

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO No.1923 of 2006(O&M)

Date of Decision: 02.05.2018

Kiran Rani & ors.

... Appellants

Versus

Kulwant Singh & anr.

.. Respondents

**CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Mukand Gupta, Advocate,  
for the appellants.

Mr. Sanjiv Pabbi, Advocate,  
for respondent No.2-Insurance Company.

**RAMENDRA JAIN, J.(Oral)**

**C.M. No.8593-CII of 2017**

For the reasons mentioned in the application, the same is allowed.

Main appeal is taken up today for hearing.

**C.M. No.8594-CII of 2017**

Through this application, prayer has been made for mentioning the name of appellant No.3-Shivam as Shiv Parkash @ Shivam in the memo of parties.

Heard.

Since the name of appellant No.3 has been shown as Shiv Parkash in the birth certificate (Annexure A-1) and matriculation certificate (Annexure P-2), therefore, name of appellant No.3 be read as Shiv Parkash @ Shivam.

Amended memo of parties is taken on record. The same be tagged at appropriate place.

Application stands disposed of

**FAO No.1923 of 2006(O&M)**

Claimants through this appeal have sought enhancement of compensation by modifying impugned award dated 30.01.2006 of the Motor Accident Claims Tribunal, Bathinda (in short 'the Tribunal').

Put pithily, on 29.12.2004, Rajinder Kumar since deceased while travelling in a jeep sustained multiple injuries on account of rash and negligent act of respondent No.1, who had parked his truck on the road ignoring the traffic rules, which could not be seen by the driver of his jeep on account of dense fog. Therefore, their jeep struck against the truck from back side. Later on, he succumbed to his injuries. In a claim petition filed under Section 163 of the Motor Vehicles Act (for short 'the Act') by legal heirs of the deceased Rajinder Kumar, the learned Tribunal awarded compensation of ₹2,63,500/- to them vide impugned award dated 30.01.2006.

Learned counsel for the appellants-claimant *inter alia* contends that the appellants have claimed monthly income of the deceased at ₹2,500/- from his vocation as drummer and member of orchestra. Kiran Rani, widow of the deceased as AW-1 had categorically testified that her deceased husband was earning ₹2,500/- per month. However, learned Tribunal without any justification, illegally took income of the deceased at ₹2,000/-, instead of ₹25,00/-.

On the other hand, learned counsel for the Insurance Company strongly refuting the aforesaid submissions, submits that no cogent and convincing evidence was led by the appellants-claimant qua income of the deceased to the tune of ₹2,500/- per month. Therefore, learned Tribunal has rightly awarded compensation treating income of the deceased at ₹2,000/- per month.

Having given anxious consideration to the submissions made by

both the sides, I find that the instant appeal deserves acceptance for the reasons to follow.

The appellants-claimant in support of their case produced salary certificate of the deceased issued by Jai Durga Bhajan Mandli and Sankiratan Mandal, Bathinda, showing his monthly income at ₹2,500/- per month. There was no rebuttal to the above evidence of the appellants-claimant from the side of the Insurance Company or the driver and owner of the offending truck. Therefore, learned Tribunal was required to take into consideration salary certificate produced by the appellants-claimant in support of their assertion. Taking income of the deceased at ₹2,000/- per month without any basis is completely hypothetical and illegal. Hence, the income of the deceased at the time of his death is taken as ₹2,500/- per month. Finding of the learned Tribunal to this effect is set aside.

The appellants-claimant have filed claim petition under section 163-A of the Act. Therefore the compensation has to be calculated in accordance to the 2<sup>nd</sup> Schedule of the Act. On calculation, the claimants are entitled to compensation of ₹3,29,500/- .

Learned counsel for the Insurance Company has not been able to controvert or point out any infirmity in the compensation aforesaid arrived at by this Court.

Therefore, the appellants-claimant are entitled to ₹3,29,500/- less the compensation already paid to them. In other words, the appellants-claimant are entitled to enhanced compensation to the tune of ₹66,000/- over and above the compensation already awarded by the learned Tribunal.

In view of discussion made above, this appeal stands disposed of with direction to the Insurance Company to deposit the enhanced

compensation of ₹66000/- before the learned Tribunal within two months from today along with upto-date interest @ 7.5% per annum from the date of institution of the claim petition till realization for onward disbursement to the appellants-claimant in proportion so arrived at by it, in accordance with law against proper receipt and identification.

02.05.2018  
monika

(RAMENDRA JAIN)  
JUDGE

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |