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

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Reserved on:- 25.07.2023

Pronounced on:- 21.08.2023

Ravinder Kaur and others

...Appellants

Versus

Jaswant Singh and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Rohit Singla, Advocate and
Mr. Abhay Gupta, Advocate
for the appellants/claimants.

Mr. Vikas Sharma, Advocate for
Mr. Pardeep Goyal, Advocate
for respondent No. 2 – Insurance Company.

AMARJOT BHATTI, J.

1. The appellants/claimants – Ravinder Kaur, Kanwar Pal Singh (minor through his mother Ravinder Kaur being natural guardian), Dhanjit Singh and Paramjit Kaur have filed present appeal against impugned Award dated 07.04.2005 passed by learned Motor Accident Claims Tribunal, Barnala vide which the appellants/claimants have been awarded compensation of Rs. 7,80,000/- in equal shares alongwith interest @6% per annum from the date of claim petition till realization of the full and final compensation amount, out of which Rs. 50,000/- has already been deposited by the Insurance Company under Section 140 of Motor Vehicles Act, leaving the balance amount of Rs. 7,30,000/-.

2. The facts of the case are that aforesaid appellants/claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation of Rs. 30,00,000/- alongwith interest @18% per

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annum on account of death of Kiranpal Singh @Kirpal Singh in a motor vehicular accident on 23.12.2002. Late Kiranpal Singh @Kirpal Singh was about 20 years old at the time of accident. He was carrying out his business in the name and style of M/s Dashmesh Trading Co. and also in the name of M/s K.P. Poultry Farm and was earning Rs. 1,50,000/- per annum from all sources. On the fateful day of 23.12.2002, Kiranpal Singh @Kirpal Singh alongwith Bhagwan Singh and Tarsem Singh were going to village Sibian from Khuddi Kalan in a Motor car bearing No. PCS 2067, which was being driven by late Kiranpal Singh @Kirpal Singh. When they reached near village Godara, Police Station Sadar Kot Kapura, a truck bearing No. RJ-13G-3561 came from the opposite side which was being driven by respondent No. 1 in a rash and negligent manner and struck against the car on the driver side. Due to the said impact, the persons sitting in the Motor car sustained multiple injuries and the car was also completely damaged. The injured persons were rushed to G.G.S. Hosptial, Faridkot. Kiran Pal Singh succumbed to his injuries on the way to the hospital and injured Bhagwan Singh and Tarsem Singh were got admitted in the hospital. In this regard, FIR No. 138 dated 24.12.2002, under Section 279, 337, 304-A, 427 of IPC was registered at Police Station Sadar Kot Kapura. Hence the claim petition.

3. The claim petition was contested by both the respondents. In the amended written statement filed by respondent No. 1, he has taken preliminary objections qua locus standi and jurisdiction. On merits, he has denied the claim of the claimants. He submitted that on the inquiry conducted by him, he came to know that the deceased and others were returning from a marriage party and the deceased Kiran Pal Singh @Kirpal

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Singh was driving the vehicle in a drunken condition due to which he has dashed his car against some unknown vehicle. The vehicle of the answering respondent has been wrongly involved in this case. As no accident took place on 23.12.2002 due to the rash and negligent driving of truck bearing No. RJ-13G-3561, therefore, the question of payment of compensation to the petitioners does not arise. Hence, it was prayed that the claim petition may be dismissed with costs and special costs to the tune of Rs. 10,000/- may be awarded to the answering respondent.

4. In the written statement filed by respondent No. 2, preliminary objection regarding maintainability was taken. It is submitted that the driver of the alleged vehicle was not having valid and effective license at the time of alleged accident. It is further submitted that the claimants are not the legal heirs of alleged deceased. On merits, all the averments as mentioned in the claim petition were denied by the answering respondent. However, it is submitted that the FIR in question was lodged with malafide intention just to grab the compensation. No accident took place as alleged in the claim petition. The claimants are not entitled to any compensation from the answering respondent. Hence, it was prayed that the claim petition may be dismissed with costs and the answering respondent be awarded special costs to the tune of Rs.20,000/-.

