

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

FAO No.3361 of 2013 (O&M)

Date of decision: 01.10.2015

Nazeera and others

....Appellants

Versus

Surain and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Amit Kashyap, Advocate
for Mr.R.D. Sharma, Advocate
for the appellants.

Mr.Vishal Munjal, Advocate
for respondent No.1.

Mr. S.S. Sidhu, Advocate
for respondent No.2.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal') vide award dated 16.02.2013, on account of death of Abdul Misr in a motor vehicular accident which took place on 08.11.2011.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 08.11.2011, at about 05:30 p.m. Abdul Misr along with his wife Phulla and minor daughter Zareena came to Sujampur on a scooter bearing registration No.PB-35-E-1470, which was being driven by him, at

a normal speed. At about 05:30 p.m., when they reached near bridge No.4, Sujanpur on National Highway, a truck bearing registration No.JK-02-AH-7481 came from the side of Madhopur, which was being driven at a very high speed, rashly and negligently by respondent No.1 and by coming on the wrong side, it struck against the scooter of Adbul Misr (deceased). As a result of which, both the occupants of the scooter fell on the road and suffered multiple serious injuries. Abdul Misr and his wife, namely, Phulla succumbed to the injuries at the spot.

In this regard, FIR No.133, in respect of the accident in question was got registered at Police Station Sujanpur on the statement of Yakub (brother of the deceased).

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

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, AW-2, Yakub (brother/eye-witness of the accident) tendered his affidavit Ex.A2 to prove the accident and has stated that the FIR No.133 dated 09.11.2011 Ex.A4) with regard to the accident, was got registered by him. Neither the driver of the offending vehicle nor any other person claiming to have witnessed the accident appeared in the witness-box to rebut the statement of AW-2 Yakub and 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 Surain Singh-respondent No.1. The claim petition was accepted by the Tribunal and a sum of Rs.5,14,000/- was awarded as compensation on account of death of Abdul Misr along with future interest at the rate of 6% per annum from the date of filing of the petition till its realization.

The monthly income of the deceased was assessed at Rs.4,020/- per month (rounded off to Rs.4,000/-), out of which 1/4th amount was deducted towards personal expenses. The dependency of claimants, thus, came to Rs.3,000/- per month, which came to Rs.36,000/- per annum. Abdul Misr (deceased) was 44 years of age at the time of the accident/death and the multiplier of 14 was applied. Thus, the claimants were found entitled to compensation of Rs.5,04,000/-. In addition to it, further compensation of Rs.10,000/- was awarded towards funeral expenses. Hence, the claimants were found entitled to total compensation of Rs.5,14,000/-.

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 and *New India Assurance Compnay Limited vs. Gopali*, (2012) 12 SCC 198. Accordingly, the compensation re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.4,000/- x 12)	Rs.48,000/-
(ii)	30% of (i) above to be added as future prospects (Age 44 years)	(Rs.48,000/-) + (Rs.14,400/-) = Rs.62,400/-
(iii)	Dependency of the claimant after deducting 1/10th of (ii) towards personal expenses of the deceased	(Rs.62,400/-) - (Rs.6,240) = Rs.56,160/-
(iv)	Compensation after multiplier of 14 is applied	(Rs.56,160/- x 14) =Rs.7,86,240/-
(vi)	Loss of love and affection to mother	Rs.50,000/-
(vii)	Loss of love and affection to minor children	Rs.3,00,000/- (Rs.1,00,000/- each)
(viii)	Funeral expenses	Rs.25,000/-
(ix)	TOTAL COMPENSATION TO BE AWARDED	Rs.11,61,240/-
(x)	Enhanced amount of compensation	(Rs.11,61,240/-) – (Rs.5,14,000/-) =Rs.6,47,240/-

The enhanced amount of compensation of **Rs.6,47,240/-** 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

yakub