

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

**X-OBJC No.27-CII of 2012 IN/AND
FAO No.2751 of 2011 (O&M)
Date of decision: 16.11.2015**

Smt. Azad Kaur and another

....Appellants

Versus

Sunil urf Sunil and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the appellants.

Mr. Chanderhas Yadav, Advocate
for the respondent No.1/cross-objector.

Respondent No.2 *ex parte*.

Mr. R.S. Sharma, Advocate
for respondent No.3.

RITU BAHRI J. (Oral)

CM No.9189-CII of 2011

For the grounds mentioned in the application, the same
is allowed and the delay of 73 days in filing the appeals stands
condoned.

MAIN CASE

This is an appeal filed by the claimants-appellants
seeking enhancement, against the award dated 08.09.2010, passed

by Motor Accident Claims Tribunal, Bhiwani, vide which the claim petition was partly accepted and a sum of Rs.3,39,000/- was allowed, on account of death of Pawan in a motor vehicular accident which took place on 29.04.2009.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 29.04.2009 at about 11:25 a.m., Pawan along with his brother Umed were going to purchase bricks and were riding a motorcycle bearing registration No.HR-48-233. When they reached village Achina on Dadri-Jhajjar road and were a acre ahead of the Police Post, Achina, respondent No.1 came driving dumper bearing registration No.RJ-09-G-4326, in a rash and negligent manner and struck against the motorcycle. As a result of this, both the riders fell down and dumper went over the body of Pawan and he died at the spot.

In this regard, FIR (Ex.P-2) at Police Station Baund Kalan, in respect of the accident in question was got registered at the instance of Umed Singh.

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

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Umed Singh (eye-witness) appeared as PW-1 and tendered his affidavit Ex.P-1 to prove the accident in question. On the basis of the evidence led by the parties, the Tribunal has come to the conclusion that the accident

in question was occurred due to the rash and negligent driving by respondent No.1 and the Tribunal has returned the finding on Issue No.1 in favour of the claimants-appellants.

The claim petition was accepted by the Tribunal and a sum of Rs.3,39,000/- was awarded as compensation on account of death of Pawan along with future interest at the rate of 7.5% per annum from the date of filing of the petition till its realization.

The monthly income of the deceased being daily wager was assessed at Rs.4,500/- per month and the annual income comes to Rs.54,000/-. Out of which, 50% amount was deducted in respect of personal expenses. The dependency of the claimants, thus, came to Rs.27,000/- per annum. Pawan (deceased) was 24 years of age at the time of the accident/death and the multiplier of 12 was applied by taking into consideration the age of mother of the deceased. Thus, the claimants were found entitled to compensation of Rs.3,24,000/-. In addition to it, further compensation of Rs.10,000/- was awarded towards loss of estate and Rs.5,000/- was awarded towards funeral expenses. Hence, the claimant No.1, namely, Smt. Azad Kaur (mother of the deceased) was found entitled to total compensation of Rs.3,39,000/- and no amount of compensation was granted to the brother of deceased.

Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

REASSESSED COMPENSATION

I have heard the 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 re-assessed in view of the judgments of *Amrit Bhanu Shali and others vs National Insurance Company Limited and others*, 2012(4) RCR (Civil)343, *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.4,500 x 12)	Rs.54,000/-
(ii)	50% of (i) above to be added as future prospects	(Rs.54,000/-) + (Rs.27,000/-) = Rs.81,000/-
(iii)	Dependency of the claimant after deducting 50% of (iii) towards personal expenses of the deceased	(Rs.81,000/-) - (Rs.40,500/-) = Rs.40,500/-
(iv)	Compensation after multiplier of 18 (Rs.40,500 x 18)	Rs.7,29,000/-
(v)	Loss of love and affection to mother	Rs.50,000/-
(vi)	Funeral expenses	Rs.25,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.8,04,000/-
(viii)	Enhanced amount of compensation	(Rs.8,04,000/-) – (Rs.3,39,000/-) =Rs.4,65,000/-

The enhanced amount of compensation of **Rs.4,65,000/-** 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.

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The cross-objections in the present case has been filed by the driver-respondent No.1.

Learned counsel for the applicant-respondent No.1 has argued that the amount of compensation granted to the claimants-appellants is on higher side. The finding has been given by the Tribunal on Issue No.9 that since the permit was not produced, thus, the Insurance Company would not be liable, however, they will have to compensate the claimants-appellants and thereafter, can recover the same from the owner and driver of the offending vehicle. Learned counsel for the applicant-respondent No.1 has submitted that the applicant-respondent No.1 was employed with the India Cargo Mover Private Limited, near Appughar, New Delhi and he (respondent No.1) has clearly stated in his statement that the permit is with the owner and he could not bring the same

in the Court as the owner of the offending vehicle has refused to give the same. He has further submitted that since respondent No.2 was proceeded against *ex parte*, the liability could not be imposed upon the driver of the offending vehicle.

I have heard the learned counsel for the parties and have gone through the record of the case.

Reference can made to the judgment “***National Insurance Company Limited vs Raj Rani and others***”, 2008 (4) PLR 539, passed by this Court, whereby it has been held that it was for the owner to produce the permit and if he need not do so, then an adverse inference could be drawn against the owner. In another judgment “***Sunil Kumar vs Ramveer Singh and others***”, 2013 (1) PLR 849, passed by this Court, it has been held that if the vehicle was driven without any road permit, then the Insurance Company cannot be exonerated of its liability to make the payment of compensation, unless there were any specific exclusions under terms of policy. A perusal of this judgment further shows that even though the Insurance Company has been given the right to recover the compensation after making payment, then it can recover the same from the driver and owner of the offending vehicle.

In the present case, as well, respondent No.1 was merely a driver of the offending vehicle and the permit was lying in the custody of owner, who was proceeded against *ex parte*. So,

in view of the judgment *Sunil Kumar's case (supra)*, the driver cannot be made liable to make payment of compensation. It is the owner in whose custody the permit was lying and he is liable to make the payment of compensation.

Accordingly, the cross-objections are allowed and the award stands modified to the above extent. However, the Insurance Company, after making payment of compensation to the claimants, shall have the right to recover the amount from the owner of the offending vehicle.

(RITU BAHRI)
JUDGE

16.11.2015
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