

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

**FAO No.3365 of 2010 (O&M)
Date of decision: 12.10.2015**

Ram Variksh Pandey and another

....Appellants

Versus

Liyakat and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Manoj Kaushik, Advocate
for Mr. Subhash Kaushik, Advocate
for the appellants.

Respondent No.1 *ex parte*.

Mr. Suvir Dewan, Advocate
for respondent No.3.

RITU BAHRI J. (Oral)

For the grounds mentioned in the application, the same is allowed and the delay of 22 days in filing the appeal stands condoned.

MAIN CASE

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 05.11.2009, on account of death of

Brijesh Kumar Pandey in a motor vehicular accident, which took place on 15.09.2008.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 15.09.2008 at about 03:00 p.m., Brijesh Kumar Pandey (deceased) was standing in the Maruti trailer parking when the offending trailer bearing Chasis No.DNA 097607 and Engine No.FNH 546554, driven by respondent No.1, in a fast speed, rashly and negligently took a turn and struck against him. As a result of the said impact, Brijesh Kumar Pandey (deceased) sustained injuries on his head and other parts of the body. Constable Pardeep, who was present there, asked the name of trailer driver and sent the injured to General Hospital by arranging a private vehicle. However, he succumbed to his injuries on the way to hospital.

In this regard, FIR No.304 of 2008, under Sections 279 and 304-A of the Indian Penal Code, 1860, in respect of the accident in question was got registered at Police Station Palam Vihar, Gurgaon.

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

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Constable Pardeep (eye-witness)

appeared as PW-3 and tendered his affidavit Ex.PW-3/A to prove the accident in question.

Amrit Lal, Assistant Ahlmad, appeared as PW-2 and Head Constable Desh Raj, appeared as PW-6, who have made record based statements that in case FIR No.304 dated 15.09.2008 pertaining to Police Station Palam Vihar, Gurgaon, final report under Section 173 Cr.P.C. (Mark-A) was filed against accused Liyakat son of Rehman under Sections 279 and 304-A IPC.

Dr. Neelam Thapar, Medical Officer, General Hospital, Gurgaon, appeared as PW-1 and tendered her affidavit Ex.PW-1/A, vide which she has deposed that on 16.09.2008, she conducted the post-mortem examination on the dead body of an unknown male person aged about 30 years vide PMR Ex.P-1 and in her opinion, the cause of death was due to the injuries which were *ante mortem* in nature and sufficient to cause death in natural cause of event.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident was caused on account of rash and negligent driving of offending vehicle by Liyakat-respondent No.1. 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.3,26,800/- was awarded as compensation on account of death of Brijesh Kumar Pandey along with future

interest at the rate of 9% per annum from the date of filing of the petition till its realization.

The monthly income of the deceased was assessed at Rs.3,600/- per month, out of which 1/3rd amount was deducted towards personal expenses. The dependency of claimants, thus, came to Rs.2,400/- per month, which came to Rs.28,800/- per annum. Brijesh Kumar Pandey (deceased) was 25 years of age at the time of the accident/death and the multiplier of 11 was applied. Thus, the claimants were found entitled to compensation of Rs.3,16,800/-. In addition to it, further compensation of Rs.10,000/- was awarded towards funeral expenses, loss of estate, etc. Hence, the claimants were found entitled to total compensation of Rs.3,26,800/-.

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. Accordingly, the compensation re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income	Rs.43,200/-
(ii)	50% of (i) above to be added as future prospects (Age 25 years)	(Rs.43,200/-) + (Rs.21,600/-) = Rs.64,800/-
(iii)	Dependency of the claimant after deducting 50% of (ii) towards personal expenses of the deceased	(Rs.64,800/-) - (Rs.32,400) = Rs.32,400/-
(iv)	Compensation after multiplier of 18 is applied	(Rs.32,400/- x 18) =Rs.5,83,200/-
(v)	Loss of love and affection to parents	Rs.1,00,000/- (50,000/- each)
(vi)	Funeral expenses	Rs.25,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.7,08,200/-
(viii)	Enhanced amount of compensation	(Rs.7,08,200/-) – (Rs.3,26,800/-) =Rs.3,81,400/-

The enhanced amount of compensation of **Rs.3,81,400/-** 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

12.10.2015
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