

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

**FAO No.4264 of 2009 (O&M)
Date of decision: 28.10.2015**

Prem Devi and another

....Appellants

Versus

Bhagchand and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.K. Chawla, Advocate
for the appellants.

Mr. M.B. Jain, Advocate
for respondent No.3.

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 06.01.2009, on account of death of Sukh Ram in a motor vehicular accident which took place on 25.02.2008.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 25.02.2008 at about 05:00 p.m., Sukh Ram along with Rati Ram and Shiv Narrain, was returning to his house from his place of work and when he was

crossing the road, the trailer driven by respondent No.1-Bhagchand, in a very high speed, rashly and negligently, came from Bilaspur Chowki side and caused the accident with Sukh Ram. As a result of which, Sukh Ram received grievous injuries and died at the spot.

In this regard, FIR No.84 dated 25.02.2008, under Sections 279 and 304-A IPC, in respect of the accident in question was got registered at Police Station Bilaspur on the statement of Rati Ram.

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

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Rati Ram appeared as PW-4 and tendered his affidavit Ex.PW-4/A to prove the accident in question.

PW-1-Mam Raj, Additional Ahlmad and H.C. Dharam Singh, PW-2, have made record based statement that in case FIR No.84 dated 25.02.2008, under Sections 279 and 304-A IPC, Ex.P3, challan was filed in the Court against respondent No.1.

Dr. Sarayu Sharma, Medical Officer, General Hospital, Gurgaon appeared as PW-3 and has stated that on 26.02.2008, he conducted the post-mortem examination on the dead body of Sukh Ram son of Sh. Munshi Ram vide PMR Ex.P-4 and in his opinion, the cause of death was injury to vital organ brain, shock and

haemorrhage which were ante mortem injuries in nature and were sufficient to cause death in normal course of life.

Neither the driver of the offending vehicle nor any other person claiming to have witnessed the accident appeared in the witness-box to rebut the statement of PW-1, PW-2, PW-3 and PW-4.

Ultimately, on the basis of evidence led by the parties, the Tribunal has rightly returned the finding on Issue No.1, in favour of the claimants-appellants.

The claim petition was partly accepted by the Tribunal and a sum of Rs.3,04,800/- was awarded as compensation on account of death of Sukh Ram along with future interest at the rate of 9% per annum from the date of filing of the petition till its realization.

As per Salary Slip Ex.P-6, the deceased was earning Rs.5,459/- per month which includes an amount of Rs.1,949/- on account of HRA, conveyance allowance, incentive and other allowances. The said amount of Rs.1,949/- was not treated as part of the income of the deceased and thus, the monthly income of the deceased was assessed at Rs.3,510/- per month by the Tribunal, out of which 1/3rd amount was deducted towards personal expenses. The dependency of claimants, thus, came to Rs.2,340/- per month, which came to Rs.28,080/- per annum rounded off to Rs.28,000/- per annum. Sukh Ram (deceased) was 22-25 years of

age at the time of the accident/death and the multiplier of 16 was applied. The Tribunal has awarded the compensation at the rate of Rs.28,080/- per annum for the first five years i.e. Rs.1,40,400/- and thereafter, half of Rs.28,080/- i.e. Rs.1,40,400 for the remaining period of 11 years i.e. Rs.1,54,440/-, total Rs.2,94,840/-. In addition to it, further compensation of Rs.10,000/- was awarded towards transportation, last rites, etc. Hence, the claimants were found entitled to total compensation of Rs.3,04,840/-.

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 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 *Munna Lal Jain and another vs. Vipin Kumar Sharma and others*, 2015(3) Recent Apex

Judgments 459. From the perusal of the record, it is revealed that the Tribunal has deducted the amount of Rs.1,949/- on account of HRA, conveyance allowance, incentive and other allowances as per the judgment *“Sarita and another vs General Manager, Haryana Roadways and others”*, 2003 ACJ 1937. But, as per the judgment *“Vimal Kanwar and others Vs. Kishore Dan and others”* reported in 2013(2) R.C.R. (Civil) 945 passed by Hon'ble Supreme Court, the amount of Rs.1,949/- should be added towards the salary. So, the monthly income of the deceased comes to Rs.5,459/- per month (Rs.3,510 + Rs.1,949/-), rounded off to Rs.5,500/- per month. Accordingly, the compensation is re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income	Rs.66,000/-
(ii)	50% of (i) above to be added as future prospects (Age 22-25 years)	(Rs.66,000/-) + (Rs.33,000/-) = Rs.99,000/-
(iii)	Dependency of the claimant after deducting 50% of (ii) towards personal expenses of the deceased being bachelor	(Rs.99,000/-) - (Rs.49,500) = Rs.49,500/-
(iv)	Compensation after multiplier of 18 is applied	(Rs.49,500/- x 18) =Rs.8,91,000/-
(v)	Loss of love and affection to parents	Rs.1,00,000/- (Rs.50,000/- each)
(vi)	Funeral expenses	Rs.25,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.10,16,000/-
(viii)	Enhanced amount of compensation	(Rs.10,16,000/-) – (Rs.3,04,840/-) =Rs.7,11,160/-

The enhanced amount of compensation of **Rs.7,11,160/-** 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

28.10.2015

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