

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

FAO No.2352 of 2015 (O&M)

Date of decision: 21.03.2018

Kamlesh and others

....Appellants

Versus

Sanjeev Kumar and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arvind Kumar Yadav, Advocate,
for the appellants.

Mr. R.C. Gupta, Advocate,
for respondent No.2-Insurance Company.

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 04.11.2014 on account of death of Sanjay in a motor vehicular accident which took place on 25.09.2012. Appellant No.1 is widow, appellant Nos.2 & 3 are daughters and appellant Nos.4 & 5 are parents of deceased Sanjay.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 25.09.2012, Sanjay (since deceased) and his brother Rajesh were returning home from their fields. At about 12.00 noon, when they reached near the Farm belonging to one Colonel and Sanjay was trying to cross the road, in the meantime a Maruti Van bearing registration No. HR-47-A-9571 being driven by respondent No.1 in a rash and negligent manner came from the side of Rewari hit Sanjay, as a result of which, he received grievous injuries. He was taken to

General Hospital, Rewari, however, the doctors declared him brought dead. With regard to the incident, FIR No.111 dated 25.09.2012, under Sections 279/304-A IPC was registered at Police Station, Sadar, Rewari against respondent No.1-driver. 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 been caused on account of rash and negligent driving of offending vehicle i.e. Maruti Van by its driver-responder No.1 and returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Rajesh (PW-2), who was eye witnesses of the accident and on whose statement, FIR Ex.P1 was recorded. Further the claimants have proved charge sheet Ex.P2, final report under Section 173 Cr.P.C. Ex.P3 and postmortem report of deceased as Ex.P4.

In the absence of any documentary proof, income of the deceased was assessed as Rs.7500/- per month being a milk vendor, out of which, 1/4th amount was deducted towards his personal expenses, which came to be Rs.5625/- per month (7500 – 1875) i.e. Rs.67,500/- per annum. As per postmortem report Ex.P4, deceased was 40 years of age at the time of death/accident. Accordingly, multiplier of 15 was applied, whereupon dependency of claimants came to Rs.10,12,500/- (67,500 x 15). In addition to it, Rs.1,00,000/- were awarded on account of loss of consortium, Rs.25,000/- towards funeral expenses and Rs.20,000/- for loss of care and guidance of minor children. Hence, claimants were found entitled to total compensation of Rs.11,57,500/- along with interest @ 7.5% per annum

from the date of filing of the 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. Finding of negligence has rightly been given by the Tribunal and no interference is required on that account. 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.7500/- per month
(ii)	25% of (i) above to be added as future prospects	7500 + 1875 = Rs.9375/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	9375 – 2343 = Rs.7032/-
(iv)	Compensation after multiplier of 15 is applied	Rs.7032/- x 12 x 15 = Rs.12,65,760/-
(v)	Compensation under conventional heads	Rs.70,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.13,35,760/-
(vii)	Enhanced amount of compensation	Rs.13,35,760 – 11,57,500 = Rs.1,78,260/-

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

21.03.2018

ajp

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