

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

**FAO No.139 of 2016 (O&M)
Date of decision: 07.05.2018**

Darshana Devi and others

....Appellants

Versus

Nilesh Tiwari and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Narender Kaajla, Advocate,
for the appellants.

Mr. Amit Kumar Aggarwal, Advocate,
for respondent No.3-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, Hisar (hereinafter referred to as 'the Tribunal') vide award dated 09.09.2015, on account of death of Mahabir Singh in a motor vehicular accident which took place on 15.04.2013. Appellant No.1 is mother and appellant Nos 2 & 3 are sister and brother of deceased Mahabir Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 15.04.2013, Mahabir Singh (since deceased) was coming from Hansi towards his native village Niyana, District Hisar on a motorcycle bearing registration No.HR-20-T-0673. Sunder Singh and Om Parkash were following him on a separate motorcycle. When Mahabir Singh reached near Digamber Jain Mandir,

Hansi, a Trolly bearing registration No. HR-55-G-1135 was standing in the middle of the road without any indication or reflector, due to which, motorcycle of Mahabir Singh dashed in the said vehicle. As a result of this accident, he (Mahabir Singh) suffered serious and grievous injuries on his person. He was shifted to General Hospital, Hansi, from where he was taken to Sarvodaya Hospital, Hisar. However, he succumbed to the injuries on 20.04.2013. With regard to the accident, FIR No.294 dated 15.04.2013, under Sections 283/337/427 IPC was registered against respondent No.1 at Police Station, City Hansi. 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 Mahabir Singh 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 Sunder Singh (PW-2), who was an eye witness of the accident and on whose statement, the FIR Ex.P18 was registered. The claimants have also proved on record copy of report under Section 173 CPC Ex.P19 and charge sheet Ex.P20.

In the absence of any documentary proof, income of the deceased was assessed as Rs.7500/- per month i.e. Rs.90,000/- per annum. Out of this, 1/3rd amount was deducted towards personal expenses of the deceased, which came to Rs.60,000/- per annum (Rs.90,000 – Rs.30,000). The deceased was 27 years of age at the time of accident/death. However, multiplier of 13 was applied keeping in view the age of his mother i.e.

claimant No.1-Darshana Devi. After applying the multiplier of 13, dependency of claimants (appellants) came to Rs.7,80,000/- (60,000 x 13). In addition to it, Rs.1,00,000/- were awarded towards loss of love and affection, Rs.25,000/- on account of funeral expenses, Rs.25,000/- as costs of litigation and Rs.1,27,900/- for purchase of medicines and hospitalization. Hence, appellant-claimants were found entitled to total compensation of Rs.10,57,900/- 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. 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. 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)	40% of (i) above to be added as future prospects	7500 + 3000 = Rs.10,500/-
(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	10,500 – 3500 = Rs.7000/-
(iv)	Compensation after multiplier of 17 is applied (as per the age of deceased)	Rs.7000/- x 12 x 17 = Rs.14,28,000/-
(v)	Compensation under the conventional heads	Rs.30,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.14,58,000/-
(vii)	Enhanced amount of compensation	Rs.14,58,000 – 10,57,900 = Rs.4,00,100/-

The enhanced amount of compensation of **Rs.4,00,100/-** 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

07.05.2018
ajp

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