

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

FAO No. 162 of 2016 (O&M)

Reserved on :03.02.2023

Pronounced on :05.05.2023

Lakhmir Kaur and Anr.

... Appellants

Versus

Balbir Singh @ Bira and Ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Paramveer Singh, Advocate
for Mr. Samir Rathore, Advocate, for the appellants.

Mr. Manmohan, Advocate for
Ms. Suman Jain, Advocate
for respondent No.3-Insurance Company

SANJIV BERRY, J. (ORAL)

Instant appeal has been preferred by the claimant-appellants against the award dated 08.10.2015 passed by the Motor Accident Claim Tribunal, Ambala (hereinafter referred to as 'Tribunal').

2. Brief facts of the present case are that the claimants, who are parents of the deceased, had filed the claim petition stating therein that on 03.11.2001 Jatinder Singh was going from Indira Chowk, Ambala Cantt to Mahesh Nagar by driving scooter No. HR-01B-2076 and one Inder Pal Singh was pillion rider. At about 5.30 P.M. when they reached near Gandhi Ground, on Ambala-Jagadhri Road, a truck bearing registration No. HNE-5965 driven by respondent no.1 in rash and negligent manner came from behind and hit the scooter of the deceased by going on the extreme left side

of the road, as a result, both fell down and suffered injuries. The injured were taken to Civil Hospital, Ambala Cantt but due to serious injuries on Jatinder Singh was referred to PGI, Chandigarh, wherein he remained admitted from 03.11.2001 to 28.11.2001 and ultimately expired on 08.07.2002 on account of injuries suffered in the accident, FIR was registered against respondent No.1.

3. On the basis of pleadings and the evidence on the record, the Tribunal assessed the income of the deceased as ₹36,000/- annually by considering him as labourer, earning ₹3000/- per month. The deceased being unmarried $\frac{1}{2}$ of this amount deducted towards personal living and expenses of the deceased, which comes to ₹18,000/-. The claimants were 47 and 57 years old at the time of filing of petition and the average age comes to 52 years and considering the age of the claimants, the multiplier of 11 applied and by applying the same the amount comes to ₹1,98,000/- (₹18,000/- x 11). ₹50,000/- each for the loss of love and affection and ₹25,000/- for performing last rites of the deceased. The petitioners were also entitled to interest @ 7.5 per annum from the date of filing of petition till actual realization. The learned Tribunal awarded a total sum of ₹3,23,000/- with interest @7.5% per annum from the date of filing of petition till actual realization and held respondents jointly and severally liable to pay the amount of compensation.

4. Learned counsel for the appellants contend that the learned Tribunal had gravely erred in holding the deceased to be a labourer and assessing his monthly income to be ₹3,000/- per month only, whereas it was duly proved on record that the deceased was working as a Driver at the time

of death and as such compensation awarded be enhanced and placed reliance on the judgment of Hon'ble Supreme Court in ***Rajesh & Ors. Vs. Rajbir Singh & Ors. 2013(3) RCR (Civil) 170***. He further contends, that it is a settled proposition of law that in case of death of a poor person having income below ₹5,000/- per month rule of deduction towards personal expenses is to be applied qua 1/10th of the income only, and placed the law laid down by the Hon'ble Supreme Court in ***New India Assurance Co. Ltd. Vs. gopali & Ors 2012(3) RCR (Civil) 818***. At the time of death, deceased was 24 years of age and as such the multiplier of 18 is to be applied instead of multiplier of 11 as per law laid down by the Hon'ble Supreme Court in ***Sarla Verma Vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77***. He further contends that substantial amount was spent upon his treatment at PGI Chandigarh, transportation, special diet, medical expenses, attendant charges, filial consortium, and future prospects. He has referred judgments cited as '***Magma General Insurance Co. Ltd vs. Nanu Ram alias Chuhru Ram and ors.***' (2018) 18 SCC 130 and ***National Insurance Company Limited vs Pranay Sethi and others***", 2107 Supreme (SC) 1050 in support of his contentions. As such he prays for enhancement of the awarded amount.

5. *Per contra*, learned counsel for the respondent No.3 Insurance Company has assailed these arguments and contends that the learned Tribunal has rightly awarded the compensation as the settled provisions of law as such he prays for dismissal of the appeal.

6. After considering the rival contentions and perusing the record, it transpires that claimants parents of the deceased filed the claim petition

stating that on 03.11.2001 Jatinder Singh with Inder Pal as pillion rider were going on a scooter, when they reached near Gandhi Ground, on Ambala-Jagadhri Road, a truck bearing registration No. HNE-5965 driven by respondent no.1 in rash and negligent manner came from behind and hit the scooter, resultantly, both fell down and suffered injuries. The injured were taken to Civil Hospital, Ambala Cantt, but due to serious injuries Jatinder Singh was referred to PGI, Chandigarh, wherein he remained admitted from 03.11.2001 to 28.11.2001 and ultimately expired on 08.07.2002. It is not disputed that at the time of death deceased Jatinder was 24 years old, and there was no specific income of the deceased and therefore, his income was assessed as ₹3000/- per month. As per '**Sarla Verma's case (Supra)**' multiplier of 18 is applicable between the age of 20-25 and the same would be applicable. Learned Tribunal has not awarded any compensation on account of filial consortium, as such as per **Magma General Insurance Co. Ltd (supra)** filial consortium amounting to Rs.88,000/- (44,000 x 2) is hereby awarded to the appellants. With regard to future prospect, it is settled in **National Insurance Company Limited vs Pranay Sethi and others**", reported as 2107 Supreme (SC) 1050, a constitutional Bench of Hon'ble Supreme Court which has held as under:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

xxxxxxxxxxxxxxxxxx

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased

was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax. (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

Therefore, 40% to the actual income of the deceased would be awarded while computing future prospect.

7. In view of the above discussion, the compensation applicable is as under: -

Sr.No.	Heads	Compensation Awarded
i)	Assessed monthly income - ₹3000x12	₹36,000/-
ii)	1/2 of (i) above deducted as personal expenses of deceased	₹18000/-
iii)	40% (ii) to be increased as future Prospect	₹7200/-
iv)	Compensation after multiplier of '18' is applied (25200 x18)	₹4,53,600/-
v)	Filial consortium ₹44,000 X 2	₹88,000/-
vi)	Funeral expenses	₹16,500/-
vii)	Total compensation awarded	₹5,58,100/-
	Interest	7.5%

8. The amount of the enhanced compensation aforesaid shall be payable by respondents No. 1 to 3 jointly and severally with interest @ 7.5% per annum from the date of filing of the claim petition till its

realization. However, the first liability being of respondent No.3- Insurance Company which shall pay the amount of enhanced compensation to the claimant in addition to the compensation already awarded by Id. Tribunal.

9. Accordingly the appeal is allowed and the award dated 08.10.2015 passed by Motor Accident Claims Tribunal, Ambala, is hereby modified in above terms.

10. Pending application(s) if any also stand disposed of.

(SANJIV BERRY)
JUDGE

05.05.2023
GYAN

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No