

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

F.A.O No. 7065 of 2010 (O&M)

Date of decision:- 17.01.2018

Smt. Sharmila and others

...Appellants

Versus

Sattar and others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjay Mittal, Advocate,
for the appellants.

Mr. Sandeep Kotla, Advocate and
Mr. Sanjeev Goyal, Advocate,
for respondent No. 3.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') vide award dated 05.08.2010, on account of death of Desh Raj in a motor vehicular accident which took place on 11.07.2009.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 11.07.2009 Desh Raj driveer and Rambir Conductor loaded Kiryana goods from Gujrat on Canter bearing registration No. HR-55G-5285 to Delhi. At about 5.00 AM Canter reached near Heor Honda factory at NH -8 Dharuhera. The canter being driven by Desh Raj in a right manner. Dumper No. HR-38M-5976 was standing on NH8 in negligent manner without any indicator or lights etc. and had obstructed the road due to negligence of Sattar its driver. As such, Canter of Desh Raj struck against dumper. Desh Raj died at the spot. Conductor Rambir was taken to Raman Munjal Hospital. In this regard FIR No. 201 dated 11.07.2009 under Sections 283, 337, 304A of IPC was got registered

against respondent No. 1-Sattar at Police Station Dharuhera.

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 negligently parked of dumper No. HR -38 M-5976 without any light or indicator and respondent No. 1 did not appear in witness box in order to rebut the case of the petitioners.

This finding was rightly given on the basis of FIR, Ex. P1, final report under Section 173 Cr. P.C. Ex.P2, and others documentary evidence led by the claimants. The deceased was 35 years of age at the time of accident/death and was earning Rs.8,000/- per month as salary apart from Rs. 50/- per day as expenses which is proved by Ex. PW5/1. PW2 Sharmila deposed that her husband-Desh Raj in addition to salary being a driver, used to sell milk of two buffaloes and earn Rs. 3000 per month but no document regarding income of Rs. 3000/- by milk selling has been proved. Desh Raj (since deceased) has five dependent including wife, two sons and parents of deceased. As per the law laid down in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** , 2009 (3) RCR (Civil) Page 77, income of deceased assessed by the Tribunal has Rs.4,500/- per month as per minimum wages norms. After deducting one-third amount towards personal expenses, the amount comes to Rs. 3,000/- and annual dependency comes to Rs. 36,000/-. Since the deceased was 35 years of age at the time of his death, multiplier of 12 would be applicable as per the law laid down in case Sarla (supra). After applying multiplier compensation amount comes

to Rs.4,32,000/-. In addition to this amount, Rs. 2000/- awarded towards funeral expenses, Rs.2000/- awarded towards transporation expenses and claimant no. 1 Sharmila, being widow is awarded another amount of Rs.5000/- on account of loss of consortium. Hence, the Tribunal awarded an amount of Rs. 4,41,000/- to all the claimants and no future prospects has been granted by the Tribunal.

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 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)* and *Sarla Verma and others vs. Delhi TransportCorporation and another*, 2009 (3) RCR (Civil) Page 77, as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs. 4,500/-per month
(ii)	40% added in (i) towards future prospects	Rs.4,500 + 1800=Rs.6,300 /-
(iii)	1/4 th deducting from (ii) towards personal expenses	Rs. 6,300-Rs. 1575 = Rs. 4725/-
(iv)	Multiplier applied	Rs.4725X12X15= 850,500/-
(v)	Compensation towards conventional heard	Rs. 70,000/-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
	Total Compensation awarded (iv)+ (v)	Rs. 850,500 + Rs. 70,000 =Rs. 920,500/-
	Enhanced amount of compensation	Rs.920,500 -4,41,000=Rs.479,500/-

The enhanced amount of compensation of **Rs.479,500** /- 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.

17.01.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No