

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

**FAO No.6376 of 2013
Date of decision: 29.10.2015**

Neelam and others

....Appellants

Versus

Banwari Lal Garg and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Pankaj Middha, Advocate
for the appellants.

Mr. Vipul Sharma, Advocate
for Mr. Paul S. Saini, 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, Jind (hereinafter referred to as 'the Tribunal') vide award dated 22.08.2013, on account of death of Lalit Kumar in a motor vehicular accident.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 01.06.2012, Lalit Kumar (deceased) along with driver started journey after loading goods in Eicher truck bearing registration No.HR-67-A-3957,

from Mumbai to Delhi. On 04.06.2012, at about 05:00 p.m., when they reached ahead of village Binder Sindri on NH-8 (National Highway No.8), the lights on road were switched on. Rear tyre of their Eicher truck got punctured. They parked their truck on correct left side of the road and switched on the parking lights and indicators of the truck. Indicators/reflectors of GVK were also placed. Lalit Kumar and others were in the process of replacing the punctured tyre. In the meantime, the offending truck being driven by respondent No.1 in a rash and negligent manner came from back side and struck the same against Lalit Kumar. As a result of which, Lalit Kumar succumbed to his injuries on the spot.

In this regard, FIR No.54 dated 05.06.2012, under Sections 279, 337 and 304-A of the Indian Penal Code, 1860, in respect of the accident in question was got registered on the statement of Subhash.

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

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Neelam wife of the deceased-Lalit Kumar appeared as PW-1 and reiterated the version of the petition and testified that the accident took place on account of rash and negligent driving of respondent No.1, but in her cross-examination, she has stated that she had not witnessed the

accident. Subhash appeared as PW-2 and tendered his affidavit Ex.PW-2/A to prove the accident in question and he deposed that the FIR in question was got registered by him.

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 of truck bearing registration No.RJ-30-GA-2548 by Banwari Lal Garg-respondent No.1. The Tribunal has rightly 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.19,05,000/- was awarded as compensation on account of death of Lalit Kumar along with future interest at the rate of 7% per annum from the date of filing of the petition till its realization.

After deducting tax paid, the average carry home salary from business only, of last three years, comes to **Rs.1,88,535/-** per annum (Rs.1,66,805/- + Rs.1,96,125/- + Rs.2,11,100 = Rs.5,74,030 – Rs.8426/- = Rs.5,65,604/- divided by 3 = Rs.1,88,534.6/- rounded off to Rs.1,88,535/-). Out of which 1/3rd amount was deducted towards personal expenses. The dependency of claimants, thus, came to Rs.1,25,690/- per annum. Lalit Kumar (deceased) was 35 years of age at the time of the accident/death and the multiplier of 15 was applied. Thus, the claimants were found entitled to compensation of Rs.18,85,350/-.

In addition to it, further compensation of Rs.5,000/- was awarded towards last rites, Rs.5,000/- was awarded on account of loss of estate and Rs.10,000/- was awarded in respect of consortium. Hence, the claimants were found entitled to total compensation of Rs.19,05,350/-, rounded off to Rs.19,05,000/-.

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 required to be re-assessed 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. The accident in the present case has taken place on 04.06.2012 and the Income-tax return for the year 2011-12 (Ex.PW-3/C) shows that after making Income-tax of

Rs.5,264/-, the income of the deceased is Rs.2,11,100/- and this Income-tax return has been filed prior to his death and thus, Rs.2,11,100/- should have been taken into consideration for assessing the amount of compensation. Accordingly, the compensation is re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income	Rs.2,11,100/-
(ii)	50% of (i) above to be added as future prospects (Age 35 years)	(Rs.2,11,100/-) + (Rs.1,05,550/-) = Rs.3,16,650/-
(iii)	Dependency of the claimant after deducting 1/3rd of (ii) towards personal expenses of the deceased	(Rs.3,16,650/-) - (Rs.1,05,550) = Rs.2,11,100/-
(iv)	Compensation after multiplier of 16 is applied	(Rs.2,11,100/- x 16) =Rs.33,77,600/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection for minor children	Rs.2,00,000/- (Rs.1,00,000/- each)
(viii)	Funeral expenses	Rs.25,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.38,02,600/-
(x)	Enhanced amount of compensation	(Rs.38,02,600/-) – (Rs.19,05,000/-) =Rs.18,97,600/-

The enhanced amount of compensation of **Rs.18,97,600/-** 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.

29.10.2015

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(RITU BAHRI)
JUDGE