

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

**FAO No.4650 of 2013
Date of decision: 03.12.2015**

Somwati and others

....Appellants

Versus

Brijesh Kumar and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Khurana, Advocate
for the appellants.

Mr. B.S. Tanque, Advocate
for the 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, Rewari (hereinafter referred to as 'the Tribunal') vide award dated 01.06.2013, on account of death of Rai Singh in a motor vehicular accident which took place on 15.08.2012.

FACTS NOT IN DISPUTE

On 15.08.2012, at about 07:30 p.m., Rai Singh was returning on his motorcycle bearing No.RJ-02-SK-2330 from Gurgaon to his village Thra. Dalip Yadav (complainant) was also

going on his vehicle, but he had parked his vehicle as road was obstructed near Dawarkadish Company side and after finishing his personal work at about 07:30 p.m., he was returning in his Indica car towards National Highway No.8. At that time, an Alto car bearing No.HR-36-M-7171 was ahead of his car and a motorcycle was ahead of Alto Car. He saw obstruction i.e. electrical poles were lying on the road, due to incomplete work. At that time, the ride of the motorcycle took slight brake and alto car hit the motorcyclist from back side and due to said impact, the rider of the motorcycle collided with obstruction and fallen down on the road and the driver of the said car left the occurrence.

In this regard, FIR No.323 dated 16.08.2012, under Sections 279 and 304-A IPC, in respect of the accident in question was got registered at Police Station Dharuhera.

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

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Dalip Yadav (eye-witness) appeared as PW-3 and tendered his affidavit Ex.PW-3/A, to prove the accident in question. The claimants have also tendered in evidence the copy of challan Ex.P-5, attested copy of post-mortem report Ex.P-6 of deceased.

Ultimately on the basis of the evidence led by the parties, the Tribunal has come to the conclusion that the accident

in question was occurred due to the rash and negligent driving by respondent No.1 and the Tribunal has returned the finding on Issues No.1 and 2 in favour of the claimants-appellants.

The claim petition was partly accepted by the Tribunal and a sum of Rs.19,83,120/- was awarded as compensation on account of death of Rai Singh along with future interest at the rate of 7% per annum from the date of filing of the petition till its realization.

The monthly income of the deceased as daily wager was assessed at Rs.15,620/- per month, out of which 1/4th amount was deducted towards personal expenses. The dependency of the claimants, thus, came to Rs.11,715/- per month, which came to Rs.1,40,580/- per annum. The multiplier of 14 was applied and thus, the claimants were found entitled to compensation of Rs.19,68,120/-. In addition to it, further compensation of Rs.5,000/- was awarded towards loss of consortium, Rs.5,000/- was awarded in respect of loss of estate and a sum of Rs.5,000/- was awarded towards transportation and last rites. Hence, the claimants were found entitled to total compensation of Rs.19,83,120/-.

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.

From the perusal of the record, it is revealed that PW-2, namely, G. Suresh, Assistant Manager of SMS India Private Limited, Gurgaon, has stated that Rai Singh was appointed as Engineer on 01.01.2007 in the aforesaid company and he has proved the appointment letter of deceased Ex.P-2. He has further stated that Ex.P-3 was the last drawn salary of Rai Singh which is for the month of July, 2012. He has also stated that in the month of August, 2012, Rai Singh had drawn the salary of Rs.29,306/- which is Ex.R-1 and he further admitted Ex.R-1, to be correct.

As per Ex.R-1, the basic salary of Rai Singh was Rs.15,620/- for the month of August, 2012. In spite of this, he was getting HRA for the amount of Rs.9,372/-, conveyance allowance for Rs.387/- and Rs.3,657/- for personnel allowance. Thus, he was earning Rs.29,036/-.

However, the Tribunal has deducted the amount of Rs.13,416/- in respect of the allowances. But, as per the judgment ***“Vimal Kanwar and others Vs. Kishore Dan and others”*** reported in **2013(2) R.C.R. (Civil) 945** passed by Hon'ble Supreme Court, the amount of Rs.13,416/- should be added towards gross salary. So, the monthly income of the deceased comes to Rs.29,036/-. After deducting P.F. contribution of

Rs.1,874/-, Income-tax for the amount of Rs.276/-, lunch recovery of Rs.592/- and transport recovery of Rs.2,500/-, the monthly income of the deceased comes to Rs.23,794/- (Rs.29,036 – Rs.5,242).

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. Accordingly, the compensation re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.23,794 x 12)	Rs.2,85,528/-
(ii)	30% of (i) above to be added as future prospects	(Rs.2,85,528/-) + (Rs.85,658/-) = Rs.3,71,186/-
(iii)	Dependency of the claimant after deducing 1/4th of (ii) towards personal expenses of the deceased	(Rs.3,71,186/-) - (Rs.92,796/-) = Rs.2,78,390/-
(iv)	Compensation after multiplier of 14	(Rs.2,78,390/- x 14) =Rs.38,97,460/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection to children	Rs.4,00,000/- (Rs.1,00,000/- each)
(viii)	Funeral expenses	Rs.25,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.45,22,460/-
(x)	Enhanced amount of compensation	(Rs.45,22,460/-) – (Rs.19,83,120/-) =Rs.25,39,340/-

The enhanced amount of compensation of **Rs.25,39,340/-** 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

03.12.2015

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