

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

**FAO No.1188 of 2011 (O&M)
Date of decision: 10.07.2017**

Smt. Bhuro Khatoon and others

....Appellants

Versus

Raj Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the appellants.

Mr. Suman Jain, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal (Fast Track Court), Ambala (hereinafter referred to as 'the Tribunal') vide award dated 03.01.2008, on account of death of Suleman in a motor vehicular accident which took place on 17.10.2006. Appellant No.1 is widow, whereas appellant Nos.2 to 5 are children of deceased Suleman.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 17.10.2006, at about 7.40 P.M., deceased-Suleman along with Vikas (pillion rider) was going from Naraingarh towards village Firozepur Katkhar on motorcycle bearing registration No. HR-02-A-3303, which was being driven by the deceased at a normal speed and on the correct side of the road. One Gulamudeen was also going on his motorcycle bearing registration No. HR-04-A-7268.

When they reached near the bus-stand of village Okhala, a truck bearing

registration No. HR-37-8923, being driven by Raj Kumar-respondent No.1 in a rash and negligent manner, came from the side of the Naraingarh at a very high speed and struck the motorcycle of Suleman from its rear side, as a result of which, Suleman fell down in the middle of the road and died at the spot. Pillion rider Vikas also sustained multiple injuries on his body. One Rakesh son of Raghubir, who was standing at the bus-stand also received multiple injuries. After the accident, truck driver ran away from the place of occurrence along with his vehicle. With regard to the accident, FIR, Ex.P3, was registered against respondent No.1 on the statement of Gulamudeen (PW-2). Consequently, the claimants i.e. appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that Suleman died because of multiple injuries sustained in the accident and the cause of death was determined to be head injury, which was ante mortem in nature and sufficient to cause death in the ordinary course of nature. This finding was given on the basis of deposition of Gulamdeen (PW-2), who was an eye witness of the accident. In the absence of any proof of earning, the income of deceased was taken as Rs.4200/- per month, out of which, 1/3rd amount was deducted towards his personal expenses. The dependency of claimants, thus, came to Rs.2800 x 12 = Rs.33,600- per annum. As per postmortem report, the deceased was 36 years of age at the time of accident/death and the multiplier of 14 was applied. Thus, the amount of compensation came to be Rs.4,70,400/-. In addition to it, Rs.9600/- were awarded towards last rites of deceased and Rs.10,000/- as loss of consortium to the widow. The claimants were found entitled to

total compensation of Rs.4,90,000/-. However, 10% of the said amount was reduced on account of the fact that some contribution was made by the deceased in causing the accident in question. Ultimately, a sum of Rs.4,41,000/- was awarded in favour of the claimants along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-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 hereby reassessed in view of the judgments of *Asha Verman and others vs. Maharaj Singh and others*, 2015(2) RCR (Civil) 520, *New India Assurance Company Limited vs Gopali and others*, 2012 (12) SCC 198, *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, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.4200/-
(ii)	50% of (i) above to be added as future prospects	4200 + 2100 = Rs.6300/-
(iii)	1/10 th of (ii) above is deducted as personal expenses of the deceased (five dependents)	6300 – 630 = Rs.5670/-

(iv)	Compensation after multiplier of 15 is applied	Rs.5670/- x 12 x 15 = Rs.10,20,600/-
(v)	Loss of consortium for the widow	Rs.1,00,000/-
(vi)	Loss of love and affection for the children	Rs.2,00,000/- (Rs.50,000/- each)
(vii)	Funeral expenses	Rs.25,000/-
(xiii)	TOTAL COMPENSATION AWARDED	Rs.13,45,600/-
(ix)	Enhanced amount of compensation	Rs.13,45,600 – 4,41,000 = Rs.9,04,600/-

The enhanced amount of compensation of **Rs.9,04,600/-** 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.

(RITU BAHRI)
JUDGE

10.07.2017
ajp