

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 6404 of 2013 (O&M)

Date of decision : August 25, 2015

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Surinder Kaur and others

.....Appellants

Versus

Sh. Sukhwinder Dass and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Ms. Ekta Thakur, Advocate for the appellants.

Mr. G.S Bhatia, Advocate for respondents no. 1 & 2.

Mr. Vinod Chaudhary, Advocate for respondent no.3.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') vide award dated 1.10.2012 on account of death of Karora Singh in a vehicular accident, husband of claimant-appellant no.1 and father of claimants-appellants no.2 & 3.

Vide award dated 1.10.2012 passed by the Tribunal, the claim petition was partly allowed a total sum of Rs.20,05,874/- was

awarded as compensation to claimant no.1 on account of death of Karora Singh payable by respondents no. 1 & 2 jointly and severally along with interest at the rate of 6% per annum from the date of filing of the claim petition till the actual realization of the amount. In view of Section 149(2) of Motor Vehicles Act, the Insurance Company-respondent no.3 was not held liable to pay the compensation as the Insurance Company, after verifying on its own level, found that there was no permit available by which the respondent no.2 was authorized to ply the buses on the said route. Respondents no. 1 & 2 were proceeded ex parte and hence an adverse inference was drawn against them and the Insurance Company-respondent no.3 was not held liable to pay the compensation.

Counsel for respondent no.2- owner of the vehicle has filed an application under Order 41 Rule 27 read with Section 151 CPC to place on record valid route permit duly issued by the District Transport Officer, Sangrur as Annexure **A-1**. Annexure **A-1** was got verified by the duly authorized licence private investigator with regard to the genuineness of the permit. Copy of the same is annexed as Annexure **A-2** and the same was also verified by the District Transport Officer, Sangrur. He has further informed the Court that an application for setting aside the ex parte decree has been filed before the trial Court and the same is now fixed for 27.8.2015. Since the matter is pending before the trial Court on 27.8.2015, the application, at this stage, is dismissed as the respondents will be bound by the decision made by the trial Court for setting aside the ex parte decree.

As far as the present appeal is concerned, reference can be made to a judgment passed by Hon'ble the Supreme Court of India in the case of **National Insurance Co. Ltd. vs. Chella Bharathamma (2005-1) 139 PLR 102 (SC)**, wherein it has been held that the insurer cannot be held liable to satisfy the award once it is proved that the insured vehicle was being plied without permit. Following the ratio of **Chella Bharathamma's case**, a co-ordinate Bench of this Court in the case of **New India Assurance Company Limited. vs. Smt. Anuradha and others, 2013(4) PLR 594** has held that the insurer could be asked to satisfy the third party claim and then to recover the said amount from the insured by executing the award as a decree against him.

In view of the above said judgments, the appeal of the claimants is being disposed of and the Insurance company-respondent no.3 shall satisfy the claim and thereafter recover the amount from the owner of the vehicle i.e respondent no.2 as a decree of the Court.

FACTS NOT IN DISPUTE

On 1.1.2010, Karora Singh started from his house in Kharar on motorcycle bearing no. PB-65-D-5579 for his office situated in Sector-34, Chandigarh. When he reached near Petrol Pump on Landran road, Chappar Chiri at about 8.25 a.m driving his motorcycle on left hand side at normal speed. Respondent no.1 came from opposite direction driving offending bus bearing registration no. PB-13-R-8789. He came on the wrong side and the

bus hit the motorcycle of Karora Singh. He fell down along with the motorcycle and received multiple injuries on vital organs of his body. He was taken to hospital but was declared dead in the hospital. FIR No. 3 dated 1.1.2010 Ex. P-1 was registered at Police Station, Kharar.

COMPENSATION ASSESSED BY THE MACT

On account of death of Karora Singh, claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988, which was accepted by the Tribunal and a sum of Rs. 20,05,874/- was awarded as compensation on account of death of Karora Singh. The actual income of the deceased minus income tax at the time of death came to Rs.2,70,801/- per annum. 1/3rd amount was deducted towards personal expenses. The dependence of claimant no.1, thus, came to Rs.1,80,534/-. Karora Singh was 55 years of age at the time of the accident and hence the multiplier of 11 was applied. Thus, the claimants were found entitled to compensation of Rs.19,85,874/-. In addition to it, further compensation of Rs.10,000 towards loss of consortium, Rs.5,000/- towards loss of estate and Rs.5000/- towards funeral expenses was awarded. Hence the claimants were found entitled to total compensation of **Rs. 20,05,874/-**.

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. The deceased 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, 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:-

<i>Sr. No.</i>	<i>HEADS</i>	<i>CALCULATION</i>
(I)	Income	Rs.2,70,800/- per annum (approx.)
(ii)	15% of (i) added for future prospects	(Rs.2,70,800/-)+(Rs.40,620/-) =Rs.3,11,420/-
(iii)	1/3 rd of (i) deducted personal expenses of the deceased	(Rs.3,11,420/-)- (Rs.1,03,807/-) =Rs.2,07,613/-
(iv)	Compensation after multiplier of 11 is applied	(Rs.2,07,613x11) =Rs.22,83,743/-
(v)	Loss of estate	Rs.1,00,000/-
(vi)	Loss of consortium	Rs.1,00,000/-
(vii)	Loss of love and affection to children	Rs.2,00,000/- (Rs.1,00,000 to each child)
(viii)	Funeral expenses	Rs.25,000/-
	TOTAL COMPENSATION AWARDED	Rs.27,08,743
	Enhanced amount of compensation	(Rs.27,08,743/-)- (Rs.20,05,874/-) =Rs.702869/-

The enhanced amount of compensation of **Rs.7,02,869/-** 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.

August 25, 2015
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(RITU BAHRI)
JUDGE