

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

Sr. No.1184

FAO-4358-2018

Date of Decision:05.07.2023

BINIYA DEVI @ MINA DEVI & ORS

.... Appellants

Versus

GURNAM SINGH AND ORS

... Respondents

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

Present:- Mr. Ishwar Cooner, Advocate
for the appellants.

Mr. Ashwani Talwar, Advocate along with
Mr. Dinesh Jaswal, Deputy Manager and
Mr. Sumeet Rawal, A. O. for respondent No.3-Oriental Ins. Co.

H. S. MADAAN, J. (ORAL)

1. Briefly stated facts of the case are that on account of death of one Parmanand Singh in a motor vehicle accident, which took place on 15.09.2016 in the area near New Grain Market, Police Station Saha, statedly on account of rash and negligent driving of truck tipper bearing registration No.HR-37C-3018 (hereinafter referred to as the 'offending vehicle') driven by respondent No.1-Gurnam Singh, legal representative of deceased, Parmanand Singh, i.e. his widow Biniya Devi @ Mina Devi aged about 42 years; sons Muthura Nand Singh aged about 42 years, Dukhanand Singh aged about 20 years, Rajesh Kumar aged about 18 years; and mother Buchiya Devi aged about 65 years, all residents of village-Gamhariya, Post Office-Madanpur, District Araria (Bihar) had filed a claim petition under Section 166 of Motor Vehicles Act, 1988 against respondents i.e. Gurnam

Singh, driver; Mr. Parveen Chawla, owner of the offending vehicle; Oriental Insurance Limited Company, Ambala Cantt.-through its Divisional Manager insurer of truck tipper bearing registration No.HR-37C-3018 for claiming compensation.

2. On getting notice, all the respondents had put in appearance through counsel and contested the claim petition by way of filing written replies. Issues were framed and parties were afforded adequate opportunities to address and lead evidence in support of their respective claims. After hearing arguments of the parties, Motor Accident Claims Tribunal, Ambala, (hereinafter ‘The Tribunal’) vide award dated 16.10.2017, accepted the claim petition of the claimants and awarded compensation of Rs.16,69,000/- with interest @ 7.5% per annum from the date of filing of claim petition till its realization besides costs to the petitioner-claimants. The details of the compensation as awarded by the Tribunal are as follows:-

Sr. No.	Head of Compensation	Amount
1.	Loss of Dependency	Rs.13,44,000-00
2.	Funeral expenses	Rs.25,000-00
3.	Loss of Consortium to Biniya Devi (widow)	Rs.1,00,000-00
4.	Loss of love and affection to minor claimants No.2 to 4 Mathura Nand, Dukhanand Singh, Rajesh Kumar. (Rs.50,000/- each)	Rs.1,50,000-00
5.	Loss of love and affection to claimant No.5 Buchiya Devi (mother)	Rs.50,000-00
	Total	Rs.16,69,000-00

3. Finding the compensation so awarded by the Tribunal to be on a lower side, the claimants have approached this Court by way of filing the present appeal, notice of which was given to respondent No.3-Insurance Company which had put in appearance through its counsel.

4. I have heard the arguments of learned counsel for the parties besides going through the record.

5. In the present case, the Tribunal, after considering the evidence brought on record by the parties especially the statement of eye-witness of the accident provided by PW-2/Arjan Paswan, who had supported the case of claimants in material aspects and the fact that the respondent No.1 has been booked in criminal case with regard to this very accident vide FIR No.135 dated 16.09.2016 (Exhibit P-7) and that he has been challaned and sent up to face trial in the case and taking into consideration the post mortem report of deceased (Exhibit P-1), final report under Section 173 Cr.P.C. (Exhibit P-2), mechanical report of the offending vehicle (Exhibit P-3), copy of crime Detail Form (Exhibit P-4) and considering the fact that respondents Nos.1 and 2 had not appeared in the witness box to rebut the case of claimants, has returned a clear finding that respondent No.1 was author of the accident by driving the truck tipper in rash and negligent manner resulting into death of Parmanand Singh.

