

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

(211)

FAO No.6020 of 2013 (O&M)

Date of Decision:04.04.2018

Anil and others

.....Appellants

Vs.

Sheda Ram and others

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Pankaj Middha, Advocate
for the appellants.

Mr. M.B. Jain, 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, Rohtak (hereinafter referred to as 'the Tribunal') vide award dated 23.05.2013 on account of death of Sunder Singh in a motor vehicular accident which took place on 16.10.2010. Appellant No.1 is widow, appellant No.2 is son and appellant No.3 is mother of deceased Sunder Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 16.10.2010, at about 7.30 PM, Jitender was going to Sampla from Village Naya Bans along with his relatives Sunder Singh (since deceased) and Ravinder in a qualis vehicle bearing registration No.DL-3CQ-9280. When they reached near Truck Union Sampla on Kharkhoda Road, respondent No.1, who was going ahead,

applied brakes of his vehicle without giving any signal. Resultantly, qualis vehicle in which the deceased and other passengers were travelling struck against the trala from behind. Due to this, Sunder and Jitender received grievous injuries and were brought to PGIMS, Rohtak by Ravinder but Sunder (deceased) succumbed to the injuries at the spot whereas Jitender died on the way to PGIMS, 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 been caused on account of rash and negligent driving of offending vehicle i.e. Trala by its driver, as well as due to the rash and negligent driving of qualis vehicle driven by Jitender (deceased) and returned finding on issue No.1 accordingly. This finding was rightly given on the basis of deposition of Ravinder (PW-1), who was eye witnesses of the accident and on whose statement, FIR Ex.P1 was recorded. Further the claimants have proved charge sheet, final report under Section 173 Cr.P.C. and postmortem report of deceased as Ex.P3.

In the absence of any documentary proof, income of the deceased was assessed as Rs.6000/- per month equivalent to the skilled labourer, out of which, 1/3rd amount was deducted towards his personal expenses, which came to be Rs.4000/- per month (6000 – 2000) i.e. Rs.48,000/- per annum. As per postmortem report Ex.P3, deceased was 29-1/2 years of age at the time of death/accident. Accordingly, multiplier of 16 was applied, whereupon dependency of claimants came to Rs.7,68,000/- (48,000 x 16). In addition to it, Rs.20,000/- were awarded on account of loss

of consortium, Rs.10,000/- towards funeral expenses. While giving findings on Issue No.1, it was also held by the Tribunal that deceased-Jitender was also negligent while driving the Qualis vehicle in a rash and negligent manner on the date of accident, so, being himself negligent to the extent of 20%, the claimants were found entitled to 80% of the total compensation of Rs.7,98,000/- i.e. Rs.6,38,400/-. 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.6000 per month
(ii)	40% of (i) above to be added as future prospects	6000+2400= 8400
(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	8400-2800=5600
(iv)	Compensation after multiplier of 16 is applied	5600 x 12 x 16 = Rs.10,75,200/-
(v)	Compensation under conventional heads	Rs.70,000/-
(vi)	Total Compensation Awarded	Rs.11,45,200/-

Sr. No.	HEADS	CALCULATIONS
(vii)	Enhanced amount of compensation	Rs.11,45,200/- - Rs.6,38,400/- = Rs.5,06,800/-

Counsel appearing for the appellants challenging the finding of Issue No.1 whereby compensation to the extent of 20% has been deducted in view of the contributory negligence of both the drivers. A perusal of the finding of Issue No.1 of the impugned judgment shows that the decision on contributory negligence has been made in paragraph 19 of the award. The Tribunal has observed that the eye witness PW1 Ravinder in his cross-examination stated that both the vehicles were being driven at the same speed of 60 km per hour. Deceased Jitender was driving the qualis vehicle which hit against the vehicle of respondent No.1 from behind and hence it was held that Jitender deceased who was driving the qualis was also negligent in causing the accident and he was supposed to drive the vehicle in a controllable speed. His contribution towards the accident was assessed as 20% and negligence of the trala was assessed at 80%.

Learned counsel for the appellant has referred to a Supreme Court judgment in case **Khenyei v. New India Assurance Co. Ltd. and others, 2015(3) PLR 314** where it has been held that for an injured in a contributory negligence of the two drivers cannot be made to suffer on account of grant of compensation. This judgment is not applicable to the facts of the present case. In this case, deceased- Jitender was driving the Qualis vehicle in a negligent manner.

The award is being modified and the enhanced amount of compensation after deducting 20% (₹5,06,800/- - ₹1,01,360/- =

₹4,05,440/-) comes out to ₹4,05,440/- which shall be payable within a period of two months from the date of receipt of certified copy of this order.

This 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. The Insurance Company will be at liberty to proceed with the Insurance Company of the Qualis for claiming 20% of the compensation. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

April 04, 2018
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(RITU BAHRI)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No