

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

F.A.O. No.4880 of 2014

Date of Decision: 15.09.2017

Smt. Sudela Devi and others

. . . Appellants

Versus

Pargat and another

. . . Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sharad Kumar Yadav, Advocate
for the appellant.

Mr. Suresh Goyal, Advocate
for respondent No.2-Insurance Company.

Ritu Bahri, J. (Oral)

1. This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') vide award dated 05.03.2014, on account of death of Balwinder Singh in a motor vehicular accident which took place on 24.11.2012. Appellant No.1 is widow and appellant Nos.2 to 5 are sons of deceased-Balwinder Singh.

FACTS NOT IN DISPUTE

2. On 24.11.2012, Balwinder Singh (since deceased) was travelling as a pillion rider on a motor cycle bearing registration No.HR-99-ME-1590, being driven by respondent No.1-Pargat Singh and they were going to their village on normal speed in a very careful manner. At about

2115 hours, when they were in the area of Village Neemwala, a new culvert was constructed, the motor cycle struck in the culvert due to darkness and they fell down and received injuries. As a result of which, Balwinder Singh succumbed to his injuries on the spot, whereas driver Pargat Singh was shifted to Saraswati Mission Hospital, Pehowa where he received treatment. Consequently, the claimant i.e. appellant filed a claim petition before the Tribunal.

Upon notice, No.1, owner of the motorcycle, appeared and filed written statement stating wherein denied the factume of rash and negligent driving and further stated that he was having a valid and effective driving licence. The motorcycle was insured with respondent No.2.

Respondent No.2-Insurance Company, in his separate written statement pleaded that no accident ever took place as alleged and there was violation of terms and conditions of the insurance policy. In order to procure a false claim, petition has been filed by the claimant in collusion with respondent No.1 and the DDR lodged is an afterthought with a view to fabricating the evidence.

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

1. Whether deceased Balwinder Singh succumbed to the injuries received during the use of motor cycle bearing registration No.HR-99-ME-1590 as alleged?
2. IF issue No.1 is proved, whether petitioners are entitled to compensation, if so, to what amount and from whom? OPP.
3. Whether insurance company is not liable to indemnify the compensation? OPR-2
4. Relief.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that Balwinder Singh died on account of injuries suffered in the accident in question which took place out of the use of the motor cycle bearing registration No.HR-99-ME-1590. Since the claim petition was filed under Section 163-A of the Motor Vehicle Act, therefore, negligence of driver of the motorcycle was not required to be proved. The monthly income of the deceased has been taken by the Tribunal to be Rs.3200/-, which comes to Rs.38,400/- per annum. Out of this income, 1/3rd amount was deducted towards personal expenses of deceased. The dependency of claimants, thus, came to Rs.25,600/- per annum. After taking into consideration, the documentary evidence available on record, the Tribunal has accepted the age of the deceased as 58 years at the time of accident/death. Accordingly, multiplier of 9 was applied. Thus, claimants were found entitled to compensation of Rs.2,30,400/- ($25,600 \times 9 = 2,30,400$). Apart from this, Rs.10,000/- were awarded towards loss of estate, Rs.10,000/- towards funeral expenses and Rs.10,000/- towards loss of consortium. Ultimately, claim petition was allowed and the claimants were held entitled to a total compensation of Rs.2,60,400/- along with interest @ 7.5% per annum from the date of award till realization. Feeling dissatisfied with the impugned award, the claimants-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. It is not in dispute that the offending vehicle was fully insured with the Insurance Company. The deceased was about 57-58 years of age at the time of death/accident. Therefore, income of the deceased has to be taken by taking reference of the judgment passed by Hon'ble the Supreme Court in **Kishan Gopal Vs. Lala and others**, 2013 AIR SC 2464. Further, the claimants are required to be awarded something under the conventional head as per another judgment passed by Hon'ble the Supreme Court in **R.K. Malik and another Vs. Kiran Pal and others**, 2009 (14) SCC 1. Accordingly, the compensation is reassessed in view of the judgments passed in **Kishan Gopal & R.K. Malik's** case (supra), **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)	Notional Income	Rs.40,000/- per annum.
(ii)	1/3 rd of (i) above is deducted as personal expenses of the deceased	40,000 + 13,333 = Rs.26,667/-
(iii)	Compensation after multiplier of 09 is applied	Rs.26,667 x 09 = Rs.2,40,003/-
(iv)	Compensation towards all other heads (conventional)	Rs.75,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.3,15,003/-
(vi)	Enhanced amount of compensation	Rs.3,15,003 – 2,60,400 = Rs.54,603/-

The enhanced amount of compensation of **Rs.54,603/-** 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.

[RITU BAHRI]
JUDGE

September 15, 2017
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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No