

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

**FAO No.926 of 1996 (O&M)
Date of decision: 09.12.2015**

Krishan and others

....Appellants

Versus

Nand Lal and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Atul Gaur, Advocate,
for Mr. R.N. Kush, Advocate,
for the appellants.

None for the respondents.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide award dated 06.02.1996, on account of injuries suffered by deceased-Naurang in a motor vehicular accident which took place on 27.10.1991.

Brief facts of the case are that on 27.10.1991, deceased-Norang was going from Sirsa to his village Khanak, district Bhiwani in a four wheeler bearing registration No. HR-16-3442. Gobind, Budh Ram and Ram Chander (his brother) were also travelling along with him. The aforesaid vehicle was being driven by Nand Lal-respondent No.1 in a rash and negligent manner. At about 8.00 P.M., the four wheeler reached near bus stand of Chickenwas on Fatehbad-Hisar stretch of National Highway No.10.

There was a bend in the road. Respondent No.1 tried to negotiate the same

at a fast speed, but could not control his vehicle, as a result of which, the four wheeler overturned. Norang and some other persons travelling in the vehicle received multiple injuries. The injured were taken to General Hospital, Hisar, where one or two persons died. The matter was reported to the police. However, no criminal case was registered against the driver of offending vehicle. Norang was admitted in Kolmet Hospital, Delhi on 28.10.1991 and remained there till 15.11.1991. He was treated by Dr. S.K. Sogani and other doctors and during this period, he was given cosmetic treatment. Thereafter, he was got admitted in Sir Ganga Ram Hospital at New Dehli, where he remained admitted from 15.11.1991 to 27.11.1991 and was operated upon a number of times. When the claim petition was filed, he was still under follow up treatment and was confined to bed. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

Upon notice, respondents appeared and filed separate written statements, wherein all the allegations levelled by the claimants were controverted and prayer for dismissal of claim petition was made.

From the pleadings of the parties, following issues were framed:-

1. Whether the impugned accident was caused by respondent No.1 while driving the offending vehicle rashly and negligently? OPP
2. If issue No.1 is proved, whether the claimants are entitled to receive any amount of compensation, if so, how much and from whom? OPP
3. Whether respondent No.2 is exonerated from liability for the reasons recorded in preliminary objection Nos.6, 11 (I to V)

and 13? OPR

4. Whether the petition is time barred? OPR2

5. Whether the petitioner is estopped by his act and conduct to file the petition? OPR2

6. Relief.

Initially, the claim petition was filed by Norang, however, during the pendency of petition he expired on 25.02.1994 and thereafter, Krishan and others filed application for being impleaded as legal representatives of deceased-Norang. The said application was allowed and title of the petition was amended.

Before the Tribunal, claimants-appellants examined Hans Raj, HC (PW-2) enabling him to produce daily diary report recorded at Police Station, Agroha with regard to the accident. This witness has deposed that the record was destroyed as per rules on 27.10.1991. However, the respondents tendered a copy of daily diary report bearing No.32 dated 28.10.1991 as Ex.R5, which was recorded on the statement of Budh Ram son of Hem Raj, who was travelling in the same four wheeler. As per this report, the four wheeler was going to Sirsa and there were 20/22 passengers in it. When they were returning to their village Khanak, the accident had taken place near bus-stand of village Chikanwas. It was stated that a bull suddenly appeared before the four wheeler, which was being chased by some dogs. Nand Lal-respondent N.1 tried to avoid hitting the bull and in that process, the four wheeler overturned. Statement made by Ram Chander (PW-4) has corroborated the version of the daily diary report. He is the brother of one of the person named Rameshwar, who sustained injuries and died in the accident as per version given in Ex.R5. His presence at the time

of accident was not doubtful and a finding has been rightly given by the Tribunal on issue No.1 in favour of the claimants that the accident had been caused on account of rash and negligent driving of offending vehicle by Nand Lal-respondent No.1. The deceased was aged about 45 years and was the sole bread earner of the family. As per medical record, the deceased had suffered paralysis after the accident and the head injury was of such a nature that he must have undergone a great deal of pain and suffering. The Tribunal has assessed the compensation by taking into account the income of deceased as Rs.500/- per month i.e. Rs.6000/- per annum. The deceased was 45 years of age at the time of accident/death and the multiplier of 10 was applied. Thus, the financial loss came to be Rs.60,000/-. Apart from this, the claimants were awarded Rs.55,352/- on account of medical expenses, as per medical bills (Mark B-1 to B-50). Further, a sum of Rs.1,00,000/- was awarded on account of pain and sufferings. Hence, the claimants were found entitled to a total compensation of Rs.2,15,352/- (Rs.55,352 + 1,00,000/- + 60,000/-). Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

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

The fact of accident is admitted and proved. The accident in question took place in the year 1991 and the income of the deceased has rightly been taken as Rs.500/- per month i.e. Rs.6000/- per annum. Keeping in view that after the accident, the deceased had suffered a paralytic attack, the compensation is required to be enhanced under the head, 'special diet, transportation charges, pain and sufferings'. Accordingly, in the peculiar facts and circumstances of the case, to meet the ends of justice, the

compensation is hereby reassessed as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Financial loss as assessed by the Tribunal	Rs.Rs.60,000/-
(ii)	Medical expenses	Rs.55,352/-
(iii)	Compensation towards special diet, transportation charges, pain and sufferings etc.	Rs.2,00,000/-
(iv)	TOTAL COMPENSATION AWARDED	Rs.3,15,352/-
(v)	Enhanced amount of compensation	Rs.3,15,352 – 2,15,352 = Rs.1,00,000/-

The enhanced amount of compensation of **Rs.1,00,000/-** 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

09.12.2015
ajp