

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

FAO No.6421 of 2013.

Date of Decision: 23.04.2016.

Sama Kaur and others

....Appellants.

VERSUS

Ashok Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. M.S. Randhawa, Advocate for the appellants.

Service of respondent No.1 was dispensed with vide order dated 10.11.2014.

Respondent No.2 was proceeded exparte vide order dated 10.11.2014.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellants-Sama Kaur and others seek enhancement of compensation awarded to them by learned Motor Accident Claims Tribunal, Narnaul (for short, "the Tribunal") vide award dated 02.08.2013 passed in MACT Case No.40 of 2013 on account of death of Mohar Singh (husband of appellant No.1 and father of appellants No.2 to 4), in a vehicular accident.

That facts are that on 18.12.2012 at about 6:00 p.m., when

Mohar Singh (since deceased) was going to his house, on foot, from pond of his village Bargaon, he was hit by a TATA-407 bearing registration No.HR-66-5280 (hereinafter referred as to “the offending vehicle”) being driven rashly, negligently and in a high speed by Ashok Kumar (respondent No.1). As a result of the accident, Mohar Singh sustained grievous injuries. He was shifted to Kailash Hospital, Behror and then to SMS Hospital, Jaipur where he succumbed to the injuries on 29.12.2012.

A First Information Report No.343 dated 20.12.2012 under Sections 279/336/337/304-A of the Indian Penal Code in respect of the accident was registered against respondent No.1-Ashok Kumar at Police Station Sadar, Narnaul.

The claimants-appellants filed a petition seeking compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) on the ground that the accident occurred entirely due to rash and negligent driving of the offending vehicle by respondent-Ashok Kumar.

The driver, owner and insurer (respondents No.1 to 3) of the offending vehicle contested the petition denying the allegations levelled in the petition. Respondent No.3 pleaded that the driver of the offending vehicle was not holding a valid driving licence at the time of accident and the offending vehicle was being driven in violation of the terms and conditions of the insurance policy. On the basis of pleadings of the parties, issues were settled. 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, learned Tribunal partly allowed

the petition and awarded to appellant No.1 compensation to the tune of Rs.2,34,000/- alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization. Respondents No.1 to 3 were held jointly and severally liable to pay compensation to claimant No.1.

Feeling dissatisfied, the claimants-appellants preferred the instant appeal.

The submissions made by Mr. M.S. Randhawa, learned counsel for the appellants and Mr. R.K. Bashamboo, lerned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants argued that as indicated by the pension payment order Ex.P32, deceased Mohar Singh was a pensioner and as stated by PW3 Ram Kishan, Computer Operator, Branch Office, PNB, Naseebpur, Narnaul, the last pension drawn by the deceased in the month of November, 2012 was of Rs.9091/-. In addition to income from the pension, the deceased was engaged in the work of sale purchase of animals from which also he used to earn around Rs.10,000/- per month. However, learned Tribunal completely ignoring the evidence led in that behalf has awarded a lump sum amount of Rs.1,50,000/- as compensation to appellant No.1-Smt. Sama Kaur, widow of the deceased. The amount of Rs.10,000/- each awarded towards loss of consortium and funeral expenses is also on the lower side.

On the other hand, learned counsel for respondent-insurance company submitted that it is proved from the pension documents of the deceased produced by PW3 Ram Kishan, Computer Operator that the age of

the deceased was 70 years at the time of his death. Appellants No.2 to 4 i.e. two sons and daughter of the deceased were all independently working and were not dependent on the deceased. The only dependent of the deceased was his widow-appellant No.1-Smt. Sama Kaur and as stated by PW3 Ram Kishan, Computer Operator, the case of family pension of the said appellant is under process. As such, the amount awarded in lump sum as compensation towards loss of dependency to appellant No.1-Sama Kaur is adequate.

Indeed, PW5 Bhup Singh stated that he is 36 years aged and is privately employed. Appellant No.2-Raj Kumar is his elder brother and as stated by PW6 Sama Kaur, he (Raj Kumar) is also working and her daughter Sushila is married. As such, learned Tribunal rightly held that none of the sons and daughter of the deceased were dependent on him. The pension record Ex.P31 and Ex.P32 of the deceased proves that his date of birth was 08.04.1942 which means he was 70 years old when he died due to the injuries sustained in the accident on 18.12.2012. He was drawing pension of Rs.9091/-. The case of family pension of widow of the deceased may be under process but that is immaterial as far as the entitlement to compensation, being a dependent, of widow-Sama Kaur, is concerned. When the deceased was a pensioner, the compensation ought to have been calculated as per proved income of the deceased and learned Tribunal fell in error in awarding a lump sum amount. Only the widow of the deceased being his dependent, 50% of the income of the deceased had to be deducted towards his personal living expenses. The age of the deceased being 70

years, the appropriate multiplier would be '5'. Accordingly, the compensation payable to appellant-claimant No.1-Sama Kaur is calculated as under:-

1.	Monthly income of the deceased (in Rupees)	Rs.9091/-
2.	Actual age of the deceased	70 years
3.	Annual dependency	1/2 of Rs.9091 x 12 = Rs.54,546/-
4.	Multiplier	5
5.	Total	Rs.2,72,730/-

In addition to the amount of Rs.2,72,730/- calculated towards dependency, the amount of Rs.10,000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/- and the amount of Rs.10,000/- awarded on account of loss of consortium is enhanced to Rs.1,00,000/-. The amount of Rs.64,000/- awarded by learned Tribunal as the expenses incurred on the treatment of deceased Mohar Singh is just and adequate.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 02.08.2013 passed by learned Tribunal is modified. The enhanced compensation of Rs.2,27,730/- shall be paid to claimant-appellant No.1 within 45 days from the date of receipt of certified copy of this judgment failing which she shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of this order till realization. The amount of compensation will be disbursed to appellant-claimant in terms of conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

23.04.2016.
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