

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

F.A.O. No. 5829 of 2011

Date of decision November 15, 2017

Smt. Manju Devi Jain and another

..... Appellants

Versus

Pritam and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RITU BAHRI

Present: Mr. S. K. Biriwal, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for the respondent No.3-Insurance Co.

RITU BAHRI, J (ORAL)

The instant appeal is directed against the judgment/award dated 21.05.2011 rendered by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as the 'Tribunal') vide which it granted compensation in the sum of Rs.4,72,500/- in favour of the appellants-claimants.

FACTS NOT IN DISPUTE

The brief facts of the case are that on 11.6.2009 the deceased-Akshay Kumar Jain aged about 20 years left his house at about 11.00 A.M. along with his friend one Lovejeet Singh son of Joginder Singh on motorcycle bearing registration No.HR-29U-3279. The said motorcycle was being driven by Lovejeet Singh and the deceased was riding on the pillion seat. Lovejet Singh and deceased Akshay Kumar Jain were going to Uttam Nagar, Dwarka, New Delhi for taking their examination in Bachelors

When Lovejeet Singh and the deceased reached near Hyundai Show Room on Delhi-Mathura road, near Mewla Maharajpur, Faridabad as sixteen wheeled trailer truck bearing registration No.HR-47-A-6728, which was being driven in a rash and negligent manner by respondent No.1 came and hit the said motorcycle from behind. As a result of the impact and thrust of the offending vehicle, Lovejeet Singh and the deceased fell down. Lovejeet Singh fell down towards left side of the road and the deceased fell down in front of the trailer truck and was crushed to death under the tyres of the offending vehicle. Due to this accident, Akshay Kumar Jain died on the spot and when he was taken to Badshah Khan Hospital, Faridabad he was declared 'brought dead'.

The deceased was a young man with sober habits and was at the prime of his life and career. He had taken up a job as Accounts Assistant in M/s Sobhag Exports, Prop.U.S.Textiles and Investment Company Private Ltd.and was drawing a monthly salary of Rs. 12,000/- as well as allowances of Rs.3,000/- per month, thus making a total salary of Rs. 15,000/- per month. The deceased was studying in IInd year of Bachelors of Commerce through distance education learning from University of Delhi. Both the appellants were completely dependent upon the income of their deceased son.

Aggrieved against the said accident, the appellants filed a claim petition under Sections 167 and 140 of the Motor Vehicles Act, 1988 before the Motor Accidents Claims Tribunal, Faridabad, praying for the grant of compensation of Rs. 25,75,000/- along with interest @ 12% per annum from the date of filing of the claim petition till the date of its

realization.

On notice respondent Nos. 1 and 2 failed to appear before the Tribunal and they were proceeded against ex-parte vide order dated 4.5.2010. Respondent No.3-Insurance Company filed a written statement.

5. On the pleadings of the parties, the following issues were framed by the Tribunal.

“1. Whether the accident in question took place due to rash and negligent driving of sixteen wheeled trailer truck No. HR-47-A-6728 by Pritam respondent No.1?OPP

2. If issue No.1 is proved, to what amount of compensation, the appellants are entitled to and from whom?OPP

3. Whether respondent No.1 was not holding a valid and effective driving license at the time of accident and insured had also violated the other terms and conditions of the policy and as such respondent No.3 is not liable to make payment of compensation, if any?OPR

4. Relief.”

In order to establish the mode of accident claimants examined Constable Rohit Kumar as PW-1 who has proved certified copy of FIR Ex.PW1/A. ASI Madan Gopal, the Investigating officer as PW-3 who has stated that the challan has been presented in the Court against the driver. The eye witness Lovejeet Singh appeared as PW-9 and filed his affidavit Ex. PW8/A and stated the facts.

The claimants have also placed on file the copy of FIR Ex. PW1/A, photographs of the spot Ex. PW-2/1 to Ex. PW2/5, copy of the

post mortem report Ex. PW5/1, death certificate Ex. PW7/4.

COMPENSATION ASSESSED BY THE MACT

The parties led evidence. After hearing learned Counsel for the parties, and, on going through the evidence, on record, the Tribunal taking the income of the deceased at Rs. 6,000/- per month as that of a daily wager, which comes to 72,000/- per annum awarded compensation in the sum of Rs.4,72,500/-, to the claimants, with interest at the rate of 7 ½ % per annum. The Tribunal has awarded the compensation as per the law laid down by the Supreme Court in the case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SC 121** where it was held that if the deceased is bachelor, the deduction towards his personal expenses should be 50% and assessed dependency of the claimants at Rs. 36,000/- per annum and applied the multiplier of 13 taking the age of the parents of the deceased and the loss on account of dependency came to 4,68,000/-.

In addition to that, the Tribunal awarded Rs.2,000/- towards funeral expenses, Rs.2500/- towards loss of estate and the total compensation was assessed at Rs.4,72,500/-. It was directed that the Insurance Company will make the payment of compensation and then recover the same from respondent No.2.

Dissatisfied, with the inadequacy of the compensation awarded, the instant appeal was filed by the the appellants-claimants.

The learned Counsel for the claimants-appellants at the very outset, contended that the Tribunal was wrong, in awarding the compensation of Rs.4,72,500/-. He further contended that the age of the deceased at the time of the accident and his death was 20 years, and it was a

fit case, in which multiplier of 18 instead of 13 should have been applied by the Tribunal. He further contended that even the future income of the deceased was not taken into consideration by the Tribunal. He, further contended that it was a fit case, in which there should be enhancement of compensation. The age of the deceased, at the time of accident, and his death, as is evident from Ex.PW5/1, copy of the Post Mortem Report, was 20 years. He further submits that the deceased was an educated person and was pursuing his Bachelor of Commerce and was to support his parents.

REASSESSED COMPENSATION

I have heard learned Counsel for the appellants-claimants, and have gone through the record of the case.

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 passed by the Hon'ble Supreme Court of India in National Insurance Company Ltd. Vs. Pranay Sethi and others 2017 SCC 1270 and Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil)
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S.No.	Heads	Calculation
(i)	Income	6,000/-
(ii)	40% of (i)above to be added as future prospects	6000+2400=8400/-
(iii)	1/2 of (ii) above is deducted as personal expenses of the deceased	8400-4200=Rs.4200/-
(iv)	Compensation after multiplier of 18 is applied	Rs.4200/- x 12 x 18= Rs. 9,07,200/-
(v)	Compensation under conventional heads	Rs.30,000/-
vi	Total awarded compensation	Rs.9,37,200/-

<i>S.No.</i>	<i>Heads</i>	<i>Calculation</i>
vii	Enhanced amount of compensation	Rs.9,37,200/--4,72,500/- =Rs.4,64,700/-

The enhanced amount of compensation of Rs. 4,64,700/- 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 at the rate of 9% per annum from the date of filing of the claim petition till its realization, in view of the judgment of Hon'ble Supreme Court in the case of **Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and others, 2015 (1) SCC 539.**

Accordingly the award stands modified to the above extent and the present appeal is partly allowed. The additional amount of compensation shall be distributed equally amongst the appellants-claimants.

(RITU BAHRI)
JUDGE

November 15, 2017
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