

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**  
**232** **FAO-5411-2018 (O&M)**  
**Date of decision: 02.05.2023**

**Kunti Devi & Another** **...Appellant(s)**  
**Vs.**  
**Nand Singh & Others** **...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Chetan Goyal, Advocate  
for the appellants.

Mr. Aseem Aggarwal, Advocate  
for respondent No.3.

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**NIDHI GUPTA, J.**

Mr. Aseem Aggarwal, Advocate puts in appearance on behalf of respondent No.3 and files Power of Attorney which is taken on record.

2. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.11,64,000/- granted by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as "the learned Tribunal") vide Award dated 19.02.2018 passed in MACP/372/2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The two claimants are the parents of the deceased-Dharminder Kumar, who was aged 19 years at the time of death.

3. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Dharminder Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 11.07.2017 due to rash

and negligent driving of Swift Dzire car bearing registration No.HR-70B-9547 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

4. Learned counsel for the appellants seeks enhancement of compensation inter alia on the grounds that:

a) that income of the deceased has been taken on lower side. It is submitted that prior to the accident, the deceased was running a *rehri* of meat, eggs and chicken, etc. and earning Rs.20,000/- per month from the said avocation. However, learned Tribunal has taken his income as that of a casual unskilled labourer as only Rs.7,500/- per month;

b) that nothing whatsoever has been granted by learned Tribunal towards loss of consortium, and as per law, claimants are entitled to Rs.44,000/- towards loss of consortium.

5. In response, it is submitted by learned counsel for respondent No.3/Insurance Company that the appellants led no evidence whatsoever to prove the alleged avocation of the deceased and therefore, there was no error in the notional income of the deceased as assessed by learned Tribunal. It is very fairly submitted that appellants are entitled to Rs.44,000/- towards loss of consortium.

6. No other argument is raised on behalf of the parties.
7. I have heard learned counsel for the parties.
8. Perusal of record of the case shows that age of the deceased was proven to be 19 years at the time of death on the basis of his post mortem report (Exhibit P2). It was pleaded on behalf of the claimants that the deceased was running a *rehri* of meat, eggs and chicken, etc. and earning Rs.20,000/- per month. However, learned Tribunal took income of the deceased as that of a casual unskilled labourer as only Rs.7,500/- per month on the ground that no cogent and convincing evidence was led by the claimants in this respect. In my view, learned Tribunal has failed to correctly appreciate the evidence on record in this regard. PW1-Ram Kumar @ Ramu, eyewitness, who had tendered into evidence his affidavit Exhibit PW1/A, has categorically testified that on the date of accident, the deceased was going with his *rehri* from DMW under bridge, Patiala towards his residence Bajwa Colony, Patiala when the deceased was hit by the offending vehicle from behind. Besides this, both PW1 and PW2 have also stated on affidavit that the deceased was running a *rehri* of meat, eggs and chicken. No doubt it has been pleaded that no *rehri* number was allotted by any Department to the deceased, however, admittedly, no evidence in rebuttal was led by the respondents. Accordingly, in my view, there is no reason to doubt the above said evidence of the claimants/PW1 and PW2, and income of the deceased ought to be taken as that of a skilled

labourer which, as per the relevant Minimum Wage notification comes to Rs.9,245/- per month rounded off to Rs.9,500/- per month.

9. There can be no disputing that the appellants are entitled to consortium of Rs.44,000/-. Accordingly, compensation awarded to the claimants is re-worked as follows:-

| Heads            | Awarded by MACT                                     | Awarded by this Court                               |
|------------------|-----------------------------------------------------|-----------------------------------------------------|
| Income           | Rs.7,500/- per month                                | Rs.9,500/- per month                                |
| Future prospects | (40%) Rs.7,500/- +<br>Rs.3,000/- =<br>Rs.10,500/-   | (40%) Rs.9,500/- +<br>Rs.3,800/- =<br>Rs.13,300/-   |
| Deduction        | (50%) Rs.10,500/- -<br>Rs.5,250/- =<br>Rs.5,250/-   | (50%) Rs.13,300/- -<br>Rs.6,650/-                   |
| Multiplier       | (18) Rs.5,250/- x 18 =<br>Rs.94,500/-               | (18) Rs.6,650/- x 18 =<br>Rs.1,19,700/-             |
| Annual income    | Rs.94,500/- x 12 =<br>Rs.11,34,000/-                | Rs.1,19,700/- x 12 =<br>Rs.14,36,400/-              |
| Consortium       | --                                                  | Rs.14,36,400/- +<br>Rs.44,000/- =<br>Rs.14,80,400/- |
| Funeral expenses | Rs.11,34,000/- +<br>Rs.15,000 =<br>Rs.11,49,000/-   | Rs.14,80,400/- +<br>Rs.16,500/- =<br>Rs.14,96,900/- |
| Loss of estate   | Rs.11,49,000/- +<br>Rs.15,000/- =<br>Rs.11,64,000/- | Rs.14,96,900/- +<br>Rs.16,500/- =<br>Rs.15,13,400/- |
| Total            | Rs.11,64,000/-                                      | Rs.15,13,400/-                                      |

10. Interest @ 7% as determined by learned Tribunal is maintained. Present appeal accordingly, stands **allowed** in above terms.

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

02.05.2023  
Sunena

(Nidhi Gupta)  
Judge

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