

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

FAO No.765 of 2011 (O&M)

Date of decision: 01.10.2015

Smt. Ajanta Kumari and others

....Appellants

Versus

Gian Singh @ Gian Chand and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jamshed Ahmed, Advocate
for the appellants.

None for respondent No.3.

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 20.07.2009, on account of death of Subhash Chander in a motor vehicular accident which took place on 28.06.2007.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 28.06.2007, at about 06:30 p.m. Subhash Chander (deceased) after finishing his duty was returning to his house from Faridabad on his scooter bearing

registration No.HR-49-0078 and when he reached on Jail Packet Chowk, he stopped his scooter due to red light. In the meantime, a tractor bearing registration No.HR-26-AK-6031, driven by Dharampal-respondent No.2 in a rash and negligent manner, came from behind and struck against his scooter. As a result of which, Subhash Chander sustained serious injuries and was taken to Paras Hospital, but he succumbed to the injuries received by him during treatment.

In this regard, FIR No.154 dated 28.06.2007, under Sections 279, 337, 304-A IPC, in respect of the accident in question, was got registered at Police Station Sector 56, Gurgaon.

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

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, PW-7, Arjun Singh (eye-witness of the accident) tendered his affidavit Ex.PW-7/A, to prove the accident and has stated that the FIR No.154 dated 28.06.2007 (Ex.P-2) with regard to the accident, was got registered by him. Vikas, Asstt. Ahlmad (Ex.PW-1) has made record based statement that after registration of the aforesaid FIR, the police had submitted the challan in the Court against Dharampal in respect of the accident. He has also proved on record copies of report under Section 173 Cr.P.C. (Ex.P-1), recovery memo (Ex.P-3), besides various other documents. Dr. Vishal, Casualty Medical Officer,

Paras Hospital, Gurgaon, stated that on 28.06.2007, he conducted medico legal examination of Subhash Chander vide MLR (Ex.P-11) and found multiple fractures on his ribs and spine fracture. He sent *ruqa* (Ex.P-12) to the police, but Subhash Chander expired on the same day after about half an hour. PW-2, Dr. S.P. Bhanot, Medical Officer, General Hospital, Gurgaon, has stated that on 29.06.2007, he conducted the postmortem examination on the dead body of Subhash Chander vide PMR (Ex.P-9) and his opinion, the cause of death was due to shock and haemorrhage due to chest injury which was ante mortem in nature and sufficient to cause death in ordinary course of nature and thus, the Tribunal has returned the finding on Issue No.1 in favour of the claimants-appellants.

Ultimately, 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 by Dharampal-respondent No.2. The claim petition was accepted by the Tribunal and a sum of Rs.15,87,569/- was awarded as compensation on account of death of Subhash Chander 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.12,300/- per month, out of which 1/3rd amount was deducted towards personal expenses. The dependency of claimants, thus,

came to Rs.8,200/- per month, which came to Rs.98,400/- per annum. Subhash Chander (deceased) was 28 years of age at the time of the accident/death and the multiplier of 16 was applied. Thus, the claimants were found entitled to compensation of Rs.15,74,400/-. In addition to it, further compensation of Rs.10,000/- was awarded towards funeral expenses, transportation, loss of estate, consortium, etc. A sum of Rs.3169/- on account of expenses incurred on the treatment of deceased prior to his death was also awarded. Hence, the claimants were found entitled to total compensation of Rs.15,87,569/-.

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. From the perusal of the record, it is revealed that the Tribunal has deducted the amount of Rs.1,165/- in respect of the allowances. But, as per “*Vimal Kanwar and others Vs. Kishore Dan and others*” reported in 2013(2) R.C.R. (Civil) 945, the amount of Rs.1,165/- should be added towards gross salary. Accordingly, the compensation re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.12,300 + Rs.1165)	(Rs.13465/- x 12) =Rs.1,61,580/-
(ii)	50% of (i) above to be added as future prospects (Age 28 years)	(Rs.1,61,580/-) + (Rs.80,790/-) = Rs.2,42,370/-
(iii)	Dependency of the claimant after deducing 1/3rd of (ii) towards personal expenses of the deceased	(Rs.2,42,370/-) - (Rs.80,790) = Rs.1,61,580/-
(iv)	Compensation after multiplier of 17 is applied	(Rs.1,61,580/- x 17) =Rs.27,46,860/-
(vi)	Loss of love and affection to parents	Rs.1,00,000 (Rs.50,000/- each)
(vii)	Loss of consortium to widow	Rs.1,00,000/- each
(viii)	Loss of estate	Rs.1,00,000/-
(ix)	Funeral expenses	Rs.25,000/-
(x)	TOTAL COMPENSATION TO BE AWARDED	Rs.30,71,860/-
(xi)	Enhanced amount of compensation	(Rs.30,71,860/-) – (Rs.15,87,569/-) =Rs.14,84,291/-

The enhanced amount of compensation of **Rs.14,84,291/-** 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

01.10.2015
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