

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

**FAO No.8132 of 2014 (O&M)
Date of decision: 02.11.2015**

Raj Kali and others

....Appellants

Versus

Nirdosh Sharma and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Baldev Singh, Advocate
for the appellants.

Mr. Ankit Jindal, Advocate
for Mr. Suman Jain, Advocate
for respondent No.2.

RITU BAHRI J. (Oral)

CM No.21941-CII of 2014

For the grounds mentioned in the application, the same is allowed and the delay of 68 days in filing the appeal stands condoned.

MAIN CASE

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') vide award dated 07.03.2014, on account of death of Suraj Bhan @ Surju in a motor vehicular accident.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 19.08.2012, Suraj Bhan @ Surju after loading wheat husk in a tractor-trolley bearing registration No.HR-40-B-4175 of one Vinod Kumar, to unload the same in the village of sister of said Vinod Kumar at village Badhouli, Tehsil Naraingarh, District Ambala, started their journey from village Ardana, Tehsil Asandh, District Karnal. The tractor was being driven by Vinod Kumar on its correct left side of the road. Raju @ Raj Kumar and his brother Parkash were also with him. At about 09:00 p.m., when their tractor-trolley reached near Petrol Pump in the area of village Nagla, on Saha-Shahbad road, in the meantime, a canter bearing registration No.HR-37-B-0727, being driven by respondent No.1 rashly and negligently came from opposite side i.e. Saha side and hit his canter into the right tyre of tractor-trolley. As a result of which, the tractor-trolley became out of control and fell into ditches by the side of the road. Suraj Bhan @ Surju came under the trolley, where other persons fell on the other side and suffered minor injuries. He was taken to Civil Hospital, Ambala Cantt., where he was declared brought dead and succumbed to the injuries on the way to hospital.

In this regard, FIR No.101 dated 20.08.2007, under Sections 279 and 304-A IPC, in respect of the accident in question was got registered at Police Station Ambala.

Consequently, the claimants-appellants filed a claim

petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Raj Kali appeared as PW-1 and tendered her affidavit Ex.PW-1/A to prove the accident in question. Vinod Kumar appeared as PW-3 and corroborated the testimony of PW-1. Sham Sunder, Criminal Ahlmad, appeared as PW-2 and deposed that the case i.e. FIR No.101 dated 20.08.2012, under Sections 279 and 304-A IPC, Police Station Ambala, is pending for 26.09.2012 for issuing Court notice and vehicle No.HR-37-B-0727 was taken into police possession, which was taken on superdari by Nirdosh Sharma.

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 Issue No.1 in favour of the claimants-appellants.

The claim petition was partly accepted by the Tribunal and a sum of Rs.6,73,000/- was awarded as compensation on account of death of Suraj Bhan @ Surju along with future interest at the rate of 7.5% per annum from the date of filing of the petition till its realization.

The monthly income of the deceased was assessed at Rs.4,500/- per month as daily wager, out of which 1/4th amount was deducted towards personal expenses. The dependency of the

claimants, thus, came to Rs.3,375/- per month, which came to Rs.40,500/- per annum. Suraj Bhan @ Surju (deceased) was 32 years of age at the time of the accident/death and the multiplier of 16 was applied. Thus, the claimants were found entitled to compensation of Rs.6,48,000/-. In addition to it, further compensation of Rs.10,000/- was awarded towards funeral expenses and Rs.10,000/- was awarded towards loss of consortium and loss of estate and Rs.5,000/- was awarded towards loss of love and affection. Hence, the claimants were found entitled to total compensation of Rs.6,73,000/-.

Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

REASSESSED COMPENSATION

Learned counsel for the claimants-appellants submitted that as per the Price Index prevailing in the year 2013, the income of the deceased as a daily wager has to be taken at Rs.4,968/- per month, whereas the Tribunal has taken the income of deceased at Rs.4,500/- per month.

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 *New India Assurance Company Ltd. vs Gopalit and others*, 2012 (2) SCC 198, *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. Keeping in view the Price Index prevailing in the year 2013, the income of the deceased is taken as Rs.4,968/- per month (rounded off to Rs.5,000/-). Accordingly, the compensation is re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.5,000 x 12)	Rs.60,000/-
(ii)	50% of (i) above to be added as future prospects (Age 32 years)	(Rs.60,000/-) + (Rs.30,000/-) = Rs.90,000/-
(iii)	Dependency of the claimant after deducting 1/10th of (ii) towards personal expenses of the deceased	(Rs.90,000/-) - (Rs.9,000) = Rs.81,000/-
(iv)	Compensation after multiplier of 16	(Rs.81,000/- x 16) =Rs.12,96,000/-
(v)	Loss of consortium to widow	Rs.1,00,000/-
(v)	Loss of estate	Rs.1,00,000/-
(vi)	Loss of love and affection to mother of the deceased	Rs.50,000/-
(vii)	Loss of love and affection to minor children	Rs.3,00,000/- (Rs.1,00,000/- each)
(viii)	Funeral expenses	Rs.25,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.18,71,000/-
(x)	Enhanced amount of compensation	(Rs.18,71,000/-) – (Rs.6,73,000/-) =Rs.11,98,000/-

The enhanced amount of compensation of **Rs.11,98,000/-** 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

02.11.2015

yakub