

FAO-456-2020(O&M)

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

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**FAO-456 of 2020(O&M)
Decided on: 19.12.2023**

Hardeep Kaur and others

...Appellants

Versus

Narinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Ms. Swati Verma, Advocate for the appellants.

Mr. Neeraj Khanna, Advocate for
Mr. R.N. Singal, Advocate for respondent No.3.

SANJAY VASHISTH, J. (Oral)

1. The present appeal has been filed by the appellants/petitioners/claimants (hereinafter referred as claimants) in MACP/21/2019 dated 29.01.2019 for modification of award dated 06.09.2019, passed by Ld. Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'Ld. Tribunal') by way of seeking enhancement of amount of compensation, on account of death of 'Parvinder Singh' in a motor vehicular accident.

2. Claimants in the MACP/21/2019 were Smt. Hardeep Kaur(wife of deceased Parvinder Singh), Sukhjot Singh and Simranjot Singh (minor

sons of deceased Parvinder Singh) and, Kulwant Kaur (mother of deceased Parvinder Singh).

3. Briefly stated facts of the case are that on 12.10.2018, Parvinder Singh (deceased) along with Sesmani (Employee) had gone to Kup Kalan, on a motorcycle bearing Registration No. PB-19H-0104. They met one Jaspal Singh and all of three had talk inter se and after that, all three persons headed towards village Akbarpur Channa, on their respective vehicles. Deceased was driving the motorcycle whereas Sesmani was pillion-rider and said Jaspal Singh followed them on his car at a distance of about 50 yards. At about 04:20 pm, when they reached in the middle of Kup Khurd and Phallewal , then a offending bus bearing Registration No. PB-13U-9371 being driven by Respondent No. 1 came from behind at very high speed and after crossing the car of jaspal singh, struck against the motor cycle of deceased from back side, due to which, Sesmani fell down and Parvinder Singh (deceased) sustained multiple grievous injuries and he was taken to Civil Hospital, Ahmedgarh and was declared to be in critical stage and thereafter, was taken to Malerkotla, where he was declared brought dead.

For the said accident, FIR No.83 dated 13.10.2018 was registered under Section 279,337,427,and 304-A IPC at P.S Sadar Ahmedgarh.

4. Claimants filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 for seeking compensation on account of death of 'Parvinder Singh'.

5. After going through the record, appreciating the evidence,

examining the witnesses, and hearing the arguments of both the sides, Ld. Tribunal made the assessment as follows:

Parameter(s)	Deceased Parvinder Singh
Age	Approximately 40 years
Monthly Income	Rs.15,000/-
Future Prospect (addition of 25% on Rs.1,80,000/-)	Rs.45,000/-
Deduction on account of personal expenses	One-fourth (1/4)
Multiplier	15
Funeral Expenses	Rs.15,000/-
Loss of Consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-

6. Accordingly, Learned Tribunal awarded an amount of compensation to the the tune of Rs.26,01,250/- payable by respondents severally and jointly with interest @6% per annum, if payment is made within 3 months, and in failure thereof, the claimant shall be entitled to interest @ 9% p.a from the date of filing of the petition till its actual realization.

7. Appellants/petitioners/claimants in the present appeal have filed the present petition seeking enhancement of the compensation as awarded by the Ld. Tribunal.

8. While addressing arguments, Counsel representing the appellants asserts that there was a substantial error on the part of the Learned Tribunal in its assessment of the deceased’s income. Learned counsel for the appellants submits that the Ld. Tribunal has assessed the income of the

deceased on the lower side; has also provided addition in the income of the deceased under the head of Future prospects on lower side; has granted Funeral expenses to the lower side; has granted compensation on account of loss of consortium on lower side as against the settled proposition of law as rendered by Hon'ble the Supreme Court. Consequently, prays for an augmentation of the compensation amount originally granted by the Learned Tribunal.

9. Learned counsel for the appellant refers to paragraph No.16 of the award, which is reproduced herebelow:

“16. The deceased stated to be working as LTS in M/s Gillanders Arbunthnot and Company Limited (kothari Group), village Akbarpur, In this regard, it is observed that CW-2 Jaspal Singh although working as Assistant General Manager (Personnel) in the said company, was examined as an eye witness, yet he was cross-examined on the point, as to how the attendance of the employees is marked in the company. Although, CW-2 stated that attendance of the employees in the company is marked on the basis of some card system and the record pertaining to the same was not produced and proved on record, yet, claimant examined CW-5 Ram Avtar Sharma, who is also working as Assistant Manager in the Company, has testified that he joined the company on 01.01.1985, whereas deceased joined the company on 01.10.2014 as permanent employee as LTS. Therefore, even if CW-2, from whom, no record of the company with regard to the attendance, job application form, joining letter etc of the deceased were summoned and the same were not produced, yet, CW-5 has categorically revealed that the last monthly salary of deceased was Rs.16,615/- and he proved the details of salary as Ex.C16 and Ex.C17 attested by the A.G.M. Of the company, whose signatures, he had identified and statement of account of deceased Ex.C90. Even if, CW5 has not produced on record job application, joining of the deceased in the above name company, yet, the salary

statement of claimant Ex.C90 cannot be put out of sight, wherein, the salary for the month of 03.10.2018 is recorded to be Rs.15,060/-, therefore, I am constrained to take into account the monthly salary of the deceased to the tune of Rs.15,00/- (round figure).The judicial pronouncement Sarla Rani and others Vs. Charan Singh and others report in 2015 (2) LAR 126, is distinguishable.”

