

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

**FAO No.1878 of 2014 (O&M)
Date of decision: 04.11.2015**

Sukhraj Kaur and others

....Appellants

Versus

Sadhu Ram and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Arora, Advocate
for the appellants.

Mr. R.C. Gupta, Advocate
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, S.A.S. Nagar, Mohali (hereinafter referred to as 'the Tribunal') vide award dated 16.01.2014, on account of death of Amar Singh in a motor vehicular accident.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 22.03.2011, at about 12:30 p.m., Amar Singh was going from village Bakarpur to village Chhat while driving a scooty at slow speed and on left side of the road. His wife Sukhraj Kaur was pillion rider on the scooty.

When they reached in front of Sharda Dhaba near village Chhat, the offending car bearing registration No.HR-03-G-9430, came at a fast speed from Zirakpur side. When the offending car was wrongly overtaking the scooty of Amar Singh, it struck against the scooty. The offending car was being driven at a fast speed and in a rash and negligent manner by respondent No.1-Sadhu Ram. Due to this accident, Amar Singh and Sukhraj Kaur fell on the road along with scooty and suffered serious injuries. They both were taken to Gian Sagar Hospital, Ram Nagar. Sukhraj Kaur was admitted there. Due to serious condition of Amar Singh, he was taken to Fortis Hospital, Mohali, by his son Gurminder Singh and he died on the way to the hospital.

In this regard, FIR No.98 dated 03.04.2011, under Sections 279, 337, 338, 427, 304-A IPC, in respect of the accident in question was got registered at Police Station Zirakpur.

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

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Sukhraj Kaur appeared as PW-1 tendered her affidavit Ex.PW-1/A to prove the accident in question. She has also brought on record the documents Ex.P-13 and Ex.P-14. 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 PW-1 and the Tribunal

has returned the finding on Issue No.1 in favour of the claimants-appellants.

The claim petition was partly accepted by the Tribunal and a sum of Rs.5,75,000/- was awarded as compensation on account of death of Amar Singh along with future interest at the rate of 6% per annum from the date of filing of the petition till its realization.

The deceased was an agriculturist and was owning 13 acres of land, but as per *Jamabandi* Ex.P-7, the deceased had $\frac{1}{2}$ share in 11 kanals 8 marlas of land, 1011/2131 share in 73 kanals 11 marlas and 61 kanals 16 marlas of land. It was alleged that the monthly income of the deceased was Rs.80,000/- but no Income-tax return has been brought to record. So, the monthly income of the deceased was assessed at Rs.10,000/- per month, out of which $\frac{1}{4}$ th amount was deducted towards personal expenses. The dependency of the claimants, thus, came to Rs.7,500/- per month, which came to Rs.90,000/- per annum. Amar Singh (deceased) was 68 years of age at the time of the accident/death and the multiplier of 5 was applied. Thus, the claimants were found entitled to compensation of Rs.4,50,000/-. In addition to it, further compensation of Rs.1,00,000/- was awarded towards loss of consortium and Rs.25,000/- was awarded towards funeral expenses. Hence, the claimants were found entitled to total compensation of Rs.5,75,000/-.

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

REASSESSED COMPENSATION

While allowing the claim petition, the Insurance company i.e. respondent No.3 has been absolved and the finding on Issues No.3 and 4 has been given that there was no insurance cover placed on record to show that the offending car was insured with respondent No.3. At the time of accident, neither any Registration Certificate of the offending car nor Insurance Certificate were brought on record and respondent No.2 i.e. owner of the offending car was proceeded against *ex parte* and the offending car was not proved to be insured with respondent No.3.

By way of application filed under Order 47 Rule 27 read with Section 151 CPC, learned counsel for the appellants has placed on record the insurance policy issued by respondent No.3 as Annexure A-1, to prove that the offending vehicle was duly insured at the time of accident. This fact has not been disputed by learned counsel for respondent No.3.

I have heard learned counsel for the parties and perused the case file.

In view of the above, this Court is of the considered opinion that even though respondent No.2 was proceeded against *ex parte*, but the law for insurance company shall remain intact and the finding on Issues No.3 and 4 is required to be set-aside.

So, the finding on Issues No.3 and 4 are set-aside. The Insurance Company i.e. respondent No.3 shall make payment of the compensation to the claimants-appellants.

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 required to be 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. Accordingly, the compensation is re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.10,000 x 12)	Rs.1,20,000/-
(ii)	Dependency of the claimant after deducting 1/4th of (i) towards personal expenses of the deceased	(Rs.1,20,000/-) - (Rs.30,000) = Rs.90,000/-
(iii)	Compensation after multiplier of 5	(Rs.90,000/- x 5) =Rs.4,50,000/-
(iv)	Loss of estate	Rs.1,00,000/-
(v)	Loss of consortium to widow	Rs.1,00,000
(vi)	Loss of love and affection to children	Rs.1,20,000/-
(vii)	Funeral expenses	Rs.25,000/-
(viii)	TOTAL COMPENSATION AWARDED	Rs.7,95,000/-
(ix)	Enhanced amount of compensation	(Rs.7,95,000/-) – (Rs.5,75,000/-) =Rs.2,20,000/-

The enhanced amount of compensation of **Rs.2,20,000/-** 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.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed. However, the Insurance company shall have the right to make necessary recovery from the owner of the vehicle i.e. respondent No.2.

(RITU BAHRI)
JUDGE

04.11.2015
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