

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

**FAO No.3489 of 2012 (O&M)
Date of decision: 03.08.2017**

Jasbir Kaur and others

....Appellants

Versus

Balbir Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Lakhwinder Singh Mann, Advocate,
for the appellants.

Mr. Vikrampreet Arora, Advocate,
for respondent Nos. 1 and 2.

Mr. R.K. Bashamboo, 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, Fatehgarh Sahib (hereinafter referred to as 'the Tribunal') vide award dated 01.03.2011, on account of death of Jaswant Singh in a motor vehicular accident which took place on 19.11.2008. Appellant No.1 is widow, appellant Nos.2 & 3 are children and respondent No.4 is mother of deceased-Jaswant Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 19.11.2008, Jaswant Singh (since deceased) along with his cousin (Jaswinder Singh) had gone to the market of Khamano. They both were having their own separate

motorcycles. Jaswant Singh was riding his motorcycle bearing registration

No.HR-04-A-5536. When he tried to cross the divider for going towards *mandi*, an Alto car bearing registration No. PB-10-BG-0391 being driven by Parminder Singh-respondent No.2 in a rash and negligent manner, came from the side of Chandigarh at a very high speed and struck against the motorcycle of Jaswant Singh, as a result of which, he received grievous injuries and blood started oozing from his forehead. He was taken to Civil Hospital, Khamano, where he succumbed to the injuries. With regard to the accident, an FIR was registered on the basis of statement made by Jaswinder Singh, eye witness. 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 both the deceased as well as respondent No.2- Parminder Singh (driver) had equally contributed for causing the accident, which resulted into the death of Jaswant Singh. This finding was given on the basis of deposition of Jaswinder Singh (PW-2), whereby, during his cross-examination, he had admitted that there was no turn at the place of accident. In these circumstances, the Tribunal has held that the deceased himself had also contributed to the accident inasmuch as he was trying to take a turn where it was not permissible to do so. It was further observed that driver of the car ought to be more careful while driving the car in a market place, so as to avoid any accident. With these observations, driver of the offending car namely Parminder Singh as well as deceased-Jaswant Singh were held to have equally contributed for causing the accident.

In the absence of any documentary evidence, income of the deceased was taken to be Rs.3000/- per month, out of which, 1/4th amount

was deducted towards his personal expenses. Dependency of the claimants, thus, came to Rs.2250/- per month i.e. Rs. 27,000/- per annum. The deceased was 45 years of age at the time of accident/death and the multiplier of 14 was applied. Thus, the claimants were found entitled to compensation of Rs.3,78,000/- (27,000 x 14). In addition to it, Rs.5,000/- were awarded towards funeral expenses and Rs.10,000/- towards loss of consortium for the widow. Accordingly, total amount of compensation came to be Rs.3,93,000/-. Since the deceased had been held to have contributed equally in causing the accident, the claimants were held entitled to 50% of the aforesaid amount of Rs.3,93,000/-. Ultimately, the claimants were found entitled to a total compensation of Rs.1,96,500/- (Rs.3,93,000 x 50/100). along with interest @ 7½% 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 claimant-appellants, while referring to the site plan (Annexure A-1), states that vehicle of the deceased was coming after crossing the divider and at that time, the offending car came at a high speed and hit the motorcycle of deceased. Since a provision had already been made to cross the road at that point, negligence cannot be attributed to the deceased.

This aspect has already been considered by the Tribunal and it has been held that the deceased was taking a turn at a place, where there was no provision for any turn and there was a divider, therefore, he himself had contributed for causing the accident. A perusal of the site plan (Annexure A-1) shows that a provision was made in the divider to go to the other side

of the road. However, if the deceased was using that passage to go to the other side of the road, he had to be vigilant enough to see, whether any vehicle was coming or not. Therefore, the finding of contributory negligence has rightly been given by the Tribunal.

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.3000/- per month
(ii)	30% of (i) above to be added as future prospects	$3000 + 900 = \text{Rs.}3900/-$
(iii)	1/10 th of (ii) above is deducted as personal expenses of the deceased	$3900 - 390 = \text{Rs.}3510/-$
(iv)	Compensation after multiplier of 14 is applied	$\text{Rs.}3510/- \times 12 \times 14 = \text{Rs.}5,89,680/-$
(v)	Loss of consortium for the widow (appellant No.1)	Rs.1,00,000/-
(vi)	Loss of love and affection for the children (appellant Nos.2 & 3)	Rs.2,00,000/- (Rs.1,00,000/- each)
(vii)	Loss of love and affection for the mother (respondent No.4)	Rs.50,000/-
(viii)	Funeral expenses	Rs.25,000/-
(ix)	Total	Rs. 964680/-

(x)	50% of (ix) is deducted on account of contributory negligence of the deceased.	964680 – 4,82,340 = Rs.4,82,340/-
(xi)	TOTAL COMPENSATION AWARDED	Rs.4,82,340/-
(xii)	Enhanced amount of compensation	Rs.4,82,340 – 1,96,500 = Rs.2,85,840/-

The enhanced amount of compensation of **Rs.2,85,840/-** 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

03.08.2017
ajp

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