

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

**FAO No.279 of 2012
Date of decision: 06.10.2017**

Sunita Sharma and another
Versus
Pawan Kumar and others

....Appellants
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Satbir Gill, Advocate,
for the appellants.

None for respondent No.1.

Mr. Vishal Aggarwal, 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, Sirsa (hereinafter referred to as 'the Tribunal') vide award dated 10.06.2011, on account of death of Sunil Kumar in a motor vehicular accident which took place on 02.08.2009. Appellants are parents of deceased-Sunil Kumar.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 02.08.2009, at about 10.00 A.M., Sunil Kumar along with Pardeep Kumar, was going towards Sirsa in a Maruti car bearing registration No.DL-4CQ-1593. The said car was being driven by Sunil Kumar himself. In the way, three girls took lift and boarded their car at Gole Chowk, Dabwali. Thereafter, when they reached 3 Kms. ahead of village Mithri towards Sirsa, a Canter bearing registration No. RJ-13-GA-2870, being driven by Pawan Kumar-respondent No.1 in a rash and negligent manner, came from the opposite side at a very high speed and struck against the car of Sunil Kumar from right side, as a result of which,

Sunil Kumar and other occupants of the car sustained grievous injuries. The canter also turned turtle after covering a distance of half acre. Sunil Kumar was taken to CHC, Dabwali, where he succumbed to the injuries. With regard to the accident, FIR No.71 dated 02.08.2009, under Sections 279/337/338/304-A/427 IPC was registered at Police Station, Odhan, against respondent No.1 on the statement of Pardeep Kumar, eye witness. Consequently, the claimants i.e. appellants filed a claim petition before the Tribunal.

Upon notice, respondent Nos. 1 and 2 filed their joint written statement, wherein they denied the factum of accident with the canter in question. It was stated that the aforesaid canter was insured with Bajaj Allianz General Insurance Company Ltd.-respondent No.2, therefore, they were not liable to pay the compensation.

Respondent No.3-Insurance Company filed a separate written statement, stating therein that respondent No.1 was not holding a valid and effective driving license at the time of alleged accident. It was further stated that the deceased had himself contributed his negligence in the accident.

From the pleadings of the parties, following issues were framed:-

1. Whether Sunil Kumar died in a roadside accident on account of rash and negligent driving of Truck No.RJ-13GA-2870 by respondent No.1, as alleged? OPP
2. To what amount of compensation the petitioners are entitled to and from whom? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR
5. Whether respondent No.1 did not hold a valid and effective

driving licence on the date of accident, if so, to what effect?

OPR-3.

6. Relief.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place due to rash and negligent driving of the offending canter (truck) by its driver-respondent No1. Accordingly, issue No.1 was decided in favour of the claimants. This finding was rightly given on the basis of deposition of Pardeep Kumar (PW-3), who was eye witnesses of the accident. On his statement, FIR, Ex.P6, was registered against respondent No.1 at Police Station, Odhan. Further, Ramesh Kumar, Ahlmad in the Court of SDJM, Dabwali was examined as PW-2, who testified that accused-Pawan Kumar (respondent No.1 herein) had been charge sheeted in the said case on 09.10.2007 for the offence punishable under Sections 279/337/338/304-A IPC. Copy of report under Section 173 Cr.P.C. was proved as Ex.P7.

As per salary certificate, Ex.P8, Sunil Kumar was getting salary of Rs.10,500/- per month w.e.f. April, 2009 to 31.07.2009. Accordingly, income of the deceased was taken as Rs.10,500/- per month, out of which, 50% amount was deducted towards personal expenses of deceased, as he was a bachelor at the time of accident. The dependency of claimants, thus, came to Rs.5250/- per month i.e. Rs.63,000/- per annum. As per postmortem report, deceased was 25 years of age at the time of accident/death. Since he was a bachelor, multiplier of 9 was applied keeping in view of the age of his father, who was 51 years old. Thus, appellants-claimants were found entitled to compensation of Rs.5,67,000/- (5250 x 12 x 9). Apart from this, Rs.10,000/- were awarded towards funeral expenses,

last rites, love & affection, mental shock and agony etc. Ultimately, claim petition was allowed and the claimants were held entitled to a total compensation of Rs.5,77,000/- 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

Learned counsel for the appellants has argued that in the present case, multiplier of 9 has been wrongly applied by the Tribunal keeping in view the age of father of deceased, whereas the multiplier should have been applied as per the age of the deceased.

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 view of the judgment passed by Hon'ble the Supreme Court in **Reshma Kumari and others Vs. Madan Mohan and another**, 2013 (2) RCR (Civil) 660, multiplier, in the present case, should have been taken as per the age of deceased-Sunil Kumar. Accordingly, 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 in **Reshma Kumari's** case (supra), **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 (as per minimum wages)	Rs.10,500/- per month.
(ii)	50% of (i) above to be added as future prospects	10,500 + 5250 = Rs.15,750/-
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	15750 – 7875 = Rs.7875/-
(iv)	Compensation after multiplier of 18 is applied	Rs.7875 x 12 x 18 = Rs.17,01,000/-
(v)	Loss of love and affection for the appellants (parents)	Rs.1,00,000/- (Rs.50,000/- each)
(vi)	Funeral expenses	Rs.25,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.18,26,000/-
(viii)	Enhanced amount of compensation	Rs.18,26,000 – 5,77,000 = Rs.12,49,000/-

The enhanced amount of compensation of **Rs.12,49,000/-** 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

06.10.2017
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No