

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

F.A.O No. 1473 of 1997

Date of decision:- 17.01.2018

National Insurance Company ltd.

...Appellant

Versus

Mewa Devi and Others

.....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tarun Singla, Advocate,
for the appellant.

Mr.R.S.Mamli, Advocate,
for respondents.

RITU BAHRI J. (Oral)

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 11.04.1997, on account of death of Balak Ram in a motor vehicular accident which took place on 12.03.1996.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 12.03.1996 at about 11.30 or 12.00 a.m.(mid night) the deceased Balak Ram was going to Delhi while driving a truck Bearing No. DL-1G-1225. At about 12.00 mid night, they reached near village Khanpur Kolian, Police Station Sadar Thanesar when a truck bearing No. UGU-7333 (for short the offending truck) being driven by respondent No.1-Harnek Singh came from the front side rashly and negligently. The deceased was going at very slow speed at that time. But the respondent No.1 by violating the traffic rules dashed the offending truck with the truck being driven by the deceased and as a result of collision,

deceased Balak Ram died at the spot and the cleaner sustained serious injuries. The accident in question took place due to rash and negligent driving of bus being driven by respondent No. 1. In this regard FIR Ex. P1 was registered against respondent No. 1 and Ex. P2 Site plan prepared by the police in the Criminal case and the post mortem report ex.P4.

Consequently, claimants-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 the accident had been caused on account of negligent driving of offending vehicle by respondent No.1 and as per findings of issue no. 3, respondent No. 1 was holding a valid driving licence to drive the truck at the time of accident and the photocopy of the driving license is placed on record as Ex.R1. The deceased was 35 years of age at the time of accident/death and posted as a Driver and was earning Rs.3000/- per month.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the claimants. Tribunal took the salary of the deceased-Balakram as Rs. 1900/- per month and yearly contribution thus comes to Rs. 22,800/-. Balak Ram (since deceased) has three dependents including wife, one minor son and mother of the deceased. As per the age of the deceased and of the claimants Tribunal applied multiplier of 14 and amount comes after applying multiplier of 14 to Rs. 3,19,200/- In addition to this amount, Tribunal awarded Rs. 6,000/- on account of expenses on funeral and last rites of the deceased and to make it round round the same comes to Rs.3,26,000/- out of which ½ was deducted towards personal income. Hence, the Tribunal awarded an amount of Rs. 1,63,000/- to the

claimants.

Feeling dissatisfied with the impugned award, the appellants have preferred the present appeal.

Learned counsel for the appellant stated that driver of the offending vehicle was not holding valid license at the time of accident and the license which was taken into possession by the police was alleged to have been obtained from the licensing authority, Jabalpur. The, license Authority Jabalpur did not comment about the genuineness or otherwise of the driving license. The driving license produced before the Tribunal has been shown to be issued from the licensing Authority, Hoshiarpur, but the license Authority at Hoshiarpur had shown that it was renewed. But learned Counsel for the appellant-Insurance company has failed to prove the aspect regarding the driving license of driver. Tribunal has examined this fact in the paragraph 13 of the Award that the driver was holding valid license as Ex. R1. A photocopy of driving license Ex. R1 is also placed on record which shows that license was issued from the licensing authority, Hoshiarpur. In this regard no verification has been taken by the insurance company to the effect that driver had valid license or not.

As far as appeal filed by the claimant in this court numbered as FAO No. 640 of 1998 was dismissed as withdrawn with liberty to file cross-objections in accordance with law. But till date no cross objection has been filed. While exercising this Court under Order 44 Rule 33 and give liberty to the claimants. And the findings of issue no. 1 is not in dispute by both the parties that in the present case accident took place due to contributory negligence by the offending vehicle and driving by the deceased.

Vehemently, Learned Counsel for the claimants stated that while

assessing the compensation Tribunal take multiplier 14 on the basis of age of the claimants as well as of the deceased. He further put reliance upon the judgment of Hon'ble Supreme Court in case titled as *Sarla Verma and others vs. Delhi Transport Corporation and another* multiplier should be 16 as per the age of the deceased. He further stated that no future prospects have been awarded to the claimants by the Tribunal and 1/5th amount was deducted towards personal expenses whereas deceased have only three dependents.

I have heard learned counsel for the parties and perused the case file.

REASSESSED COMPENSATION

Keeping in view that the appeal has been filed within the time. 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 by Hon'ble the Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017)* wherein it was held that future prospects should be 40 % and amount of conventional head should be Rs. 70,000/- and *Sarla Verma and others vs. Delhi Transport Corporation and another* , 2009 (3) RCR (Civil)

Page 77, as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs. 2,500/-per month
(ii)	40% added in (i) towards future prospects	Rs.2500 + 1000=Rs.3,500 /-
(iii)	1/3 rd deducting from (ii) towards personal expenses	Rs.3,500-Rs. 1,167 (approx)= Rs. 2,333/-
(iv)	Multiplier applied	Rs.2,333X12X16= 4,47,936/-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(iv)	Compensation towards conventional heard	Rs. 70,000/-
	Total Compensation awarded (iii)+(iv)	Rs. 5,17,936/-
	Enhanced amount of compensation	Rs.5,17,936 -1,63,000=Rs.3,54,936/-

The enhanced amount of compensation of **Rs.3,54,936/-** 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.

17.01.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No