

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

**CM No.10857-CII of 2016 in/and
FAO No.717 of 2012
Date of decision: 07.03.2018**

Smt. Shakuntla and others

....Appellants

Versus

Rajesh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rahul Garg, Advocate,
for Mr. Siddrath Batra, Advocate,
for the appellants.

Mr. A.S. Sidhu, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.10857-CII of 2012

For the reasons mentioned in the application, same is allowed
and the main appeal is taken up today itself for disposal.

FAO No.717 of 2012

This appeal has been filed by the claimant-appellants seeking
enhancement of compensation awarded by Motor Accident Claims Tribunal,
Rohtak (hereinafter referred to as 'the Tribunal') vide award dated
13.06.2011 on account of death of Hari Ram in a motor vehicular accident
which took place on 25.09.2009. Appellant No.1 is widow, appellant Nos.2
to 4 are children and appellant Nos.5 & 6 are parents deceased Hari Ram.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 25.09.2009, Hari Ram (since deceased) along with one Bhagwan was returning from Gohana on a motorcycle bearing registration No.HR-12-M-2343. The said motorcycle was being driven by Bhagwan and Hari Ram was a pillion rider. His nephew (Vikas) was also going on a separate motorcycle. At about 12.30 P.M., when they reached near Pathania Public School, Rohtak, a tractor-trolley loaded with earth, bearing registration No. HR-12-L-5493, being driven by respondent No.1-Rajesh Kumar in a rash and negligent manner, came from behind and hit the motorcycle of Bhagwan, as a result of which, both the occupants of the motorcycle fell down on the road and Hari Ram was crushed under the wheel of tractor. Hari Ram was taken to PGIMS, Rohtak, where he succumbed to the injuries. With regard to the incident, FIR No.699 dated 25.09.2009, under Sections 279, 337 & 304-A IPC was registered at Police Station, City, Rohtak. 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 the offending vehicle by its driver i.e. respondent No.1-Rajesh Kumar. This finding was rightly given on the basis of deposition of Bhagwan (PW-4), who was an eye witness of the accident. Claimants have also proved on record copy FIR Ex.P5 and postmortem report of deceased as Ex.P-13.

The deceased was a retired employee and was getting pension. As per income tax return for the year 2009-10, he was getting total pension of Rs.1,63,513/- per annum i.e. Rs.13,626/- per month. Accordingly, the

Tribunal has taken the income of deceased as Rs.13,626/- per month, out of which, 1/3rd amount was deducted towards his personal expenses. By doing so, remaining amount came to be Rs.9084/- per month. The deceased was 46 years of age at the time of death/accident. Accordingly, multiplier of 12 was applied. After applying the multiplier of 12, dependency of claimants came to Rs.13,08,096/- (9084/- x 12 x 12). In addition to it, Rs.10,000/- were awarded on account of funeral expenses and Rs.5000/- are awarded to claimant No.1 (widow) as loss of consortium. Hence, the claimants were found entitled to total compensation of Rs.13,23,096/- along with interest at the rate of 7.5% per annum from the date of filing of 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. Parties are not in dispute with regard to the findings given by Tribunal on issue No.1 that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1. 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.14,000/- per month
(ii)	30% of (i) above to be added as future prospects	14,000 + 4200 = Rs.18,200/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	18,200 – 4550 = Rs.13,650/-
(iv)	Compensation after multiplier of 13 is applied	Rs.13,650/- x 12 x 13 = Rs.21,29,400/-
(v)	Compensation under the conventional heads	Rs.70,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.21,99,400/-
(vii)	Enhanced amount of compensation	Rs.21,99,400 – 13,23,096 = Rs.8,76,304/-

The enhanced amount of compensation of **Rs.8,76,304/-** 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 (arising out of SLP (C) No.26853 of 2016) 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

07.03.2018
ajp

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