

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

FAO No.3182 of 2005 (O&M)

Date of decision: 29.10.2015

Smt. Sunita and others

....Appellants

Versus

Sewa Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. P.R. Yadav, Advocate,
for the appellants.

Ms. Madhu Sharma, Advocate,
for Mr. Sandeep Suri, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') vide award dated 23.03.2005, on account of death of Birender Singh in a motor vehicular accident which took place on 12.12.2001. Appellant No. 1 is widow, appellant Nos.2 to 4 are children and appellant Nos.5 and 6 are parents of deceased Birender Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 12.12.2001, deceased-Birender Singh along with his wife Smt.Sunita, cousin Ashok Kumar, younger brother's wife Smt. Lalita and her two minor children namely Rajneesh alias Sunny and Ritesh was going from his village Dhani Kumbhawas to attend an inauguration function of Campa Cola in Gurgaon, by a car bearing registration No.HR-26-M-9444, driven by respondent No.4.

At about 7.30 a.m., when the car reached near village Narsingpur Bus-
Stand, it hit a container bearing registration No. HR-38-G-2931 driven by
respondent No.1 as the same was parked on the main road and due to fog,
respondent No.4 could not see the container as its back lights were off. As a
result of the accident, all the occupants of the car suffered serious injuries.
Ashok Kumar died at the spot. The injured were taken to Civil Hospital,
Gurgaon, where Birender Singh succumbed to his injuries. Some relatives
of deceased-Birender Singh, who were following the aforesaid car in a Tata
Sumo vehicle, witnessed the accident. The accident had been caused due to
negligence of respondent No.1, who had parked his container in the middle
of the main road. After the accident, respondent No.1 fled away from the
spot. With regard to the accident, FIR No.754 dated 12.12.2001, under
Sections 283/304-A IPC was recorded at Police Station, Sadar Gurgaon
against respondent No.1. Consequently, the claimants-appellants filed a
claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came
to a conclusion that Birender Singh died due to a roadside accident which
took place on account of sole negligence of respondent No.1-Sewa Singh,
driver of offending vehicle and thus, returned the finding on Issue No.1 in
favour of the claimants and respondent No.4. Ultimately, the claim petition
was accepted by the Tribunal and a sum of Rs.7,62,000/- was awarded as
compensation on account of death of Birender Singh. The income of
deceased, as per salary certificate (Ex.P4), was Rs.10,610/- per month and
net carry home salary was Rs.8580/- Accordingly, the income of the
deceased was taken as Rs.8580/-per month, out of which, 1/3rd amount was

deducted towards personal expenses of deceased. The dependency of claimants, thus, came to Rs.5720/- per month i.e. Rs.68,640/- per annum. As per documents available on the record, age of the deceased was 42 years at the time of accident/death and the multiplier of 11 was applied. Thus, the claimants were found entitled to compensation of Rs.7,55,040/-. In addition to it, Rs.2000/- were awarded towards loss of estate and Rs.2000/- for funeral charges. A sum of Rs.2500/- was awarded towards loss of consortium in favour of appellant No.1-widow. Hence, the claimants were found entitled to total compensation of Rs.7,61,500/-, round figure Rs.7,62,000/- along with interest @ 9% per annum from the date of filing of the petition till realization. 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. It stands established 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 passed in **Vimal Kanwar and others Vs. Kishore Dan and others**, 2013 (2) RCR (Civil) 945, **Asha Verman and others vs. Maharaj Singh and others**, 2015 (2) RCR (Civil) 520, **New India Assurance Company Limited vs Gopali and others**, 2012 (12) SCC 198, **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, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.10,610/- per month
(ii)	30% of (i) above to be added as future prospects	10,610 + 3183 = Rs.13,793/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased (five dependents)	13,793 – 3448 = Rs.10,345/-
(iv)	Compensation after multiplier of 14 is applied	Rs.10,345/- x 14 x 12 = Rs.17,37,960/-
(v)	Loss of consortium for the widow	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection for the children (appellant Nos.2 to 4)	Rs.3,00,000/- (Rs.1,00,000/- each)
(viii)	Loss of love and affection for the parents (appellant Nos. 5 and 6)	Rs.50,000/-
(ix)	Funeral expenses	Rs.25,000/-
(x)	TOTAL COMPENSATION AWARDED	Rs.23,12,960/-
(xi)	Enhanced amount of compensation	Rs.23,12,960 – 7,62,000 = Rs.15,50,960/-

The enhanced amount of compensation of **Rs.15,50,960/-** 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

29.10.2015
ajp