5. Rejoinder to the written statements was filed by the claimants in which they have reiterated the facts pleaded in the claim petition and denied the averments as mentioned in the written statements. From the pleadings of the parties, following issues were framed by the Tribunal on 30.09.2003:-

(1) *Whether on 23.12.2002 at about 05:30/6:00 P.M., near village Godara in District Faridkot, respondent No. 1 drove Truck bearing No. RJ-13G-3561 rashly and negligently; thereby caused an accident and in that accident, Kiranpal Singh @Kirpal Singh had died? OPP*

(2) *Whether the petitioners are legal heirs of deceased and were dependent upon him, if so, whether they are entitled to compensation, if so how much and from which of the respondents? OPP*

(3) *Whether claims Tribunal Barnala has no jurisdiction to entertain and try the petition? OPR*

(4) *Whether respondent No. 1 was not holding a valid and effective driving license at the time of accident? OPR*

(5) *Relief.*

6. In order to prove the claim petition, the petitioner/claimant No. 4 herself stepped into the witness box as AW-2. The petitioners/claimants also examined Bhagwan Singh as AW-1, Kaur Sain as AW-3 and Yadwinder Singh as AW-4. Thereafter, learned counsel for the petitioners tendered in evidence attested copy of Matriculation Certificate of Kiran Pal Singh deceased as Ex.P-7, attested copy of his Driving License as Ex.P-8, Invitation Card of the marriage of Kiran Pal Singh deceased as Ex.P-9, photographs as Ex.P-10 to Ex.P-13, Date of Birth Certificate of claimant Kanwar Pal Singh as Ex.P-14, certified copy of Post Mortem Report of Kiran Pal Singh as Ex.P-15, certified copy of Charge-sheet framed against respondent No. 1 as Ex.P-16, certified copy of report under Section 173 Cr.P.C. as Ex.P-17 and Disability Certificate

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of Dhanjit Singh as Ex.P-18 and closed the evidence.

7. In order to rebut the case of the claimants/petitioners, no witness was examined by the respondents. However, respondent No. 1 tendered in evidence certified copy of his driving license as Ex.R-2, copy of RC of truck as Ex.R-4, whereas, respondents No. 2 tendered in evidence copy of insurance policy as Ex.R-1 and closed the evidence.

8. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the petitioners/claimants was allowed by passing impugned Award dated 07.04.2005, as referred above. Feeling aggrieved of this Award, the present appeal has been preferred by appellants/claimants for enhancement of the compensation amount.

9. I have heard the arguments of learned counsel for the appellants as well as learned counsel representing the contesting respondents. The learned counsel for the appellants/claimants argued only on the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Barnala. Firstly, it is pointed out that the learned Tribunal has failed to appreciate that the deceased was an Income Tax payee. The Income Tax Returns were duly proved on record for the Assessment Year 2001-02 Ex.P-3 and Income Tax Returns of the Assessment Year 2002-03 Ex.P-5, according to which in the latest Income Tax Return his annual income was mentioned as Rs. 65,937/-. Even then the learned Motor Accident Claims Tribunal, Barnala assessed the income of deceased Kiran Pal Singh @Kirpal Singh as Rs. 8,000/- per month out of which 1/2 income was wrongly deducted towards his personal expenditure, maintenance of office and car. As per law, the maximum deduction could not be more than 1/3rd of the income of the deceased victim. It is further

