

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

**F.A.O No.3157 of 2015
Date of decision:- 01.03.2018**

Rajbala alias Bali and others ...Appellants

Versus

Nirmal Kumar and Others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Amit Kumar Goyal, Advocate,
for the appellants.

Mr. Vaibhav Goel, Advocate,
for respondent No.2.

Mr. Satpal Dhamija, Advocate,
for 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, Sonipat (hereinafter referred to as 'the Tribunal') vide award dated 03.07.2014, on account of death of Chanderpal in a motor vehicular accident which took place on 14.03.2013.

FACTS NOT IN DISPUTE

Brief facts of the case are that, on 14.03.2013, Chanderpal (since deceased) was coming from Rohtak by driving truck bearing registration No. HR-46A-8352 for going Khushkera (Rajasthan) for loading cement. Parveen Kumar son of Mahabir was also accompanying him as cleaner. When they reached near NH-8 Toll Plaza Bilaspur (Gurgaon), Chanderpal parked his truck along the road side and he tried to cross the main road on foot for coming to other side to

ease out and in the meantime, a Maruti Wagon R car bearing registration No. HR-51-3303 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1 in a rash and negligent manner came from the side of Gurgaon and struck against said Chanderpal. Due to the impact of the same, said Chanderpal fell down and sustained multiple and serious injuries on his body. After taking advantage of the situation, respondent No.1 fled away from the spot alongwith the offending vehicle. Upon seeing the accident, Parveen Kumar cleaner of the truck came at the spot and after arranging ambulance, brought the injured to Sun Rise Hospital, Gurgaon and from there he was brought to Oskar Hospital, Rohtak where he was got admitted on 15.03.2013 and during treatment, Chanderpal succumbed to the injuries on 18.03.2013. Regarding the said accident, an FIR No. 83 dated 18.03.2013, under Sections 279/304-A of the Indian Penal Code was registered at Police Station, Bilaspur, District Gurgaon against respondent No.1.

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 negligent driving of offending vehicle by respondent No.1. Claimants deposed that at the time of accident/death, deceased was 42 years of age and he was earning Rs.8,500/- per month by working as Driver and he used to drive the truck of Balbir Singh.

This finding was rightly given on the basis of FIR, and

others documentary evidence led by the claimants. Chanderpal (since deceased) has three dependents including wife, two minor sons of deceased. No proof was found regarding salary of the deceased and Tribunal took salary of the deceased as Rs. 6000/- per month as he was least capable of earning being a driver. As per the law laid down in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77, in case of deceased's age of 45 years (as per the post mortem report Ex. P1), multiplier of 14 would be applicable, to calculate the amount of compensation payable to the claimants No.1,2 and 3 being widow, minor sons of the deceased. Hence, Tribunal assessed the compensation as under:

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs. 6,000/-
(ii)	1/3 rd deducting from (i) towards personal expenses	Rs.6,000-2,000=Rs.4,000/-
(iii)	Multiplier applied	Rs.4000X12X14=6,72,000/-
(iv)	Compensation towards last rites and funeral expenses	Rs.25,000/-
(v)	Compensation towards loss of consortium to petitioner No.1	Rs. 1,00,000/-
(vi)	Compensation towards medical bills (Ex.P5)	Rs.31,000/-(remain same as per the Tribunal)
	Total Compensation	Rs. 8,28,000/-

Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

REASSESSED COMPENSATION

The fact of accident is admitted and proved. In the peculiar facts and circumstances of the case, to meet the ends of justice and compensation awarded by the Tribunal requires to be reassessed

keeping in view the judgments passed by Hon'ble Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017 wherein*** the issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which,

the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

In the present case, the compensation is being reassessed and 25% future prospects also added as per the judgment above:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs. 6,000/-
(ii)	25% added in (i) towards future prospects	Rs.6,000+1500=Rs.7,500/-
(iii)	1/3 rd deducting from (ii) towards personal expenses	Rs.7,500 -Rs.2,500= Rs.5,000/-
(iv)	Multiplier applied	Rs.5,000X12X14= 8,40,000/-
(v)	Compensation towards conventional heads	Rs. 70,000/-
(vi)	Compensation towards medical bills (remain same as per Tribunal)	Rs.31,000/-
	Total reassessed compensation	Rs.9,41,000/-
	Enhanced amount of compensation	Rs.9,41,000 -8,28,000=Rs.1,13,000/-

The enhanced amount of compensation of **Rs.1,13,000/-**

shall be payable within a period of two months from the date of receipt of certified copy of this order. As per the judgment of Hon'ble Supreme Court in case **Shri Nagar Mal and Ors versus The Oriental Insurance Company Ltd. And Ors decided on 19.01.2018** the enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization. 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.

01.03.2018
Riya Grover

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No