

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

**FAO No.4624 of 2011 (O&M)
Date of decision: 18.08.2015**

Smt. Monika and others

....Appellants

Versus

Yoginder @ Ginder and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rakesh Dhiman, Advocate,
for the appellants.

None for the respondents.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') vide award dated 04.11.2010, on account of death of Vijay Kumar in a motor vehicular accident which took place on 05.02.2009. Appellant No. 1 is widow, appellant Nos.2 & 3 are children and appellant Nos.4 & 5 are parents of deceased Vijay Kumar.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 05.02.2009, deceased-Vijay Kumar was going from village Talao to Jhajjar in a three-wheeler. When the said vehicle reached near Narain temple, a tractor bearing registration No. HR-14-A-9840, being driven by Yoginder @ Ginder-respondent No.1 in a rash and negligent manner, struck against the three-wheeler, as a result of

which Vijay Kumar received injuries and died. With regard to the accident, FIR (Ex.P3) was registered. 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. Ultimately, the claim petition was accepted by the Tribunal and a sum of Rs.5,70,000/- was awarded as compensation on account of death of Vijay. The income of the deceased was taken as Rs.4000/- per month, which came to Rs.48,000/- per annum. Out of this, 25% amount was deducted towards personal expenses of deceased. The dependency of claimants, thus, came to Rs.36,000/- per annum. As per postmortem report, the deceased was 35 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.5,40,000/-. Rs.20,000/- were awarded to widow-appellant No.1 for loss of consortium. In addition to it, Rs.10,000/- were awarded towards funeral expenses. Hence, the claimants were found entitled to total compensation of Rs.5,70,000/- along with interest @ 7.5% 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. The Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Gopali & Ors., 2012 (4) PLR 593, while examining the case of a poor person having income below Rs.5000/- per month, has held that only 1/10th deduction should be made for personal expenses as deduction of 1/4th or 1/3rd would only be applicable to rich people living in urban areas who could afford to spend a substantial amount of their income in clubs, hotels and on drinks parties. The Hon'ble Supreme Court after examining the National Sample Survey Report No.527 on Household Consumer Expenditure in India 2006-07, came to a conclusion that where the family of a deceased was having an income of Rs.3000/- to Rs.5000/- and the dependents were five persons or more, it was impossible for him to spend more than 1/10th of the total income upon himself. 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 (supra), 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)	Income	Rs.4,000/-
(ii)	50% of (i) above to be added as future prospects	4,000 + 2,000 = Rs.6,000/-
(iii)	1/10 th of (ii) above is deducted as personal expenses of the deceased (five dependents)	6,000 – 600 = Rs.5400/-

(iv)	Compensation after multiplier of 16 is applied	Rs.5400/- x 12 x 16 = Rs.10,36,800/-
(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.15,61,800/-
(xi)	Enhanced amount of compensation	Rs.15,61,800 – 5,70,000 = Rs.9,91,800/-

The enhanced amount of compensation of **Rs.9,91,800/-** 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

18.08.2015
ajp