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not appreciated that the deceased victim was 20 years old. His future prospects are not considered at all. Even the multiplier of 16 has been wrongly applied by the learned Motor Accident Claims Tribunal, Barnala to assess the quantum of compensation. It is wrongly considered by the learned Motor Accident Claims Tribunal, Barnala that appellant/claimant No. 3 Dhanjit Singh was getting pension of Rs. 2,500/- per month from the Army. It is totally ignored that he was invalidated out of military service on 24.08.1987 with 100% medical disability. The Medical Certificate in this regard is Ex.P-18. The learned Motor Accident Claims Tribunal, Barnala has merely granted Rs. 10,000/- towards funeral and last rites and Rs. 12,000/- under general damages. No compensation has been awarded for the loss of consortium. The compensation has not been calculated correctly. The interest awarded by the learned Motor Accident Claims Tribunal, Barnala is also towards the lower side i.e. 6% per annum, whereas the appellants/claimants are entitled to recover interest @12% per annum. It is therefore prayed that the appellants/claimants are entitled to receive compensation of Rs. 30 lacs alongwith interest @12% per annum which the respondents are liable to pay jointly and severally as per the terms of the Award.

10. On the other hand, the learned counsel for respondent No. 2 - Insurance Company has opposed the appeal preferred by the appellants/claimants. The income of the deceased was rightly assessed by the learned Motor Accident Claims Tribunal, Barnala. However, it is conceded that the deceased was having a wife, minor child, old mother, therefore, 1/3rd income should have been deducted towards personal expenditure. It is opposed that father Dhanjit Singh was dependent on his

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son. In-fact, he was Army personnel who was invalidated from military service and was drawing pension from the Army. Therefore, it cannot be said that the father was dependent on his son or he was entitled to receive compensation. It is prayed that the compensation awarded by the learned Motor Accident Claims Tribunal, Barnala does not require any interference.

11. I have considered the arguments and have gone through the trial Court file. In this case, the appeal has been filed only with a prayer of enhanced amount of compensation. The findings given by the learned Motor Accident Claims Tribunal, Barnala on other issues are not disputed. Regarding the quantum of compensation or the dependents who were entitled to receive the same, specific issue No. 2 was framed by the learned Motor Accident Claims Tribunal, Barnala. Admittedly, Kiranpal Singh @Kirpal Singh who was young boy of 20 years of age met with an accident while travelling in car bearing No. PCS 2067 while going from Khuddi Kalan towards Sibia when he was hit by the offending Truck bearing No. RJ-13G-3561 driven rashly and negligently by respondent No.1. In this accident, the victim lost his life and regarding this accident, FIR No. 138 dated 24.12.2002 under Section 279, 337, 304-A, 427 of IPC was registered at Police Station Sadar Kot Kapura. The present appeal has been preferred regarding the inadequate compensation awarded by the learned Motor Accident Claims Tribunal, Barnala. In order to prove the facts of the case, Paramjit Kaur – mother of the deceased victim has stepped into the witness box as AW-2. Her version is supported by Yadwinder Singh AW-4. The Income Tax Returns filed by deceased Kiran Pal Singh are proved by examining Kaur Sain AW-3 who was working as

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an Accountant for maintaining the books of account of M/s Dashmesh Trading Company, Barnala which was sole proprietorship of the deceased victim. The Income Tax Return for the Assessment Year 2001-02 is Ex.P-3 and the Income Tax Return for the Assessment Year 2002-03 is Ex.P-5. Therefore, in this case the claimants examined Kaur Sain AW-3 to prove the recent Income Tax Returns. The learned Motor Accident Claims Tribunal, Barnala wrongly and without any justification assumed the income of deceased as Rs. 8,000/- per month. Therefore, considering the Income Tax Return for the Assessment year 2002-03 Ex.P5, his annual income is mentioned as Rs. 65,937/-, round figure Rs. 66,000/- and the monthly income comes out of to be Rs. 5,500/-. The deceased was doing business, therefore, it cannot be said that he was having any fixed income. Therefore, considering his profession and by applying the authority cited in **2013(3) CivCC 15 Supreme Court of India**, in case titled “***Rajesh and others Vs Rajbir Singh and others***”, 40% income is enhanced towards future prospects, which comes out to be Rs. 2,200/- and monthly income is taken as Rs. 7,700/- and annual income is taken as Rs. 92,400/-. The deceased was a married man. Ravinder Kaur appellant/claimant No. 1 is the wife, Kanwar Pal Singh – appellant/claimant No. 2 is the minor son and the appellants/claimants No. 3 and 4 are the old parents of late Kiran Pal Singh @Kirpal Singh. Admittedly, Dhanjit Singh – appellant/claimant No. 3 is the father of deceased victim. Admittedly, he invalidated from military service on 24.08.1987 with 100% disability. The Medical Certificate is Ex.P18 and accordingly, he is getting pension from the Army. Therefore, financially Dhanjit Singh was not dependent on his son. Therefore, considering the remaining family members, 1/3rd income is

