

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

FAO No.4611 of 2014 (O&M)
Date of decision: 18.11.2015

Bimla Devi

....Appellant

Versus

Keshav Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tejinder Pal Singh, Advocate,
for the appellant.

Mr. Keshav Partap Singh, Advocate,
for respondent Nos. 1 and 2.

Mr. Ravinder Arora, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (hereinafter referred to as 'the Tribunal') vide award dated 24.08.2013, on account of death of Nirmaljit in a motor vehicular accident which took place on 31.10.2011. Appellant is widow, whereas respondent Nos.4 to 6 are children and respondent No. 7 and 8 are parents of deceased Nirmaljit.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 31.10.2011, deceased-Nirmaljit along with his brother Bhupinder Lal was going from Kangana bridge towards their village Udhanwal on scooter bearing registration No.

PB-20-5698, which was being driven by Nirmaljit at a normal speed and on

the correct side of the road. At about 7.30 P.M., when they reached at Nawanshahr Chowk, Balachaur, the offending Canter bearing registration No. PB-10-CX-0392, being driven by Keshav Kumar-respondent No.1 in a rash and negligent manner, came from the side of the chowk at a very high speed and struck against the scooter of Nirmaljit from its right side, as a result of which, both the occupants of the scooter fell down. Nirmaljit sustained multiple injuries, including head injuries, due to which, he became unconscious. Bhupinder Lal also sustained injuries on his head and other parts of the body. After the accident, Nirmaljit was taken to Raja Hospital & Diagnostic Center, Nawanshahr, where he remained admitted as an indoor patient and ultimately, succumbed to his injuries on 01.11.2011. With regard to the accident, FIR No.102 dated 01.11.2011, under Sections 279/337, 338 and 727 IPC was recorded at Police Station, Balachaur against respondent No.1. Consequently, the claimants i.e. appellant and respondent Nos.4 to 8 filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of Canter bearing registration No. PB-10-CX-0392 by Keshav Kumar-respondent No.1 and thus, returned the finding on Issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Bhupinder Lal (PW-2), who was an eye witness of the accident. Ultimately, the claim petition was accepted by the Tribunal and a sum of Rs.27,98,000/- was awarded as compensation on account of death of Nirmaljit. As per salary certificate (Ex.P-7), carry home salary of deceased was Rs.25,688/-, including the subscriptions towards GPF, GIS and LIC,

which was rounded up to Rs.25,700/-. Accordingly, the income of the deceased was taken as Rs.25,700/- per month, out of which, 1/3rd amount was deducted towards personal expenses of deceased. The dependency of claimants, thus, came to Rs.17,133/- per month (Rs.25700 - Rs.8567) i.e. Rs.2,05,596/- per annum. As per postmortem report, the deceased was 48 years of age at the time of accident/death and the multiplier of 13 was applied. Thus, the claimants were found entitled to compensation of Rs.26,72,748/-. In addition to it, Rs.1,00,000/- were awarded as loss of consortium to the widow, Rs.25,000/- as funeral charges. Hence, the claimants were found entitled to total compensation of Rs.27,97,948/-, rounded off as Rs.27,98,000/- along with interest @ 7% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has 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, **New India Assurance Company Limited vs Gopali and others**, 2012 (12) SCC 198, **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) 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, as

under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.25,700/- per month
(ii)	30% of (i) above to be added as future prospects	25,700 + 7710 = Rs.33,410/-
(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	33,410 – 11,136 = Rs.22,274/-
(iv)	Compensation after multiplier of 13 is applied	Rs.22,274/- x 12 x 13 = Rs.34,74,744/-
(v)	Loss of consortium for the widow	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection for the children (respondent Nos. 4 to 6)	Rs.3,00,000/- (Rs.1,00,000/- each)
(viii)	Loss of love and affection for the parents (respondent Nos.7 and 8)	Rs.1,00,000/- (Rs.50,000/- each)
(ix)	Funeral expenses	Rs.25,000/-
(x)	TOTAL COMPENSATION AWARDED	Rs.40,99,744/-
(xi)	Enhanced amount of compensation	Rs.40,99,744 – 27,98,000 = Rs.13,01,744/-

The enhanced amount of compensation of **Rs.13,01,744/-** 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

18.11.2015
ajp