6. There is no reason to differ with such finding recorded by the Tribunal. For that reason respondent No.1 Gurnam Singh being driver, respondent No.2 Parveen Chawla owner and respondent No.3 insurance company-insurer of the truck in question, have rightly been held liable to pay compensation on account of wrongful act of causing death of Parmanand Singh in the road side accident.

7. With regard to quantum of compensation, the Tribunal has taken the age of deceased to be 44 years, considering the date of birth as 01.01.1972, as entered in his Aadhaar Card (Exhibit P-9). His age in other documents available on the record is also reflected as 44 years. In absence of any evidence in rebuttal, the Tribunal was justified in taking the age of deceased as 44 years. In the present case, the claimant-deceased was working as a labourer earning Rs.15,000/- per month. However, the Tribunal

finding that the Parmanand Singh was an able bodied person and as per the collector rate prevalent at that time, he could be expected to earn minimum amount of Rs.12,000/- per month. Therefore, his income was taken up as such but then the Tribunal omitted to add an amount towards future prospects which was required to be done in terms of the judgment *National Insurance Company Limited Vesus Pranay Sethi; 2017(4) RCR (Civil) 2009*.

8. As per ratio in that judgment, when the deceased was self-employed and was in age group of 40 to 50 years, an addition of 25% is to be made to of his income towards future prospects. Doing that an addition of Rs.3,000/- is to be made on account of future prospects. Thus, monthly income of deceased is worked to be Rs.15,000/- (Rs.12,000+3,000) per month. The Tribunal has deducted 1/3rd of the amount from monthly income of the deceased towards his personal and living expenses, however, in that respect also, the Tribunal has committed a mistake. The deceased had left behind five dependants. In terms of judgment *Sarla Verma and Others Versus Delhi Transport Corporation and Another; 2009(3) RCR (Civil) 1977* when the deceased was married and number of dependant family members is 4 to 6, deduction towards personal and living expenses should be 1/4th. Accordingly the deduction of Rs.3,750/- is to be made from the monthly income of the deceased, leaving the dependency of claimants as 11,250/- per month and annual dependency; Rs.1,35,000/- (11,250X12).

9. The Tribunal has rightly used the multiplier of 14 considering the age of deceased to be 44 years. Thus, the total compensation comes out to be Rs.18,90,000/- (1,35,000X14). The Tribunal fell in error in awarding a sum of Rs.1,00,000/- to claimant Biniya Devi widow of deceased on account of loss of consortium and Rs.1,50,000/- to claimant Nos.2 to 4 who are sons

of the deceased under the head loss of love and affection and an amount of Rs.50,000/- to mother of deceased Buchiya Devi-claimant No.5 for loss of love and affection. In terms of the judgment of Hon'ble Supreme Court in *Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat and Others; Civil Appeal Nos.2410-2412/2023*, the claimants are entitled to get Rs.40,000/- under the head 'loss of consortium' for all the claimants. Further they are to get Rs.15,000/- as funeral expenses and Rs.15,000/- on account of loss estate. The total compensation thus comes to be Rs.19,60,000/- (18,90,000+40,000+15,000+15,000).

10. The Tribunal has awarded a sum of Rs.16,69,000/- to the claimant. The compensation amount is thus enhanced by Rs.2,91,000/- i.e. (19,60,000-16,69,000). The claimants would be entitled to get interest @ 7.5 % per month on the enhanced compensation from the date of filing of claim petition till realization. The enhanced amount be apportioned amongst the claimants in the same ratio as directed by the Tribunal in the impugned award. However the amount is to be paid in cash without there being necessity of deposit of 50% in the form of FDRs as directed in the impugned award. The appeal is accepted with partly costs.

(H. S. MADAAN)
JUDGE

05.07.2023
M.Sikka

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