

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

FAO No. 5847 of 2015

DATE OF DECISION :- April 24, 2023

Mamta Devi and others

...Appellants

Versus

Saleem and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Naveen, Advocate
Mr. Sanjiv Gupta, Advocate for the appellants.

Mr. Amit Kundra, Advocate for respondent No. 3.

Briefly stated the facts of the case are that on account of death of Rajesh Kumar, aged about 26 years, working as a care taker of harvester statedly earning Rs.13,000/- per month from that avocation, in a motor vehicular accident which took place on 29.11.2013 at about 5.00 P.M, statedly on account of rash and negligent driving of Tata truck bearing registration No. UP-11T-7205 (hereinafter referred to as offending Truck) by respondent No. 1 Saleem, legal representatives of such deceased namely his wife Smt. Mamta Devi, aged about 23 years, minor son Master Lavish, mother Smt. Angoori Devi, all residents of village Kairwali, Tehsil and District Karnal had brought a claim petition under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Saleem, driver, Rajinder Singh Rana, owner and the The New India Assurance Company Limited through its Divisional Manager, Karnal, insurer of the offending truck.

After contest, such claim petition was accepted by Motor Accident Claims Tribunal, Karnal vide Award dated 20.3.2015 and compensation of

Rs.11,36,270/- with interest at the rate of 9% per annum from the date of filing of claim petition till actual realization was awarded to the claimants payable by all the three respondents jointly and severally.

Finding the compensation to be on lower side, the claimants have preferred an appeal before this Court, notice of which was given to respondent No. 3 Insurance Company only. Since liability to pay compensation had been held to be joint and several by the Tribunal, therefore, issuance of notice to respondents No. 1 and 2 was dispensed with.

I have heard learned counsel for the appellants and learned counsel for respondent No. 3 besides going through the record.

The Tribunal, considering the facts and circumstances of the case and evidence brought on record by the parties, had returned a clear finding that respondent No. 1 was author of the accident by his rash and negligent driving of the offending truck resulting in death of Rajesh Kumar. For that reason the driver, owner and Insurance Company of the offending truck were held to be liable jointly and severally.

While assessing the compensation the Tribunal has taken age of deceased to be 27 years and his monthly income to be Rs.6700/- per month. However, I find that the monthly income so taken is some what on the lower side. It would be proper and appropriate to take it as Rs.7,000/- per month. It is so done accordingly. The Tribunal has not made any addition towards future prospects.

In terms of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' when the deceased was below the age group of 40 years an addition of 40% of the salary is to be made towards future prospects. Doing that monthly income of the deceased is assessed to be $7000 + 2800 = \text{Rs.}9800/-$. Making deduction of 1/3rd

of the amount towards personal and living expenses of deceased the dependency of the claimants comes out to $9800 - 3266 = \text{Rs.}6534/-$ per month. In that way, the annual dependency of claimants is worked out to $6534 \times 12 = \text{Rs.}78408/-$. Keeping in view the age of the deceased multiplier of 17 is required to be applied. Doing that the total dependency of claimants comes out to $78408 \times 17 = \text{Rs.}13,32,936/-$. The claimants are entitled to get a sum of Rs.40,000/- as compensation under Head loss of consortium/filial consortium, Rs.15,000/- as funeral expenses and Rs.15,000/- on account of loss of Estate. The Tribunal has awarded Rs.1 lakh for loss of consortium which is certainly on higher side, Rs.1 lakh on account of loss of care and guidance which is not legally permissible and compensation of Rs.25000/- has been awarded for funeral expenses when the amount which is payable is Rs.15,000/- only. In that way under the conventional Heads the claimants are entitled to Rs.70,000/-. Adding that amount the total compensation is worked out to Rs.14,02,936/-. The Tribunal has awarded a sum of Rs.11,36,270/-. In that way the claimants are entitled to get additional compensation of Rs.2,66,666/- ($14,02,936 - 11,36,270$) payable by the respondents with interest at the rate of 7.5% from the date of filing of claim petition till actual realization. The liability to pay this amount would be joint and several by all the three respondents.

The appeal is partly allowed with costs throughout.

(H.S. MADAN)
JUDGE

April 24, 2023

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No