

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

**FAO No.2150 of 2000
Date of decision: 30.09.2015**

Banta Singh and another

....Appellants

Versus

Gurdev Singh

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sagar Aggarwal, Advocate
for Mr. Ashit Malik, Advocate
for the appellants.

Ms. Loveleen Dhaliwal, Advocate
for the respondent.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimants-appellants against the award dated 22.12.1999, passed by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') on account of death of Balwinder Singh in a motor vehicular accident, which took place on 24.06.1997.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 24.06.1997 at about 01:00 p.m. Balwinder Singh along with his father, namely, Banta Singh were travelling from Karnal to Kachhwa on a scooter whereon the claimant-Banta Singh was riding pillion but when

they reached near Pal Nagar, the said scooter developed some mechanical problem and while Balwinder Singh was thus cleaning the plug of the scooter, a motorcycle bearing registration No.HR-08-A-2288, driven by Gurdev Singh-respondent No.1, came from the side of Karnal and struck against Balwinder Singh. As a result of which, Balwinder Singh fell on the road and received multiple injuries and ultimately succumbed thereto on the same date at hospital, Karnal. In this regard, FIR No.956 dated 24.06.1997, under Sections 279 and 304-A IPC, was got registered, in respect of the accident in question. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The Tribunal has given a finding on Issue Nos.1 and 5 against the claimants as per the testimony of PW-2 Balkar Singh, who was a witness to the said accident. He has stated the apprehended the motorcyclist at the spot and had enquired from him his name. However, Balkar Singh, during his cross-examination admitted that he did know the driver of the motorcycle-respondent No.1, prior to the accident, in question. In the claim petition, it has been stated that the driver of the motorcycle had ran-away from the spot and later on, his identity was revealed to be that of Gurdev Singh son of Jaspal (respondent No.1). The testimony of Banta Singh-claimant that the driver had ran-away from the spot and the testimony of PW-2-Balkar Singh,

became doubtful. The claimants made no effort to find-out the name of the driver who was driving the motorcycle bearing registration No.HR-08-A-2288, from the Registering and Licensing Authority. The claimants could find-out the name of the driver from the Registering Authority and implead him as a party to the petition. Hence, in view of the oral testimony of PW-1-Banta Singh and PW-2-Balkar Singh, Gurdev Singh could not be held to be driving the motorcycle on the date of accident. Moreover, Gurdev Singh while appearing as RW-2 has stated on oath that he did not know driving and he was arrested from General Hospital, Karnal, where he had gone to enquire about the welfare of one Sahab Singh of village Peont, who was admitted there.

On the basis of evidence led by the parties, the Tribunal has dismissed the claim petition of the claimant-appellant.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The claimant has placed on record the deposition of PW-1-Banta Singh and PW-2-Balkar Singh. PW-2-Balkar Singh in his testimony has stated that on 24.06.1997, he along with his son,

namely, Balwinder Singh, were going to Karnal to Kachhwa on his scooter, but when they reached near Pal Nagar, the said scooter became out of order and Balwinder Singh started cleaning the plug of the scooter. In the meantime, a motorcycle bearing registration No.HR-08-A-2288, came from the side of Karnal and hit his son. As a result of the said impact, Balwinder Singh sustained injuries and the motorcyclist ran away from the spot after causing the accident. The accident was witnessed by Balkar Singh. Ultimately, his son, namely, Balwinder Singh succumbed to his injuries in General Hospital, Karnal.

In cross-examination, Banta Singh has stated that name of the driver was disclosed to him by the police as the motorcyclist was apprehended at the spot. The motorcyclist had not fled-away from the spot and he was apprehended at the spot after causing the accident. Banta Singh in his cross-examination has admitted two things that name of the driver was disclosed to him by the police and the motorcyclist had not fled away from the spot. Banta Singh in his examination-in-chief has stated that when Balwinder Singh had parked his scooter on the kachha portion of the road, the motorcycle bearing registration No.HR-08-A-2288, being driven by Gurdev Singh son of Jaspal Singh, came in a rash and negligent manner and hit his motorcycle against the scooter of Balwinder Singh. As a result of which, the scooter and Balwinder Singh were dragged to some distance. He stopped and enquired his

name and thereafter, Balkar Singh with the help of Banta Singh took the injured-Balwinder Singh to General Hospital, Karnal where he succumbed to his injuries. In his cross-examination, he has stated that the accident took place at 11:00 a.m., and Balkar Singh had informed the police that he had caught the motorcyclist and had enquired his name. Balkar Singh has been consistent in his examination-in-chief and cross-examination that he had apprehended the motorcyclist at the spot and had enquired from him his name, etc. and thereafter, he had disclosed his name to the police. The FIR was registered on 24.06.1997 at 04:25 p.m., by Banta Singh on the same day. From the deposition of Banta Singh and Balkar Singh, it is abundantly clear that Gurdev Singh was apprehended at the spot and he had not fled-away from the spot. The version of PW-1-Banta Singh and PW-2-Balkar Singh, is consistent and corroborates the version made out in FIR. Hence, the finding on Issue No.1 and 5 recorded by the Tribunal is liable to be reversed. There is no contradiction made by both the witnesses. Hence, in view of the judgment by ***“Girdhari Lal vs Radhey Shyam and others”*** 1993(2) PLR 109, when an FIR had been registered against the driver and he was facing the trial, then it was safe to conclude in present cases that the accident had occurred because of rash and negligent driving of the driver. Once, the finding on Issue No.1 and 5 is reversed, the claimants are held entitled for compensation. Hence, it is held that the deceased has

died as a result of the accident.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of *Asha Verman and others vs. Maharaj Singh and others*, 2015(2) RCR (Civil) 520, *Sarla Verma and others vs. Delhi Transport Corporation and another*, 2009 (3) RCR (Civil) Page 77, *Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54 and *Munna Lal Jain and another vs. Vipin Kumar Sharma and others*, 2015(3) Recent Apex Judgments 459. The deceased was 19 years daily wager. So, keeping in view the Price Index for the year 1997, the income of the deceased is taken as Rs.1,800/- per month. Accordingly, the compensation is re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.1,800/- x 12)	Rs.21,600/-
(ii)	50% of (i) above to be added as future prospects (Age 19 years)	(Rs. 21,600/-) + (Rs.10,800/-) = Rs.32,400/-
(iii)	Dependency of the claimant after deducting 50% of (ii) towards personal expenses of the deceased	(Rs.32,400/-) - (Rs.16,200/-) = Rs.16,200/-
(iv)	Compensation after multiplier of 18 is applied	(Rs.16,200/- x 18) =Rs.2,91,600/-
(vi)	Loss of love and affection, loss of estate and funeral expenses	Rs.75,000/-
(vii)	TOTAL COMPENSATION TO BE AWARDED	Rs.3,66,600/-

The enhanced amount of compensation of **Rs.3,66,600/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced

amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***“Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others”***, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

30.09.2015

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