

**FAO No.3242 of 2011 &
CM No.186-CII of 2022**

ALPANA SINGH AND ORS V/S ANIL KUMAR AND ORS

Present: Mr. Narender Kaajla, Advocate
for the appellants.

Mr. Raj Kumar Bashamboo, Advocate
for respondent No.3-Insurance Company.

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CM No.186-CII of 2022

At the very outset, learned counsel for the applicants-appellants submits that the present application has become infructuous.

Resultantly, the same stands disposed of accordingly.

FAO No.3242 of 2011

Learned counsel for the appellants as well as learned counsel for respondent No.3-Insurance Company submit that there is no dispute amongst the respondents *inter-se* qua the liability to pay the amount of compensation as all the respondents have been held to be jointly and severally liable to pay the same and therefore, the service of notices upon respondent No.1-Driver and respondent No.2-Owner of the offending vehicle may be dispensed with.

Ordered accordingly.

Let the arguments be heard after the lunch break.

12.01.2023
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(MEENAKSHI I. MEHTA)
JUDGE

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

FAO No.3242 of 2011

Date of Decision: 12.01.2023

Alpana Singh and others

...Appellants

Versus

Anil Kumar and others

...Respondents

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

Present:- Mr. Narender Kaajla, Advocate
for the appellants.

Service of notice upon respondents No.1 and 2
has been dispensed with.

Mr. Raj Kumar Bashamboo, Advocate
for respondent No.3-Insurance Company.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved and dis-satisfied with the Award passed by learned Motor Accident Claims Tribunal, Hisar (for short 'the Tribunal') on 09.09.2010, whereby the appellants-claimants (here-in-after to be referred as 'the claimants') have been granted compensation to the tune of Rs.14,60,000/-, along-with interest @ 6% per annum from the date of filing of the claim petition till its realization, on account of the death of Sunil Kumar in a motor vehicular accident, they (claimants) have filed the instant appeal for seeking the enhancement of the amount of compensation.

2. As per the brief factual-matrix culminating in the filing of the present appeal, the claimants, being the wife, minor son, mother and father of

the above-said deceased respectively, filed a petition against the respondents, the respective driver, owner and insurer of Hydra Crane bearing registration No.CG.04/DB-6740 (for short 'the offending vehicle'), to claim compensation of Rs.02 (two) Crore, while averring that the deceased was employed as Site Engineer in Rajiv Gandhi Thermal Power Plant, Khedar and was drawing the monthly salary @ Rs.25,000/-. On the ill-fated day, i.e 19.11.2008, he, along-with his colleagues Arvind Pathak and Virender, was going on foot on the approach road of the said Power Plant. In the meantime, the offending vehicle, which was being driven by respondent No.1 in a rash and negligent manner, came from the back side and hit him (deceased) and he was crushed under the same and sustained multiple grievous injuries in this accident and ultimately, succumbed to the same in the hospital.

3. All the three respondents filed their respective written statements contesting the claim, as set-forth by the claimants in their petition, on various grounds. The Tribunal put the parties to the trial by framing the issues on 13.08.2009. 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 for respondent No.3-Insurance Company in the instant appeal and have also perused the record carefully.

5. Learned counsel for the claimants contends that the Tribunal fell in error in assessing the monthly income of the deceased as Rs.10,000/-, while observing that there was a discrepancy in his salary statements Exhibits P10

and R1 wherein his monthly carry-home salary is shown to be Rs.14,972/- and Rs.14,012/- respectively but ignoring the fact that his gross monthly salary in these statements is recorded to be Rs.15,932/- and moreover, the Tribunal has not awarded any compensation on the scores of future prospects and loss of estate and even otherwise, the amounts of compensation awarded towards the transportation/funeral charges and for the loss of consortium are also quite insufficient and in these circumstances, the claimants are entitled to the enhancement of the amount of compensation as awarded by the Tribunal.

6. Per-contra, learned counsel for respondent No.3-Insurance Company argues that the Tribunal has correctly calculated the amount of compensation and it being so, the claimants have no occasion to ask for any further enhancement in the same.

7. Though in the salary statements Exhibits P10 and R1, the carry-home monthly salary of the deceased has been mentioned as Rs.14,972/- and Rs.14,012/- respectively but this Court cannot lose sight of the fact that in both these documents, his gross salary is shown to be Rs.15,932/- per month. However, the amount of Rs.2400/-, as mentioned in these salary statements as the transport allowance, has to be deducted from the said gross salary of the deceased so as to arrive at his monthly salary for the purpose of calculating the amount of compensation and when so deducted, his monthly salary would be Rs.13,532/-.

8. Concededly, the deceased was about 31-32 years old at the time of his death in the said accident. Therefore, in view of the judgment as handed down by the Constitution Bench of Hon'ble the Supreme Court in **National Insurance Company Limited Versus Pranay Sethi and Others 2017(16) SCC**

680, an amount equivalent to 40% of his afore-mentioned monthly salary, i.e Rs.5412.80Ps/- (say Rs.5413/-), is to be added therein on the count of future prospects and on adding the same accordingly, his monthly salary comes out to be (13532+5413)=Rs.18,945/-.

9. The Tribunal has awarded compensation to all the four claimants while considering them to be the dependents of the deceased. Therefore, 1/4th share of his afore-assessed salary, i.e Rs.4736/-, is to be deducted towards his personal expenditure, leaving the remaining amount of Rs.14,209/- to be counted towards the monthly dependency of the claimants and their annual dependency, thus arrived, would be (Rs.14,209x12)=Rs.1,70,508/-. Keeping in view the observations as made by the Apex Court in Sarla Verma and Others vs. Delhi Transport Corporation and Anr 2009(6) SCC 121, the multiplier of ‘16’ would be applicable and when so applied, the amount of compensation comes out to be (Rs.1,70,508x16) =Rs.27,28,128/-. Besides this amount, claimants No.1 & 2 are granted a sum of Rs.44,000/- each towards the loss of spousal and parental consortium respectively whereas each of claimants No.3 and 4 is also entitled to the amount of Rs.44,000/- for the loss of filial consortium. Further, the claimants shall also be entitled to an amount of Rs.16,500/- towards the funeral expenses and another sum of Rs.16,500/- for the loss of estate.

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

Head	Compensation awarded by the Tribunal	Compensation awarded by this Court	Enhancement
Dependency	Rs.14,40,000/-	Rs.27,28,128/-	Rs.12,88,128/-

Loss of Consortium	Rs.10,000/- to wife only	Rs.1,76,000/- (Rs.44,000/-x4)	Rs.1,66,000/-
Loss of Estate	NIL	Rs.16,500/-	Rs.16,500/-
Funeral/ Transportation/ medical expenses	Rs.16,000/-	Rs.16,500/-	Rs.500/-
Total enhancement: Rs.14,66,000/-		Rs.29,37,128/-	Rs.14,71,128/-

16. In view of the fore-going discussion, the appeal in hand is hereby allowed to the effect that the claimants are entitled to the net enhanced compensation amounting to **Rs.14,71,128/-**, over and above the amount of Rs.14,66,000/- (wrongly mentioned as Rs.14,60,000/- in the relief clause in the impugned Award) as already awarded to them and the said enhanced amount shall carry the interest @ 7.5% per annum from the date of filing of the claim petition till its realization and shall be payable to the claimants in the same terms as mentioned in the impugned Award.

12.01.2023
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes