

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

**FAO No.755 of 2000
Date of decision: 30.09.2015**

Kumari Nishtha Vashisht and another

....Appellants

Versus

Shri Nand Kishore and others

....Respondents

2) FAO No.756 of 2000

Krishan Kumar Vashisht

....Appellant

Versus

Shri Nand Kishore and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Ekta Thakur, Advocate
and Mr. Kirpal Singh Thakur, Advocate
for the appellants (in both the appeals).

Mr. Satpal Dhamija, Advocate
for respondent No.3 (in both the appeals).

RITU BAHRI J. (Oral)

By this single judgment I intend to dispose of two
appeals i.e. FAO No.755 of 2000 titled as “*Kumari Nishtha
Vashisht and another vs Shri Nand Kishore and others*” and
FAO No.756 of 2000 titled as “*Krishan Kumar Vashisht vs Shri
Nand Kishore and others*” as both these appeals have arisen out

of the same award dated 20.11.1999.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 20.12.1995, claimant-Krishan Kumar was going in his Maruti car bearing registration No.HR-26-B-7733 to Faridabad along with Smt. Shailey (since deceased). He was driving his car at a very slow speed and on the correct side of the road. At about 09:00/09:15 a.m., when they were near petrol pump, situated near village Baliawas, a truck bearing registration No.HR-47-2181, being driven by respondent No.1 rashly, negligently and at a very high speed came from the opposite side. He brought the truck on the wrong side and hit the car due to which, they received multiple injuries. Initially, Smt. Shailey was taken to Pushpanjli Hospital, Gurgaon, but as the injuries were serious, she was referred to Batra Hospital, Delhi, where she died after sometime of her arrival.

In this regard, a case under Sections 279, 337 and 304-A IPC, in respect of the accident in question was got registered at Police Station Sadar, Gurgaon.

Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY MACT

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

1. *Whether the death of Smt. Shailey Vashisht wife of Krishan Kumar and injuries to petitioner-Krishan Kumar occurred in a road accident which took place on 20.12.1995 in the area of Baliwas, P.S. Sadar, Gurgaon, due to rash and negligent driving on the part of respondent No.1, driver of truck No.HR-47-2181, as alleged?*
2. *Whether respondent No.1 was not holding a valid driving licence on the date of accident and if so, to what effect? OPR-3.*
3. *Whether the petitioners are entitled to an award of compensation and if so, for how much amount and from whom? OPP.*
4. *Relief.*

Smt. Shailey's case

On the basis of evidence led by the parties, the Tribunal has returned the finding on Issue No.1 in favour of the claimant-appellant. The deceased-Smt. Shailey Vashisht was an income-tax payee and was running a business under the name and style of Nishtha Exclusive. As per Ex.P-139, the income of the deceased-Shailey was Rs.72,560/- per annum and Ex.P-145 shows that the income of the deceased was Rs.52,160/- per annum. Thus, the difference in income of the deceased comes to Rs.20,400/- per annum (Rs.72,560 – Rs.52,160). After deducting 1/3rd amount in respect of personal expenses, the dependency comes to Rs.14,000/- per annum. As per Matriculation Examination (Ex.P-2), the date of birth of deceased was 13.02.1967, which means that

she was 28 years of age at the time of accident. The multiplier of 16 was applied. So, the amount of compensation comes to Rs.2,24,000/-. Another sum of Rs.19,000/- was allowed in respect of employment of maid servant at the rate of Rs.1,000/- per month for 19 months and Rs.10,000/- was allowed in respect of last rites and consortium. In this manner, the total compensation of Rs.2,53,000/- was awarded on account of death of Smt. Shailey Vashisht along with future interest at the rate of 12% per annum from the date of filing of the petition till its realization.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the appeal i.e. **FAO No.755 of 2000** titled as ***“Kumari Nishtha Vashisht and another vs Shri Nand Kishore and others”***.

REASSESSED COMPENSATION

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

The fact of accident is admitted and proved. It stands established that the Smt. Shailey Vashisht has died, as a result of the accident.

Learned counsel for the appellant has placed on record the income-tax returns (Ex.P-139, Ex.P-173, Ex.P-175 and Ex.P-176) of deceased-Smt. Shailey Vashisht which is taken on record as Annexure A-1.

As per Ex.P-176, the income of the deceased-Shailey

was Rs.26,990/- per annum. While assessing the amount of compensation, the Tribunal has taken into consideration only two income-tax returns i.e. Ex.P-139 and Ex.P-145, of the deceased. Ex.P-176 was not taken into consideration at the time of assessment of compensation.

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 *Parminder Singh vs. Dilbagh Singh*, 2014 (4) R.C.R. (Civil) 895.

Learned counsel for the appellant pointed out that as per Ex.P-176, the income of the deceased-Smt. Shailey Vashisht was Rs.26,990/-, at the time of her death. Hence, by taking the difference of income-tax returns (Ex.P-139 and Ex.P-176), the annual income of the deceased comes to Rs.45,570/- per annum (R.72,560 – Rs.26,990). Accordingly, the compensation is re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income	Rs.45,570/-
(ii)	Compensation after multiplier of 17 is applied (Age 28 years)	(Rs.45,570/- x 17) =Rs.7,74,690/-
(iv)	Loss of love and affection to minor daughter	Rs.75,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.8,49,690/-

(vi)	Enhanced amount of compensation	(Rs.8,49,690/-) – (Rs.2,53,000/-) =Rs.5,96,690/-
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FAO No.756 of 2000

This appeal has been filed by claimant-injured, namely, Krishan Kumar Vashisht for enhancement of compensation on account of permanent disability suffered by him to the extent of 45% in the aforesaid accident.

The amount of compensation awarded to Pawan Sharda-injured, assessed by the Tribunal as under:-

SR. NO.	HEADS	AMOUNT
1.	Compensation on account of costs of treatment	Rs.2,40,000/-
1.	Compensation on account of transportation charges and petrol charges	Rs.7,000/-
2.	Compensation on account of special diet	Rs.50,000/-
3.	Compensation on account of permanent disability	Rs.25,000/-
4.	Compensation on account of employment of driver throughout the life at the rate of Rs.12,000/- per annum with the multiplier of 12	Rs.1,44,000/-
5.	Compensation on account of pain and suffering	Rs.10,000/-
6.	Compensation on account of loss of enjoyment of life	Rs.5,000/-
7.	TOTAL	Rs.4,81,000/-

Feeling dissatisfied with the impugned award, claimant-injured, namely, Krishan Kumar Vashisht has preferred the appeal i.e. FAO No.756 of 2000 titled as ***“Shri Nand Kishore and others vs Shri Nand Kishore and others”***.

It stands established that the injured-Krishan Kumar

Vashisht received permanent disability to the extent of 45%, as a result of the accident.

Accordingly, the compensation awarded by the Tribunal is required to be re-assessed at the rate of Rs.2,000/- per percentage, so, the amount of compensation comes to **Rs.90,000/-** on account of 45% permanent disability received by him. The injured-claimant remain admitted in the hospital for about 163 days and a sum of Rs.50,000/- on account of special diet has rightly been awarded by the Tribunal. Another sum of **Rs.2,40,000/-** stands allowed in respect of costs of treatment. The compensation on account of employment of driver throughout the life at the rate of Rs.12,000/- per annum has also rightly been awarded by the Tribunal. But, the multiplier of 16 has to be applied. So, by applying that multiplier, the amount of compensation comes to **Rs.1,92,000/-** (Rs.12,000 x 16). Another **Rs.1,00,000/-** also stands allowed in respect of pain and suffering and loss of enjoyment of life. So, the amount of compensation comes to **Rs.6,22,000/-** (Rs.90,000 + Rs.2,40,000 + Rs.1,92,000 + Rs.1,00,000) and after deducting Rs.4,81,000/- awarded by the Tribunal, the enhanced amount of compensation comes to **Rs.1,41,000/-**.

The enhanced amount of compensation of **Rs.5,96,690/-** shall be payable to the claimants-appellants and **Rs.1,41,000/-** shall be payable to injured-claimant, namely,

Krishan Kumar Vashisth, 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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