

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

**FAO No.3713 of 2011 (O&M)
Date of decision: 24.05.2018**

Smt. Manju Kumari and others

....Appellants

Versus

Subhash and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Singh Jattan, Advocate,
for Mr. Rajesh Sheoran, Advocate,
for the appellants.

Mr. Sandeep Singhal, Advocate,
for respondent Nos. 1 and 2.

Mr. Ashwani Talwar, Advocate,
for respondent No.3-Reliance General Insurance Co. Ltd.

Mr. Gopal Mittal, Advocate,
for Munish Goel, Advocate,
for respondent No.5-United India Insurance Company Ltd.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') vide award dated 08.02.2011, on account of death of Suresh Kumar in a motor vehicular accident which took place on 08.06.2009. Appellant No.1 is widow, appellant Nos. 2 & 3 are children and appellant Nos.4 & 5 are parents of deceased Suresh Kumar.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 08.06.2009, Suresh Kumar loaded stones in his truck from Kaliyana. One Jaibir also loaded stones in his truck. Thereafter, both the trucks left for Rohtak. Rohtash son of Ram Bhagat was cleaner on the truck of Suresh (since deceased). When they reached near village Kheradi, Jaibir's truck got punctured. Both the drivers stopped their trucks on the *kacha* portion of the road. When Suresh was changing the wheel, in the meantime, a dumper bearing No. HR-46-B-8342 being driven by respondent No.1 Subhash in a rash and negligent manner came from the side of Dadri and hit Suresh, as a result of which, he received multiple injuries. He was taken to PGI, Rohtak, but he succumbed to the injuries. With regard to the accident, FIR Ex.P26 was registered against respondent No.1. Consequently, the claimant-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 taken place on account of rash and negligent driving of offending vehicle by respondent No.1, as a result of which Suresh has died and thus, returned the finding on issue no.1 in favour of the claimants. This finding was rightly given on the basis of the deposition of Inder Rohtash (PW-4), who was an eye witness of the accident and on whose statement, the FIR Ex.P26 was registered.

In the absence of any documentary evidence, income of the deceased was assessed as Rs.5000/- per month. Out of this, 1/4th amount was deducted towards personal expenses of the deceased. By doing so, remaining amount came to Rs.3750/- i.e. Rs.45,000/- per annum. Keeping in

view the age of deceased, multiplier of 16 was applied. After applying the multiplier of 16, dependency of claimants (appellants) came to Rs.7,20,000/- (45,000 x 16). In addition to it, Rs.10,000/- were awarded on account of loss of estate, Rs.10,000/- as loss of consortium to widow-respondent No.1 and Rs.10,000/- as funeral expenses. Hence, appellant-claimants were found entitled to total compensation of Rs.7,50,000/- along with interest @ 6% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has 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. Parties are not in dispute with respect to the findings given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1. A perusal of the impugned award shows that the deceased had taken loan for from the bank for purchasing the truck and was paying monthly installments of Rs.24,200/-. This fact has been proved by Sudhir Kumar (PW-3), who had brought the summoned record and stated that their bank had financed the truck. As per record, the truck had not been sold. He further stated that the entire loan amount was cleared on 24.07.2009. Since the deceased was paying installments of Rs.24,200/- per month towards the loan, income assessed by the Tribunal as Rs.5000/- per month is on the lower side.

month. 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 **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77 and **National Insurance Company Limited Vs. Pranay Sethi and others**, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.15,000/- per month
(ii)	40% of (i) above to be added as future prospects	15,000 + 6000 = Rs.21,000/-
(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	21,000 – 7000 = Rs.14,000/-
(iv)	Compensation after multiplier of 16 is applied	Rs.14,000/- x 12 x 16 = Rs.26,88,000/-
(v)	Compensation under the conventional heads	Rs.70,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.27,58,000/-
(vii)	Enhanced amount of compensation	Rs.27,58,000 – 7,50,000 = Rs.20,08,000/-

The enhanced amount of compensation of **Rs.20,08,000/-** 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 @ 7.5% 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 “**Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others**, Civil Appeal No.448 of 2018 (decided on 19.01.2018). 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.

(RITU BAHRI)
JUDGE

24.05.2018
ajp

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