

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

FAO-10667-2018 (O&M)

Decided on : 01.09.2023

KAMLA AND ORS

. . . Appellants

Versus

KASHMIR CHAND @ KASHMIRA AND ORS.

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Ms. Amrita Nagpal, Advocate
for the appellants.

Mr. Man Mohan, Advocate
for respondent No.3.

SANJAY VASHISTH, J. (Oral)

CM-13056-CII-2023

This is an application for preponement of the date of hearing of the present appeal i.e. FAO-10667-2018.

There is no objection by respondent No.3 in preponing the date of hearing of the main appeal i.e. FAO-10667-2018.

Therefore, this Court considers it appropriate to prepone the date of hearing of the main appeal i.e. FAO-10667-2018 from 17.10.2023 to 01.09.2023 i.e. today itself.

Ordered accordingly.

Application stands disposed of.

FAO-10667-2018

1. The present appeal has been filed by the

appellants/petitioners/claimants (hereinafter referred as claimants) in MACT Case No. 80 of 2016, dated 13.09.2016, for modification of award dated 07.11.2017, passed by Ld. Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as 'Ld. Tribunal') by way of seeking enhancement of amount of compensation, on account of death of 'Jagdish Pal' in a motor vehicular accident.

2. The claimants in the MACT case were Claimant No.1 - Smt. Kamla (widow of the deceased), Claimant No.2,3 and 4—Minakshi, Rinki and Bhavya respectively (minor daughters of the deceased), Claimant No.5—Jagan Nathee (mother of the deceased). The appellants in the present appeal are claimant No.1, 3 and 4 while, claimant No.2 and 5 are proforma respondents.

3. Briefly stated facts of the case are that on 19.06.2016, deceased along with his friend Bharat Bhushan were going to Ambala from Karnal by Bus bearing No. NL02B-1991 which belonged to a school. The bus was being driven by Bharat Bhushan, however, the bus stopped, due to overheating. Jagdish came out of the bus to fill water in the radiator of the bus, but in the meanwhile, a truck bearing no. DL1GB-7258 being driven in a rash, negligent and zig zag manner came from the Karnal side and hit the bus. Due to the heavy impact, bus struck Jagdish who sustained multiple injuries and died on the spot. Accordingly, FIR No. 322 dated 19.06.2016 under sections 279, 304-A IPC was registered with the Police station, Thanesar, Sadar.

4. Claimants filed a claim petition under Section 166 and Section 140 of the Motor Vehicle Act, 1988 for seeking compensation of Rs.4,00,000/-. However, after going through the record, appreciating the

evidences, examining the witnesses and hearing the arguments of both the sides, Ld. Tribunal assessed the age of the deceased as 42 years; his monthly income as Rs.10,520/-; added 25% to the income as future prospects; applied the multiplier of 14; deducted 1/4th of his income on account of monthly expenses; provided Rs. 15,000/- on account of funeral expenses; provided consortium to the tune of Rs.40,000/- to the widow and accordingly, awarded compensation to the claimants to the tune of Rs.17,11,990/- payable by respondents severally and jointly with interest @6% per annum from the date of filing of the petition till its actual realization.

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

6. While addressing arguments, Counsel for the appellants submits that the Ld. Tribunal has erred in assessing the amount of compensation to the claimants by not awarding any compensation on account of loss of estate; provided only Rs. 15,000/- towards funeral expenses and by providing consortium only to the widow of the deceased and not to the rest of the dependants. Thus, pray for enhancement of the amount of compensation as awarded by the Ld. Tribunal.

7. On the other hand, Ld. Counsel for Respondent No. 3 – Insurance Company, submits that the Ld. Tribunal has erred in determining the monthly salary of the deceased as the same has been assessed on the basis of the collector's rate of unskilled labourer. However, the same should have been determined in accordance with the minimum wages prevalent at that time i.e. Rs. 8,070/- which is in consonance with the settled law laid down by the Apex Court. Further, there is no need to interfere in the amount

of compensation as awarded by the Ld. Tribunal under other heads.

8. This Court has acknowledged the discrepancy between the collector's rate, as opted by the learned Tribunal, for assessing the monthly income of the deceased, and the prevailing minimum wage standards at the time of accident. It is evident that the collector's rate leans towards the higher end of the spectrum in contrast to the established minimum wage benchmarks.

However, in the noble pursuit of upholding the overarching intent of this benevolent legislation and principles of equity and fairness, this court deems it appropriate to retain the deceased's salary in accordance with the collector's rate, which stands at an amount of Rs. 10,520/-.

9. This Court has already rendered a detailed judgment titled as **Sangtari Muleemv. 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 **National Insurance Company Limited v. Pranay Sethi and Ors., 2017(4) RCR (Civil) 1009** : **Law Finder Doc Id #918174**, 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 Doc Id #2081014**. 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.

This Court has noticed that although, claimant No.2 Minakshi and claimant No.5- Jagan Nathee are proforma respondents, still, this Court deems it appropriate to hold their entitlement as parental consortium *qua* claimant No.2-Minakshi and filial consortium *qua* claimant No.5-Jagan

Nathee to the tune of Rs.44,000/- each and same is payable to them.

10. Thus, the amount of compensation is calculated, taking into consideration the settled law of proposition as laid down by the Hon’ble Apex Court and as applied by this Court. For the sake of convenience, a comparative table of the compensation as assessed by this Court and awarded by Ld. Tribunal and this Court is produced below in a tabular form:-

Sr. No.	Head	Compensation awarded by Ld. Tribunal	Compensation Awarded by High Court
1.	Income	Rs. 10,520/-p.m.	Rs.10,520/-p.m.
2.	Future Prospects	Rs. 2,630/- (25% of the income of the deceased)	Rs. 2,630/- (25% of the income of the deceased)
3.	Deduction towards personal expenses	Rs. 3,287.50/- ([i.e.1/4thof(Rs10,520 /- + Rs. 2,630/-]	Rs. 3,287.50/- ([i.e.1/4thof(Rs10,520 /- + Rs. 2,630/-]
4.	Total Annual Income	Rs.1,26,240/- (Rs.10,520/- x12)	Rs.1,18,350/- [i.e.3/4th of (Rs10,520/- + Rs. 2,630/-)] x12]
5.	Multiplier	14	14
6.	Loss of Dependency	Rs. 16,56,900/- (i.e. Rs.1,18,350/- x 14)	Rs.16,56,900/- (i.e. Rs.1,18,350/- x 14)
7.	Funeral Expenses	Rs. 15000/-	Rs.50,000/-
8.	Loss of Estate	NIL	Rs.20,000/-
9.	Loss of Spousal Consortium	Rs.40,000/-	Rs.44,000/-
10.	Loss of Parental Consortium	NIL	Rs.1,32,000/- (Rs.44,000 x 3)
11.	Loss of Filial Consortium to parents i.e. mother of the deceased	NIL	Rs.44,000/-
12.	Total Compensation to be Paid	Rs. 17,11,900/-	Rs.19,46,900/-

11. Counsel for the appellants further submits that the rate of

interest awarded by the Ld. Tribunal i.e. at 6% per annum from the date of filing of the claim petition till its realization is on the lower side and is liable to be enhanced to 9% p.a. in view of the settled proposition of law established by the Apex Court and applied by this Court.

However, learned counsel appearing on behalf of respondent No.3 -Insurance Co., submits that the rate of interest should not be over the awarded amount and therefore, it should be maintained at the rate of 6% per annum.

12. I have gone through the judgments cited by counsel for the appellants (claimants) and thus, I deem it appropriate to grant the rate of interest at 7.5% per annum.

13. Thus, keeping in view the aim of this beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellants (claimants) is Rs.19,46,900/- along with interest at 7.5% per annum from the date of filing of claim petition till the date of payment of compensation to the appellants (petitioners/claimants).

14. 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 shall be distributed among the claimants in the manner as provided by the Ld. Tribunal in the impugned award.

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

(SANJAY VASHISTH)
JUDGE

September 01, 2023
Lavisha

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