10. Learned counsel for the appellants submits that in regard to the monthly salary of deceased, undisputed evidence in the shape of salary slip Ex.C-16 and C-17 has been proved by the witness, namely Ram Avtar Sharma-CW-5, who is working as Assistant Manager in the Company, where the deceased was employed.

11. Counsel further submits that deceased-Parvinder Singh was working as LTS in M/s Gillender and Arbuthnot and Company Limited (Kothari Group), Village Akbarpur as per the deposition of CW-5. Before the date of accident, deceased had drawn the salary of Rs.16,615/- per month. However, taking note of the details of the salary Ex. C-16 and C-17, the income of the deceased is assessed Rs.15,000/- by learned Tribunal .

12. Counsel also submits that since the deceased was working in the a private company, the bonus and Leave Travel Allowance (LTA) always keeps on increasing from time to time, thus, it cannot be deducted as observed by learned Tribunal. Learned counsel contends that once the bonus and LTA enhances, the salary also enhances in the same ratio. This may be a hypothetical view of the appellants, but undoubtedly, the deceased was working with a progressive company i.e. Kothari Group, therefore, considering the purpose of beneficial legislation also, out of total drawn

salary of Rs.16,615/-, an amount of Rs.615/- could be deducted towards the miscellaneous charges, however, the total drawn salary has been reduced by Rs.1,615/-,thus, assessing the monthly salary of deceased as only Rs.15,000/-.

13. Alternatively, Mr. Khanna, learned counsel for respondent No.3 argued that the learned tribunal has very fairly assessed the income of deceased as Rs.15,000/- per month.

14. Learned counsel for respondent No.3 is unable to give any satisfactory reply to the contention averred by the appellants that the amount towards bonus and LTA keeps on increasing from time to time and it all depends upon the nature of the job and status/reputation of the company.

15. This Court is in agreement with the arguments addressed by Ms. Swati Verma, counsel for the appellants and is of the view that monthly salary of the deceased is to be assessed as Rs.16,000/- instead of Rs.15,000/-.

16. This Court has already rendered a detailed judgment titled as **'SangtariMuleem Vs. Karnail Singh',(FAO No.2538 of 2006 D/d 07.07.2023 : Law Finder Doc Id # 2270482,** in consonance with the settled proposition of law laid down by the Apex Court in case titled as '**National Insurance Company Limited v. Pranay Sethi' (2017(4) R.C.R (Civil) 1009,** and **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77: Law Finder Doc Id # 188882,** and **Smt.Anjali and others v. Lokendra Rathod and others, 2023 (1) R.C.R. (Civil) 22: Law Finder DocId # 2081014.**

17. Therefore, in the case in hand, same parameters as laid down by the Hon’ble Apex Court are applied for the purpose of calculation of compensation. For the sake of convenience, a comparative table of the compensation as assessed and calculated by Ld. Tribunal and this Court is produced below in a tabular form:

Head	Compensation awarded by Ld. Tribunal	Compensation Awarded by High Court
Income	Rs. 15,000/-p.m.	Rs. 16,000/-p.m.
Future Prospects	Rs.3,750/- p.m(25% of income of the deceased)	Rs. 8,000/- (50% of the income of the deceased)
Deduction towards personal expenses	Rs. 4,688 /- [i.e.1/4 (half) of Rs.18,750 /-]	Rs. 6,000/- ([i.e.1/4(half) of (Rs16,000/- + Rs. 8,000/-)]
Total Annual Income	Rs.2,25,000 /- (Rs.14,062/- x12)	Rs. 2,16,000/- (Rs.18,000 /- x12)
Multiplier	15	15
Loss of Dependency	Rs.25,31,250 /- (i.e.,1,68,750 /- x 15)	Rs. 32,40,000/- (i.e. Rs.2,16,000 x 15)
Funeral Expenses	Rs. 15,000/-	Rs. 25,000/-
Loss of Estate	Rs. 15,000/-	Rs. 20,000/-
Loss of Consortium	40,000/-	Rs.48000/-
Loss of Parental Consortium	NIL	Rs.96,000/-(48,000 each x2)
Filial Consortium	NIL	Rs.48,000/-
Total Compensation to be Paid	Rs. 26,01,250/-	Rs.34,77,000/-

18. Counsel for the appellants further submits that the rate of interest awarded by the Ld. Tribunal i.e. at 6% per annum and in case payment is not made within three months, then 9% per annum from the date of filing of the claim petition till its realization is worth to be maintained in view of the settled proposition of law established by the Apex Court and applied by this Court.

19. However, learned counsel appearing on behalf of respondents submits that the penal rate of interest as awarded by the Tribunal is against the settled law, and thus, interest should be only 6% without any caveat.

20. I have gone through the judgments cited by counsel for the appellants (claimants) and thus, I deem it appropriate to maintain the rate of interest as awarded by the Learned Tribunal in consonance with the findings already rendered by this Court in '***Oriental Insurance Company Limited v. Harpal Kaur***', FAO-5255-2023: Law Finder Doc ID #2370280.

21. Thus, keeping in view the aims and objects of this beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellants (claimants) is Rs.34,77,000/- along with interest at 6% per annum and in case payment is not made within three months, then 9% per annum from the date of filing of claim petition till the date of payment of compensation to the appellants (petitioners/claimants).

22. Needless to mention that out of the total payable compensation amount, already paid amount (if any) in compliance to the impugned award, would be adjusted and the amount of compensation awarded shall be

distributed among the claimants in the same ratio as was held by the Ld. Tribunal.

23. Therefore, by partly modifying the award, appeal is allowed with the terms indicated here-above.

Pending Miscellaneous applications, if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

19.12.2023
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No