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deducted towards personal expenditure. The learned Motor Accident Claims Tribunal, Barnala again without any justification had reduced 1/2 income towards personal expenditure. Therefore, the dependency of the family comes out to be Rs.5,133/- P.M. and the annual income comes out of to be Rs. 61,596/-. The learned Motor Accident Claims Tribunal, Barnala again wrongly applied the multiplier of 16 to assess the quantum of compensation, whereby by applying the authority cited in **2009 ACJ 1298 Supreme Court of India**, in case titled “*Smt. Sarla Verma and others Vs Delhi Transport Corporation and another*”, the multiplier of 18 is appropriate to be applied in this case and with this multiplier, amount of compensation comes out to be Rs. 11,08,728/-. In the case in hand, the learned Motor Accident Claims Tribunal, Barnala has already granted Rs. 10,000/- towards funeral expenditure and last rites and Rs. 12,000/- under general damages. However, no compensation has been awarded regarding loss of consortium. Ravinder Kaur – appellant No. 1/claimant No. 1 lost her husband at a very young age and similarly, Kanwar Pal Singh – appellant No. 2/claimant No. 2 lost her father in his childhood. Therefore, both wife and son of deceased victim are granted Rs. 44,000/- each i.e. Rs.88,000/- towards loss of consortium. The compensation of Rs. 22,000/- under expenditure of funeral, last rites and general damages does not require any interference. Therefore, the total amount of compensation comes out to be Rs. 12,18,728/-. As referred above, the learned Motor Accident Claims Tribunal, Barnala had already granted Rs. 7,80,000/- as compensation, out of which Rs. 50,000/- has already been deposited by the Insurance Company under Section 140 of Motor Vehicles Act. Therefore, the balance amount of Rs. 7,80,000/- is liable to be adjusted from the

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aforesaid amount if already deposited and the enhanced amount of compensation comes out to be Rs. 4,38,728/-.

In the case in hand, the learned Motor Accident Claims Tribunal, Barnala while granting compensation of Rs. 7,80,000/-, it was ordered that all the appellants/claimants are entitled to receive this amount in equal shares. Therefore, the appellants/claimants No. 3 and 4 are already adequately compensated. As per memo of parties dated 27.01.2020, the age of appellant No. 2/claimant No. 2 is mentioned as 17 years, which means that he has attained majority in the year 2023. Therefore, Ravinder Kaur and Kanwar Pal Singh – appellants No. 1 and 2/claimants No. 1 and 2 are entitled to receive the enhanced amount of compensation i.e. Rs.4,38,728/- in equal shares from the respondents jointly and severally. The aforesaid appellants/claimants are entitled to receive this amount with interest @7% per annum from the date of filing of present appeal till realization of the amount. Considering the long pendency of present appeal, the appellants No. 1 and 2/claimants No. 1 and 2 are further granted Rs. 5,000/- each towards litigation expenses.

Resultantly, the findings given by the learned Motor Accident Claims Tribunal, Barnala while passing impugned Award dated 07.04.2005 are modified regarding quantum of compensation by accepting the present appeal.

The photocopy of record received from the Tribunal be sent back to the concerned quarter. Pending application(s), if any, also stand disposed off.

21.08.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes