



FAO No.725 of 2011 (O&M)

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

FAO No.725 of 2011 (O&M)

Date of Reserve: 23.05.2025

Date of Decision: 28.05.2025

SURILA KUNDU AND OTHERS

.....Appellant(s)

Vs

SOM NATH AND OTHERS

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vipul Sharma, Advocate
for the appellants.

Mr. R.C. Gupta, Advocate
for respondent No.3.

HARKESH MANUJA, J.

[1]. By way of present appeal, challenge has been laid to an award dated 21.07.2010 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter to be referred as "learned Tribunal"), whereby an amount of Rs.13,29,500/- was awarded as compensation to the appellants/claimants along with interest @ 7.5% per annum.

Brief Facts

[2]. Appellants/claimants being dependents of deceased filed claim petition before the learned Tribunal praying for grant of compensation to the tune of Rs.50,00,000/- (Rupees Fifty Lakhs only) along with interest @ 12% per annum on account of death of Jagdish Kumar in a motor vehicular accident which took place on 05.09.2007, while alleging rash and negligent driving of respondent No.1/driver.

[3]. Learned Tribunal after appraisal of evidence led by the parties found that the accident occurred due to rash and negligent driving of respondent



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No.1/driver and held respondents jointly and severally liable, thereby awarding compensation in the following manner: -

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs.13,20,000/-
2.	Loss of consortium	Rs.5,000/-
3.	Funeral expenses	Rs.2,000/-
4.	Loss of Estate	Rs.2,500/-
	Total	Rs.13,29,500/-

[4]. Being aggrieved against the award dated 21.07.2010, the present appeal has been preferred by the appellants/claimants for enhancement of compensation awarded by the learned Tribunal.

Arguments

[5]. Learned counsel for the appellants/claimants argued that the learned Tribunal erred to ignore the income tax return of the deceased while assessing his income and as such the compensation amount was liable to be enhanced. Lastly, he concluded the arguments by submitting that compensation under conventional heads being on the lower side was also to be enhanced.

[6]. Per contra, Learned counsel for respondent No.3/Insurance Company submitted that the claimants have already been awarded compensation in excess. He further argued that learned Tribunal failed to consider the fact that loan account was in the name of deceased and appellant No.2, thus, the assessment of income of the deceased while considering the said loan being paid by him was wrongly done and as such the income assessed was required to be reduced.

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[7]. I have heard learned counsel for the parties and perused the paper-book of the case. I do find force in the arguments advanced by learned Counsel for the appellants.

Discussion**Question of Income Assessed**

[8]. In the present case, on the basis of material available on record, learned Tribunal erred to discard the Income Tax Return of the deceased for the year 2007-2008 (Ex.P-3) while holding that in the absence of ITRs of preceding years the income of the deceased could not be taken as per Ex.P-3. Present being a case of motor vehicular accident, strict rules of evidence would not apply rather it has to be decided on preponderance of probabilities and the fact that merely because claimants could not produce ITR of previous years the factum that deceased was earning Rs.5,01,202/- per annum at the time of motor vehicular accident as established by Ex.P-3 could not be neglected. In this regard, reference can be made to the judgment passed by the Hon'ble Supreme Court in case of **"Smt. Anjali & Ors. vs Lokendra Rathod & Ors."**, reported as **2023 (1) R.C.R (Civil) 229**, where it has been held that deceased's income tax returns can be considered for computing his income in motor accident compensation claim cases.

Relevant paragraph thereof is reproduced hereunder: -

"9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased's annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in Malarvizhi & Ors . (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed,



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where available, for computation of annual income. In *Malarvizhi (Supra)*, this **Court** has laid as under:

"10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased."

*Hence, this **Court** is of the opinion that the deceased's annual income be fixed at Rs.1,18,261/-, approx. Rs.9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010."*

Therefore, in the facts and circumstances of the case in hand and after placing reliance upon *Anjali's* case (supra), this Court in its humble opinion holds that the income of deceased needs to be reassessed as Rs.5,01,202/- per annum with no redetermination qua the age of the deceased.

Question of Compensation under Conventional Heads

[9]. In view of judgments of the Hon'ble Apex Court in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported as 2009(3) R.C.R. (Civil) 77; *National Insurance Co. Ltd vs Pranay Sethi & others*, reported as (2017) 16 SCC 680 and *United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur*, reported as (2021) 11 SCC 780, the findings of learned Tribunal on deduction to be made towards family expenses while determining the compensation warrants no interference, however, the amount awarded under the heads of "funeral expenses", "loss of estate" and "consortium" is required to be reassessed. Appellants/claimants are, thus held entitled to Rs.18,000/- as compensation under the head of funeral expenses and Rs.18,000/- towards loss of estate by applying 10% increase under the conventional heads. Loss of consortium is to be awarded to the tune of Rs.48,000/- x 3 (Rs.1,44,000/-) as claimants being



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wife and children of deceased are also entitled for spousal and parental consortium; but simultaneously, they would not be entitled for compensation on account of loss of love and affection.

Conclusion

[10]. In view of the discussion made herein above, appellants/claimants are held entitled for the grant of compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1.	Annual Income of deceased	Rs.5,01,202/-
2.	Add 10% of Future prospects (deceased being businessman and 53 years of age)	Rs.50,120.2/-
3.	Total Income (Rs. 5,01,202+ Rs. 50,120.2/-) (per annum)	Rs.5,51,322/- (rounded off)
4.	Deduction (1/3)	Rs.1,83,774/-
5.	Net Income after Deduction (per annum)	Rs.3,67,548/-
6.	Total Loss of dependency (after applying multiplier of 11 as per age of 53 years)	Rs.40,43,028/-
7.	Funeral Expenses	Rs.18,000/-
8.	Loss of Consortium (Rs.48000x3) (to respondents no.1 to 3/claimants)	Rs.1,44,000/-
9.	Loss of Estate	Rs.18,000/-
	Total Compensation	Rs.42,23,028/-
	Amount Awarded by the Tribunal	Rs.13,29,500/-
	Enhanced Amount	Rs.28,93,528/-

[11]. The grant of interest @ 7.5% per annum is not equitable and just in view of the observations made by the Hon'ble Supreme Court in *Smt. Supe Dei and others Vs. National Insurance Company Limited and other, (2009) (4) SCC*



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513 approved in a subsequent judgment titled as *Puttamma and others Vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443*, thus, the interest is enhanced to 9% per annum on the amount of compensation awarded to the appellants/claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

[12]. In view of aforesaid modification, the present appeal stands disposed of. Pending miscellaneous application(s) if any, shall also stand disposed of.

May 28, 2025

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**(HARKESH MANUJA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No