

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.118 of 2012

Date of Decision: 02.09.2015

Sarbari and Others

.....Appellants

Vs.

Mehboob and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ashish Gupta, Advocate for the appellants.

Ms.Vandana Malhotra, Advocate
for the respondent/Insurance Company.

RITU BAHRI, J.

FAO No.118 of 2012

This appeal has been filed by the 8 claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal') vide award dated 30.09.2011 on account of death of Sh.Shafi.

FACTS NOT IN DISPUTE

On 09.04.2010, the deceased-Shafi was going to Punhana from his village while sitting on a Tonga. At about 11:00 am, when they reached near Mohan Bhatta, then a tractor bearing No.HR-27-B-2317 came from behind being driven by respondent No.1 rashly and negligently and struck with a motorcycle which was coming behind the tonga and then struck with the tonga as a result of which Sh.Shafi deceased fell on the road and was crushed underneath the tractor and died. Sh.Shafi was aged 35 years and was a mason and was earning Rs.5,000/- p.m.

The driver and the owner did not contest the claim petition despite being served. FIR No.111 dated 09.04.2010 Ex.P2 was registered at Police

Station Punhana for the offence under Sections 279, 304-A IPC and charges were framed against the accused Mehboob son of Kale @ Sumen Khan on 07.06.2010. Ex.P1 was the correct photocopy of FIR, Ex.P2 was the correct copy of the report under Section 173 Cr.P.C., Ex.P3 is the copy of the post mortem report, Ex.P4 to Ex.6 are the copies of registration certificate, driving licence and Insurance cover note. The trial Court after hearing the parties and going through the documents came to the conclusion that the accident had taken place on account of rash and negligent driving of respondent No.1. The Insurance Company tendered documentary evidence Ex.R1 to Ex.R3 and examined Sh.Bhanu Partap Singh as RW1 who stated that driving licence had not been issued by their office. Hence the learned Tribunal held that driving licence of respondent No.1 was not a valid and he violated the terms of the policy of the Insurance Company. The Insurance Company was given a right of recovery after making payment to the claimants.

COMPENSATION ASSESSED BY THE MACT

The compensation was assessed by the learned Tribunal as the deceased was aged 47 years, his income was taken at Rs.3500/- per month as per minimum wages. Keeping in view the number of dependents being 8, deduction of 1/5 was imposed, as such, monthly loss to the dependents becomes equal to Rs.2800/- and by applying the multiplier 13, it becomes Rs.4,36,000/- (2800 X 12 X 13). Rs.5,000/-, Rs.10,000 and Rs.5,000/- were awarded towards loss of estate, loss of consortium and funeral expenses respectively. Therefore, total amount Rs.4,56,800/- were awarded as full compensation.

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

REASSESSED COMPENSATION

The fact of accident is admitted and proved. The deceased 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 Verma 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 and New India Assurance Company Ltd. Vs. Gopali and Others 2012 (3) RCR (Civil) 818, Accordingly, the compensation is re-assessed as under:-*

<i>Sr. No.</i>	<i>HEADS</i>	<i>CALCULATION</i>
1.	Income	Rs.3500/-
2.	30% of (i) above to be added as future prospects	[Rs.3500/- + Rs.1150/-] =Rs.4650/-
3.	1/10 th deduction as per Hon'ble Supreme Court Judgment in the case of <u>New India Assurance Company Ltd. Vs. Gopali and Others</u>	[(Rs.4650/-)-(Rs.465/-)] =Rs.4185/-
4.	Multiplier	[Rs.4185/- X 12 X 13]=Rs.6,52,860/-
5.	Loss of love and affection for 6 children (Rs.1,00,000/- each)	Rs.6,00,000/-
6.	Love and affection for parents (mother)	Rs.50,000/-
7.	Loss of estate	Rs.1,00,000/-
8.	Loss of consortium	Rs.1,00,000/-
9.	Funeral Expenses	Rs.25,000/-
	Total compensation awarded	Rs.15,27,860/-
	Enhanced amount of compensation	[(Rs.15,27,860/-)-(Rs.4,56,800/-)] =Rs.10,71,060/-

The appeal of the claimants is being disposed of and the insurance

company-respondent No.3 shall satisfy the claim and thereafter recover the same from owner of the vehicle i.e. respondent No.2 as a decree of the Court.

The enhanced amount of compensation of Rs.10,71,060/- 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

02.09.2015

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