

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

**FAO No.3171 of 2016 (O&M)
Date of decision: 11.10.2017**

Shiv Devi and others

....Appellants

Versus

Govinder and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Singal, Advocate,
for the appellants.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

CM-11405-CII-2016

In view of the averments mentioned in the application, same is allowed and delay of 948 days in filing of the appeal is condoned.

FAO No.3171 of 2016

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') vide award dated 01.06.2013, on account of death of Raju in a motor vehicular accident which took place on 26.10.2011. Appellant No.1 is widow and appellant Nos.2 and 3 are sisters of deceased-Raju.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 26.10.2011, Suresh Tiwari, Raju and Mohammed Umar were coming on a motorcycle bearing registration No. HR-10-P-4505 from Panipat to village Chidana. The said

Ram Singh was also following them on his separate motorcycle bearing registration No. HR-11-D-7595. When they reached near Shaheed Amardeep Petrol Pump on Gohana Road, a Canter bearing registration No. HR-38-J-9871, being driven by Govinder-respondent No.1 in a rash and negligent manner, came from Gohana side at a very high speed and struck against the motorcycle of Raju, as a result of which, all the occupants of the motorcycle suffered injuries and died at the spot. With regard to the accident, FIR No.272 dated 26.10.2011, under Sections 279/304-A IPC was registered at Police Station, Israna, against respondent No.1. Consequently, the claimants i.e. appellants filed a claim petition before the Tribunal.

Upon notice, respondent No. 1 written statement, wherein he denied the factum of accident with the canter in question. It was stated that a false FIR has been got registered by the claimants in order to get compensation.

Respondent No.2-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 motorcycle was being driven in a rash and negligent manner by its driver without observing traffic rules.

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

1. Whether the accident in question took place on account of rash and negligent driving of Canter bearing No. HR-38-J-9871 by respondent No.1, as alleged? OPP
2. Whether the petitioner is entitled to get compensation, if so, to what amount and from whom? OPP
3. Whether the petition is not maintainable? OPR
4. 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 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 Mukesh (PW-3), who was eye witnesses of the accident and on whose statement, FIR, Ex.P3, was registered against respondent No.1.

In the absence of any evidence, income of deceased-Raju was taken as Rs.4500/- per month as per the minimum wages fixed for the unskilled labourer, 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 claimant No1-mother, thus, came to Rs.2250/- per month. Since he was a bachelor, multiplier of 9 was applied keeping in view of the age of his mother (appellant No.1), who was 60 years old. Thus, claimant No.1 was found entitled to compensation of Rs.2,43,000/- (2250 x 12 x 9). 30% of the income was added towards future prospects, which came to Rs.72,900/-. Apart from this, Rs.20,000/- were awarded to appellant No.1 towards pain and sufferings, Rs.10,000/- towards funeral expenses and Rs.10,000/- as transportation expenses etc. Ultimately, claim petition was allowed and the claimant No.1-Shiv Devi was held entitled to a total compensation of Rs.3,56,000/-, 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

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 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 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.4500/- per month.
(ii)	50% of (i) above to be added as future prospects	4500 + 2250 = Rs.6750/-
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	6750 – 3375 = Rs.3375/-
(iv)	Compensation after multiplier of 9 is applied	Rs.3375 x 12 x 9 = Rs.3,64,500/-
(v)	Loss of love and affection for the mother (appellant No.1)	Rs.50,000/-
(vi)	Loss of love and affection for the sisters (appellant Nos. 2 and 3)	Rs.50,000/-
(vii)	Funeral expenses	Rs.25,000/-
(viii)	TOTAL COMPENSATION AWARDED	Rs.4,89,500/-
(ix)	Enhanced amount of compensation	Rs.4,89,500 – 3,56,000 = Rs.1,33,500/-

The enhanced amount of compensation of **Rs.1,33,500/-** 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.

11.10.2017
ajp

(RITU BAHRI)
JUDGE

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