

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3556 of 2013

Date of Decision: 04.09.2015

Rajbala and Others

.....appellants

Vs.

Jitender and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms.Avnika Gupta, Advocate for
Mr.Vinod Bhardwaj, Advocate for the appellants.

Mr.T.K.Joshi, Advocate for
respondent No.3/Insurance Company.

RITU BAHRI, J. (ORAL)

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') vide award dated 03.04.2013 on account of death of Daya Kishan in a vehicular accident, husband of claimant-appellant No.1 and father of claimants-appellants No.2 to 4.

FACTS NOT IN DISPUTE

The brief facts of the case are that on 10.07.2010, Daya Kishan (since deceased) along with his cousin Kuldeep and Pawan Kumar and Deepu, were going from Bhiwani to Hardwar for a dip in Ganga in his car bearing registration No.HR-16F-3970, being driven by said Kuldeep. At about 11:30 P.M, when they had crossed Lalukheri on Shamli-Muzaffarnagar road, in the meantime on TATA-407 bearing registration No.HR61-4649, being driven by its driver rashly, negligently and at a very speed and in a zig-zag manner, came on the wrong side and struck against the car. Due to heavy impact, Daya Kishan and Deepu suffered multiple

and Pawan also received grievous injuries on their respective persons. Injured Kuldeep and Pawan were got admitted in the hospital and the dead bodies of the deceased Daya Kishan and Deepu were lying at the spot. The accident had taken place due to sole rash and negligent driving of respondent No.1 while driving offending vehicle bearing registration No.HR61-4649. On having received the information of the accidents and death of the deceased, Ganga Bishan along with several other persons reached at the place of occurrence and on the statement of Ganga Bishan, FIR No.254 dated 11.07.2010 under Sections 279, 337, 338, 304-A and 427 of the Indian Penal Code was registered against respondent No.1. The accident had taken place due to sole rash and negligent driving of respondent No.1 while driving vehicle bearing registration No.HR61-4649.

COMPENSATION ASSESSED BY THE MACT

The learned Tribunal on the basis of evidence on record returned to the findings that accident took place on account of rash and negligent driving of respondent No.1 who was driving the offending vehicle. This fact was corroborated by the deposition of Kuldeep PW-6 and copy of FIR Ex.PW5/B. There was not rebuttal to the aforesaid evidence. The learned Tribunal has assessed the compensation of claimants i.e. Rajbala and her three children by taking his monthly income at Rs.4348/- and by adding 30% of the said amount as future prospect, deduction of 1/4th was imposed. Since, the deceased was 40 years old at the time of accident, multiplier 15 was applied. Thus, the claimants were found entitled to compensation of Rs.7,63,020/-. In addition to it, further compensation of Rs.10,000/- towards transportation of dead body, Rs.10,000/- towards funeral expenses, Rs.25,000/- towards love and affection and Rs.10,000/- towards loss of consortium was awarded. Hence, the claimants were found entitled to total compensation of Rs.8,18,020/-. The assessment of this compensation has done

correctly by the learned Tribunal.

REASSESSED COMPENSATION

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

The fact of the accident is admitted and proved. The deceased died as a result of the accident.

Learned Tribunal has assessed the compensation of the claimants by applying very correct method. However, compensation over the conventional heads has been awarded on the lower side.

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.4,348/-/-
2.	30% of (i) above to be added as future prospects	[Rs.4348/- + Rs.1304/-] =Rs.5,652/-
3.	1/4 th deduction as dependents are four in number	[(Rs.5652/-)-(Rs1,413/-)] =Rs.4,239/-
4.	Multiplier	[Rs.4239/- X 12 X 15]=Rs.7, 63,020/-
5.	Loss of love and affection for 3 children (Rs.1,00,000/- each)	Rs.3,00,000/-
6	Loss of estate	Rs.1,00,000/-
7	Loss of consortium	Rs.1,00,000/-
8	Funeral Expenses	Rs.25,000/-
	Total compensation awarded	Rs.12,88,020/-

	Enhanced amount of compensation	[(Rs.12,88,020/-)- (Rs.8,18,020/-)] =Rs.4,70,000/-
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The enhanced amount of compensation of Rs.4,70,000/- 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.

(RITU BAHRI)
JUDGE

04.09.2015
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