

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

**FAO No.1246 of 2006 (O&M)
Date of decision: 13.08.2015**

Smt. Sushila Devi and others

....Appellants

Versus

Mohan Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kulvir Narwal, Advocate,
for the appellants.

Mr. Suvir Dewan, 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, Rohtak (hereinafter referred to as 'the Tribunal') vide award dated 05.04.2005, on account of death of Surender Singh in a motor vehicular accident which took place on 31.10.2002. Appellant No. 1 is widow, appellant Nos.2 & 3 are children and appellant Nos. 4 and 5 are parents of deceased Surender Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 31.10.2002, deceased-Surender Singh was going from Shahpur to Jaipur (National Highway No.8) on a motorcycle bearing registration No. RJ-35-M-6209. When he reached near Police Station, Manoharpur, a four wheeler bearing registration No. RJ-14-1G-7570 came from behind on left side and while overtaking his

motorcycle, gave a sudden turn on the right hand side of the road, as a result of which, the said vehicle struck against the motorcycle of Surender Singh. Upon this, Surender Singh fell down and received multiple injuries. He was taken to Civil Hospital by Ashok Kumar. Later on, Surender Singh succumbed to the injuries. With regard to the accident, Kanha Ram son of Ramu Ram lodged an FIR at Police Station, Manoharpur. Postmortem of the dead body was conducted at Civil Hospital, Manoharpur. 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 it was a case of contributory negligence and the aforesaid accident was the result of 25% negligence of deceased-Surender Singh and 75% negligence of respondent No.1-driver of the offending vehicle. Ultimately, the claim petition was accepted by the Tribunal and a sum of Rs.10,92,500/- was awarded as compensation on account of death of Surender Singh. As per certificate, Ex.P2, deceased was getting a sum of Rs.11,993/- per month. To make it in round figure, the income of the deceased was taken as Rs.12,000/- per month, which came to Rs.1,44,000/- per annum. Out of this, 1/3rd amount was deducted towards personal expenses of deceased. The dependency of claimants, thus, came to Rs.96,000/- per annum. As per certificate, Ex.P2, the deceased was 42 years of age at the time of accident/death and the multiplier of 15 was applied. Thus, the claimants were found entitled to compensation of Rs.14,40,000/-. In addition to it, Rs.10,000/- were awarded towards funeral expenses. Since, Surender Singh himself was held responsible for causing the accident to the extent of 25%, therefore, a sum of Rs.3,62,500/- was deducted out of

the total compensation of Rs.14,50,000/-. Rs.5000/- were given to appellant No.1-widow towards loss of consortium. Hence, the claimants were found entitled to total compensation of Rs.10,92,500/- 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.

Learned counsel for the appellants has argued that the accident took place on 31.10.2002 when the deceased was going from Shahpur to Jaipur (National Highway No.8). When he reached in front of Police Station, Manoharpur, the offending four wheeler came from the left side and while overtaking the motorcycle of the deceased, it gave a sudden turn towards right side. Consequently, the offending vehicle struck against the motorcycle of the deceased and caused the accident. Surender Singh fell down and received injuries. After perusing the deposition of Kanha Ram, eye witness (PW-3) and site plan (Ex.P4), the finding recorded by the Tribunal is not correct that Surender Singh-deceased was responsible for causing the accident to the extent of 25%.

After perusing site plan (Ex.P4) and the deposition of Manha Ram (PW-3), it is apparent that the offending four wheeler had tried to overtake the motorcycle of the deceased from the left side. The motorcyclist was not going on wrong side of the road. At the time of

overtaking, it was the duty of driver of four wheeler to keep a safe distance from the vehicle, which was going on the right side of the road. The four wheeler should have overtaken the motorcycle from right side, but instead of that, he had tried to over take the motorcycle from the left side and in this process, the motorcycle hit the four wheeler from backside. This fact was admitted by Kanha Ram (PW-3) in his cross-examination. He had witnessed that back portion of the four wheeler had struck against the front portion of motorcycle. Upon perusing site plan (Ex.P4), the finding of the Tribunal that it was the motorcyclist, who was intending to overtake the four wheeler, is not made out. It is the consistent stand of eye witness Kanha Ram (PW-3) that the offending vehicle was following the ill-fated motorcycle. It had overtaken the motorcycle and gave a sudden turn towards the right hand side. In that process, the offending vehicle hit the ill-fated motorcycle.

The Tribunal was swayed by the deposition of PW-3 that the offending vehicle, driven by respondent No.1, did not give any indication that it was going to turn right with intention to go to the other side of the road. But, this witness has been consistent that the offending four wheeler had tried to overtake the motorcycle from left side. A perusal of site plan (Ex.P4) would show that if the four wheeler was to overtake the motorcycle from the left side, then it would be the duty of the driver of four wheeler to give indication as well as keep a safe distance from the two wheeler. Hence, in view of the deposition of eye witness (PW-3) and the site plan (Ex.P4), negligent of motorcycle being driven by deceased-Surender Singh is not made out at all. The Tribunal was swayed by the statement of eye witness Kanah Ram (PW-3) that no indication was given by the offending

vehicle while turning to the right. The very fact that the offending vehicle was on the left side of the road while overtaking, is sufficient to prove that he was 100% negligent. Hence, this finding of the Tribunal on issue No.1 is set aside and it is held that the accident had been caused on account of rash and negligent driving of the offending vehicle by Mohan Singh-respondent No.1.

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, *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)	Annual Income	Rs.1,44,000/-
(ii)	30% of (i) above to be added as future prospects	1,44,000 + 43,200 = Rs.1,87,200/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased (five dependents)	1,87,200 – 46,800 = Rs.1,40,400/-
(iv)	Compensation after multiplier of 14 is applied	Rs.1,40,400/- x 14 = Rs.19,65,600/-
(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	Rs.2,00,000/- (Rs.1,00,000/- each)
(viii)	Loss of love and affection for the parents (appellant Nos. 4 and 5)	Rs.1,00,000/- (Rs.50,000/- each)
(ix)	Funeral expenses	Rs.25,000/-
(x)	TOTAL COMPENSATION AWARDED	Rs.24,90,600/-

(xi)	Enhanced amount of compensation	Rs.24,90,600 – 10,92,500 = Rs.13,98,100/-
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The enhanced amount of compensation of **Rs.13,98,100/-** 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

13.08.2015
ajp