

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

Date of decision: 11.07.2017

FAO No.3610 of 2012 (O&M)

Dixit Kumar & others

...Appellants

Vs.

Keshar Lal & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. Vipul Sharma, Advocate, for

Mr. Paul S. Saini, Advocate, for respondent No.3.

RAJIV NARAIN RAINA, J. (ORAL)

This is an appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal') in MACT Case No.53 of 2009 presented under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') vide award dated 02.02.2012.

The claimants are the parents and son of the deceased – Dhyan Singh, who died due to injuries suffered in an accident on 28.05.2009. The death occurred due to rash and negligent driving by the first respondent – Keshar Lal, driver of the truck No.RJ-06-GA-5557, the offending vehicle. The truck was insured by the third respondent – the United India Insurance Company Ltd. The deceased was aged 30 when the tragedy happened. The learned Tribunal has awarded ₹5,81,200/- as compensation on account of the death of Dhyan Singh to be paid by respondents No.1, 2 & 3 jointly and severally to the claimants with interest at the rate of 7.5% per annum from

the date of filing of petition till payment. The petition was filed on 15.06.2009 and was decided by the impugned award on 02.02.2012.

The Tribunal has bifurcated the compensation and awarded an amount of ₹2,00,000/- to the son of the deceased and the remaining amount along with interest to be paid to the parents of the deceased.

Mr. S.K.Yadav, learned counsel appearing on behalf of the claimants is satisfied with the multiplier of 17 applied by the Tribunal to award the compensation. Appellants, however, claim enhancement under three heads i.e. 'loss of love & affection to the son and the parents of the deceased'; 'loss to the estate of the family left behind'; and 'funeral expenses' according to the current legal position.

On the other hand, Mr. Vipul Sharma, Advocate, appearing on behalf of Mr. Paul S. Saini, Advocate, has very fairly conceded that 'funeral expenses' have to be enhanced in view of the law in Rajesh Vs. Rajbir Singh, (2013) 9 SCC 54. He also does not dispute enhancement for 'loss to the estate' and 'loss of love & affection'.

Having heard Mr. S.K.Yadav and Mr. Vipul Sharma, I find that the discussion under the three heads have neither been noticed or dealt with by the Tribunal in the award and as such they will arise for consideration in appeal for determination in appeal. However, having considered the facts and circumstances of the case, I am of the considered view that the award insofar it is for determining loss of dependency requires no interference in FAO.

Having taking into consideration all the factors which might weigh in the mind of court, I am of the view that the Tribunal has erred in assessing the compensation. The deceased was 30 years old and a widower

with a son left behind, who was a minor and keeping in view that the deceased victim of the accident was a Mason working on daily wages, he would have continued, if he lived, to earn a living for himself, his son and his parents at least for another 30 years, if not longer. Dependency has been assessed by the Tribunal at $1/3^{\text{rd}}$ of the income i.e. ₹33,600/- (2800x12) per annum, which I think is a reasonable amount for the year 2009 keeping in mind the minimum wages fixed under the Minimum Wages Act by the Collector of the District. Therefore, the dependency of ₹33,600/- deserves a multiplier of 17 and the amount so calculated would come to ₹5,71,200/-. In addition to the amount of compensation awarded as far as loss of love & affection is concerned, no amount of money can replace the loss. However, the only tool in the hands of the Court is to award some amount of money to represent what should be regarded as reasonable loss for love & affection lost to the family forever till they live. Then, reasonable compensation in this case would work out to be ₹1,00,000/- to the son and ₹50,000/- to the parents. Accordingly, I would enhance the compensation under the three heads i.e. 'loss of love & affection to the son and the parents of the deceased'; 'loss to the estate of the family left behind'; and 'funeral expenses' as follows:

Sr. No.	Heads	From	To
1.	Loss of Love & affection to the son and the parents	--	₹1,00,000/- to the son and ₹50,000/- to the parents
2.	Loss to the estate	₹5000/-	₹10,000/-
3.	Funeral expenses	₹5000/-	₹25,000/-

Thus, the total compensation payable shall be ₹7,56,200/-. The amount in excess, over what has already been granted by the Tribunal shall also attract the same rate of interest as awarded by the Tribunal from the date of filing of petition till the final realization of the amount. There will be no interest on the funeral expenses enhanced. The liability *inter se* shall remain the same as fixed by the Tribunal.

Accordingly, the present appeal is partly allowed with the aforesaid modification of the award.

11.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>