

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.947 of 1997

Date of Decision: 01.09.2015

Sumandeep Kaur and Others

.....Appellants

Vs.

Baldev Singh and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Inderjit Singh Brar, Advocate for the appellants.

Mr.Tarun Singla, Advocate for respondent No.3.

RITU BAHRI, J.

FAO No.947 of 1997

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Faridkot (hereinafter referred to as 'the Tribunal') vide award dated 11.12.1996 on account of death of Balwinder Singh, husband, father, son and brother respectively of the claimants-appellants.

FACTS NOT IN DISPUTE

The brief facts of the case are that on 15.06.1989 Balwinder Singh son of Mukhtiar singh and Hamir Singh son of Mukhtiar Singh alias Harphool Singh of village Karai wala were going from village Aulakh to Malout on G.T.Road on a Bajaj Chetak Scooter bearing registration No.PJX-5974 which was being driven by Balwinder Singh (deceased) at a slo speed of 40 K.M. per hour and they were being followed by Pws Sukhmander Singh and Chhinderpal on another scooter, when they just crossed village Aulakh, a truck bearing registration No.PAT-3479, which was being driven by Baldev Singh-respondent No.1 rashly and negligently came from the opposite side at

a very high speed and when reached near the scooter being driven by Balwinder Singh(deceased) turned turtle on the scooter resulting into the death of Balwinder Singh and Hamir Singh at the spot. The scooter was also smashed. According to the claimants, the accident took place due to the rash and negligent driving of Baldev Singh-respondent No.1 while driving truck No.PAT-3479 rashly and negligently.

The learned Tribunal after framing the issues returned to the findings that as to whether Balwinder Singh lost his lives due to the rash and negligent driving of Baldev Singh-respondent No.1 on 15.06.1989. The claimants have examined Sukhmander Singh as PW-2 and Chhinder Pal as PW-4. Sukhmander Singh PW-2 stated that he had got FIR registered at police station, the certified copy of which was Ex.PA. The scooter was also smashed and the same facts have deposed by PW-4 Chhinder Pal.

Respondent No.1 Balwinder Singh RW-1 stated that he was an employee of one Shamsher Singh who was owner of the truck which was insured with New India Assurance Company Ltd. Malaut. According to him, he applied brakes of the truck with a view to save the scooterists but the truck turned turtle and fell on the scooterists as a result of which both the scooterists died on the spot. These issues are accordingly decided in favour of the claimants and against the respondents.

On issue No.5, even though, the direction was issued by the Tribunal that the liability was absolved from the respondent/Insurance Company as the driver was not holding valid driving licence at the time of accident. A report was given by the Insurance Company as per deposition of Jagdish Maini, who was appointed as local commissioner visited Gauhati and recorded the statement of RW1 Rabinder Dev that disputed licence was never

the signatures of Sh.P.K.Goswami, the then, District Transport officer, Kamrup, Gauhati on the endorsement in which it was reported that licence number submitted by respondent No.1 was not issued by the District Transport Officer, Kamrup. Statement of Sh.B.N.Pathak, District Transport Officer was also recorded who deposed that licence No.B-15650/88 was issued in the name of Shri Jose K.K. And was issued on 01.04.1977 which was valid upto 31.10.;1988 and the photostate copy of which was produced on the file, was never issued by the said authority. Therefore, the learned Tribunal came to the conclusion that the Driver was not holding a valid licence at the time of accident.

COMPENSATION ASSESSED BY THE MACT

The learned Tribunal while assessing the compensation for LR's of the deceased-Balwinder Singh, his widow Smt.Sumandeep Kaur appeared as PW3 deposed that at the time of his death, her husband was of the age of 22 years and was running cotton rolling machine and his income from all sources was Rs.4,000/-. Therefore, his income was assessed as Rs.4000/- and made a deduction of Rs.2000/- as he used the same for his own expenses and by applying multiplier of 20, Rs.4,80,000/- (2000 X 20 X12) has been awarded by the learned Tribunal.

Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

REASSESSED COMPENSATION

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

The fact of accident is admitted and proved. The deceased 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 Verma 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 and New India Assurance Company Ltd. Vs. Gopali and Others 2012 (3) RCR (Civil) 818*, Accordingly, the compensation is re-assessed as under:-

<i>Sr. No.</i>	<i>HEADS</i>	<i>CALCULATION</i>
1.	Income	Rs.4,000/-
2.	50% of (i) above to be added as future prospects	[Rs.4000/-+ Rs.2000/-]=Rs.6000/-
3.	1/10 th of (ii) deducted as personal expenses of the deceased in view of the judgment of <u>New India Assurance Company Vs. Gopali and others</u>	[(Rs.6,000/-)-(Rs.600/-) =Rs.5400/-
4.	Compensation after multiplier of 18 is applied	Rs.5400/- X 18 X 12=Rs.11,66,400/-
5.	Loss of consortium	Rs.1,00,000/-
6.	Love and affection (children) two in number	Rs.2,00,000/-
7.	Love and affection (parents) Rs.50,000/- each	Rs.1,00,000/-
8.	Loss of Estate	Rs.1,00,000/-
9.	Funeral Expenses	Rs.25,000/-
	Total	Rs.16,91,000/-
	Enhanced amount	(Rs.16,91,400/-)-(Rs.4,80,000/-)=Rs.12,11,400-

The guidelines laid down by Hon'ble the Supreme Court in the case of *New India Assurance Company Limited Vs. Smt.Anuradha and Others 2013 (4) PLR 594,* whereas, insurer could be asked to satisfy the third party

award as a decree against him.

In view of the said judgment, the appeal of the claimants is being disposed of and the insurance company-respondent No.3 shall satisfy the claim and thereafter recover the same from owner of the vehicle i.e. respondent No.2 as a decree of the Court.

The enhanced amount of compensation of Rs.12,11, 400/- 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

01.09.2015
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