prospectus) - 1/3rd (deduction towards personal expenses)x 12 x 13 (multiplier) +Rs.95,000/- (conventional head). Thus, the enhanced compensation of Rs.1,80,853/-, over and above the amount of Rs.1,09,147/- already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum from the date of filing of the present appeal, till its

realization, shall be paid to the LRs of deceased Mam Kaur in equal ratio within a period of 2 months from the date of receipt of a certified copy of this judgment, failing which, the amount shall accrue an interest as awarded by the Tribunal.

11. Modifying the award to the aforesaid extent, the present appeal is disposed of.

21.11.2023 **(AMAN CHAUDHARY)**
gsv/M.kamra **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No