

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

**FAO No.1022 of 2011 (O&M)
Date of decision: 04.12.2015**

Smt. Shakuntla Devi and another

....Appellants

Versus

Tahir and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Pratibha Yadav, Advocate,
for the appellants.

Mr. Aditya Jain, Advocate,
for respondent Nos. 1 and 2.

Mr. V. Ramswaroop, 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 28.09.2010, on account of death of Kishan Chand in a motor vehicular accident which took place on 28.09.2008. Appellant No. 1 is widow, whereas appellant No.2 is daughter of deceased Kishan Chand.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 28.09.2008, deceased-Kishan Chand along with Raj Kishore, Anil and Sanjay Singh was going to Sohana from Gurgaon in a car bearing registration No. HR-26-AG-4740. The car was being driven by Sanjay Singh and deceased-Kishan Chand was sitting

by his side on front seat. Raj Kishore and Anil were sitting on back seat. A tempo bearing registration No. HR-46-A-5557 laden with stones, being driven by Tahir-respondent No.1 in a rash and negligent manner was going ahead of them. At about 7.00 P.M., when they reached near village Dhani Sohna, driver of the tempo suddenly applied brakes in order to stop the same, as a result of which, the aforesaid car rammed into the tempo from backside. All the occupants of car received multiple and serious injuries. They were taken to General Hospital, Sohana, where Raj Kishore was declared dead. Kishan Chand and Anil were referred to General Hospital, Gurgaon, however, Kishan Chand was taken to Artemis Health Institute, Gurgaon, where he remained admitted till 26.10.2008. Thereafter, he was taken to Dr. Ram Manohar Lohia Hospital, New Delhi, where he succumbed to his injuries on 30.10.2008. With regard to the accident, an FIR under Sections 279/337/304-A IPC was recorded 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 the accident had been caused on account of rash and negligent driving of offending vehicle by respondent No.1 and thus, returned the finding on Issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Sanjay Singh, who was an injured eye witness of the accident and had filed a separate claim petition seeking compensation. The claimants had also examined Ahlmad to prove that respondent No.1 was facing trial under Sections 279/337/304-AIPC for causing the aforesaid accident. The income of the deceased was taken as Rs.1,00,000/- per annum, out of which, 1/3rd amount was deducted towards

personal expenses of deceased. The dependency of claimants, thus, came to Rs.66,000/- per annum. As per postmortem report, the deceased was 38 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.9,90,000/- (Rs.66,000 x 15). In addition to it, Rs.10,000/- were awarded as funeral expenses and Rs.5,11,901.71 Ps as treatment expenses. Hence, the claimants were found entitled to total compensation of Rs.15,11,901.71 Ps. along with interest @ 6% 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. As per deposition of Kirtinaya Parkash Verma, Editor-in-Chief, Canon Communication (PW-11), the deceased was working as freelance correspondent and was getting remuneration. Photocopy of details of payment made to him for the period of January, 2007 to September, 2008 was proved as Mark-A. He was also getting 400 US dollars for uploading. As per Mark-A, till September, 2008, the deceased had received 5035 US dollars. After taking the value of one US dollar equal to Rs.45/-, his total income for that period came to be Rs.2,26,575/-. Since the aforesaid income is only for the year 2008, the finding of Tribunal is being reversed and the income of the deceased is taken as Rs.3,00,000/- per annum.

Accordingly, 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.3,00,000/-
(ii)	50% of (i) above is added as future prospects (Age 38 years)	Rs.3,00,000/- + 1,50,000 = Rs.4,50,000/-
(iii)	10% of (ii) above is deducted towards income tax	4,50,000 - 45,000 = Rs.4,05,000/-
(iv)	1/3 rd of (iii) above is deducted as personal expenses of the deceased	4,05,000 - 1,35,000 = Rs.2,70,000/-
(v)	Compensation after multiplier of 15 is applied	Rs.2,70,000/- x 15 = Rs.40,50,000/-
(vi)	Loss of consortium for the widow	Rs.1,00,000/-
(vii)	Loss of estate	Rs.1,00,000/-
(viii)	Loss of love and affection for the child (appellant No.2.)	Rs.1,00,000/-
(ix)	Funeral expenses	Rs.25,000/-
(x)	TOTAL COMPENSATION AWARDED	Rs.43,75,000/-
(xi)	Enhanced amount of compensation	Rs.43,75,000 – 15,11,901.71 = Rs.28,63,098.29/- (rounded off Rs.28,63,099/-

The enhanced amount of compensation of **Rs.28,63,099/-** 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

04.12.2015
ajp