

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

FAO No.6689 of 2012.

Date of Decision: 09.02.2016.

Gaytri and others

....Appellants.

VERSUS

Puran and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Virender Kumar, Advocate for the appellants.

Mr. Vikas Thakur, Advocate for

Mr. Vivek Singla, Advocate for respondents No.1 and 2.

Ms. Mansi Bansal, Advocate for

Mr. R.C. Gupta, Advocate for respondent No.3.

SNEH PRASHAR, J.

This is an appeal directed against an award dated 15.09.2012 passed by Motor Accident Claims Tribunal, Jind (for short, “the Tribunal”) in MACT case No.51 of 2011 titled “Smt. Gaytri and others vs. Puran and others”.

The prayer of the appellants-claimants is for enhancement of the compensation awarded by the Tribunal. The facts indicate that on 14.02.2011 Sarwan Kumar (husband of appellant No.1 and father of appellants No.2 and 3) alongwith his nephew Indraj was going from Delhi to Kauhrian, Tehsil Sunam (Punjab) by means of his Maruti car No.DL-9CE-5848 to attend his duty. When at about 9:00 a.m. they reached near

village Baroda towards village Khatkar, a Santro car bearing registration No.PB-13Q-5125 (hereinafter referred to as the “offending car”) being driven rashly and negligently, in a zigzag manner by respondent No.1, came from the opposite direction and struck into their maruti car. Because of the impact, Sarwan Kumar died at the spot and the offending car got damaged. An ambulance reached at the spot and the driver of the offending car was sent to the hospital. On the statement of Indraj son of Suresh Chand, a case bearing First Information Report 20 dated 14.02.2011 under Sections 279 and 304-A of the Indian Penal Code was registered against respondent No.1.

A petition claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by legal heirs of deceased Sarwan Kumar impleading as respondents the driver, owner and insurer of the offending car. Respondents No.1 and 2 filed their joint written statement whereas respondent No.3 contested the petition by filing separate written statement.

On the rival contentions of the parties, following issues were settled:-

1. Whether the accident in question took place due to the rash and negligent driving of car no.PB-13Q-5125 in which Sarwan Kumar has lost his life as alleged in the petition? OPP.
2. If issue no.1 is proved in the affirmative whether petitioners are entitled to any compensation, and if so, to what effect and from whom? OPP.
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of the accident? OPR3.

4. Relief.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the Tribunal awarded compensation to the tune of Rs.34,21,000/- to the claimants.

Feeling aggrieved, the claimants Gaytri and others assailed the award dated 15.09.2012 by filing the instant appeal on the ground that they had not been adequately compensated.

The submissions made by Mr. Virender Kumar, learned counsel representing the appellants, Mr. Vikas Thakur, learned counsel representing respondents No.1 and 2 and Ms. Mansi Bansal, learned counsel representing respondent No.3 have been heard and record perused.

Learned counsel for the appellants-claimants argued that the tribunal assessed the income of the deceased on the basis of his salary certificate but did not add any amount for computing the future prospects. Also the amount awarded under the head of loss of consortium; funeral expenses; and loss of estate is on a very low note. No amount has been awarded for loss of love and affection to the claimants.

Admittedly, deceased Sarwan Kumar was posted as Branch Manager with Punjab and Sind Bank, Kauhrian, Sunam (Punjab) and was drawing salary to the tune of Rs.46,736/-. Considering the evidence available on record, learned tribunal rightly deducted 30% of total salary amount towards income tax and rounded up the net salary of the deceased as Rs.32,702/- per month. The age of deceased Shri Sarwan Kumar, when

he died in accident, was 48 years and the multiplier of 13 was rightly applied by the tribunal. There were three dependents of the deceased namely his wife Gaytri, daughter Tarannum and son Adarsh. Deducting 1/3rd of income towards his personal and living expenses, 2/3rd of his earnings was assessed as the amount spent on maintenance of the claimants. However, as per law laid down in **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170** there had to be an addition of 30% to the actual income of the deceased on account of future prospects, which the Tribunal failed to allow. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)	Rs.32,702/-
2.	Actual age of the deceased	48 years
3.	Increase in future income as per Rajesh and others' case (supra)	Rs.9,810/-
4.	Annual dependency	2/3 of Rs.42,512/- x 12 = Rs.3,40,096/-
5.	Multiplier	13
6.	Total	44,21,248/-

In addition to the amount of Rs.44,21,248/- calculated towards dependency, the amount of Rs.5000/- awarded under the funeral expenses is enhanced to Rs.25,000/- whereas the amount of Rs.10,000/- awarded towards loss of consortium is enhanced to Rs.1 lac. A further amount of Rs.1 lac is awarded to the appellants-claimants No.1 to 3 for loss of love and affection. The amount of Rs.5,000/- awarded towards loss of estate is adequate. In the above premise, the appellants-claimants are held entitled to compensation of Rs.46,51,248/- as indicated above.

Accordingly, the appeal filed by appellants-claimants Gayatri and others is partly allowed and the award dated 15.09.2012 passed by the tribunal is modified. The appellants claimants are held entitled to enhanced compensation of Rs.12,30,248/- in addition to the amount of Rs.34,21,000/- awarded by the tribunal. The enhanced amount of compensation shall be deposited by respondent No.3- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the tribunal.

(SNEH PRASHAR)
JUDGE

09.02.2016.
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