

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

FAO No.2775 of 2016 (O&M)

Date of decision: 16.04.2018

Birmati and others

....Appellants

Versus

Sushil and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.S. Cooner, Advocate,
for the appellants.

Mr. Robin Lohan, Advocate,
for respondent Nos.1 and 2.

Mr. Punit Jain, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.10293-CII of 2016

In view of the averments mentioned in the application, same is allowed and delay of 175 days in filing of the appeal is condoned.

FAO No.2775 of 2016

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as 'the Tribunal') vide award dated 28.05.2015, on account of death of Jitender in a motor vehicular accident which took place on 05.08.2012. Appellant No.1 is widow, appellant Nos. 2 to 4 are children and appellant Nos. 5 & 6 are parents of deceased Jitender.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 05.08.2012, at about 09.00

personal work on a motorcycle bearing registration No. HR-10-R-3876. His brother-Dharmender along with one Ashok was also going to Kharkhoda on a separate motorcycle. When Jitender reached near Major Brick Kiln, Village Sisana, in the meantime, a Cruiser Jeep bearing registration No. HR-39-B-1867, being driven by respondent No.1-Sushil in a rash and negligent manner, came from the side of Rohtak and hit the motorcycle from behind, as a result of which, Jitender fell down on the road and received injuries. He was taken to Government Hospital, Kharkhoda, where he succumbed to the injuries. With regard to the accident, FIR No.278 dated 05.08.2012, under Sections 279/304-A IPC was registered against respondent No.1 at Police Station, Kharkhoda on the statement of Dharmender. 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 Jitender 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 Dharmender (PW-2), who was an eye witnesses of the accident and on whose statement, FIR Ex.P13 was registered. Claimants have further proved on record copy of charge sheet Ex.P14, report under Section 173 Cr.P.C. Ex.P15 and postmortem report Ex.P16.

Deceased-Jitender was employed as private teacher in Sant Hari Dass School Ridhau, Farmana and was getting a salary of Rs.16,500/- per month. Accordingly, income of deceased was taken by the Tribunal as Rs.16,500/- per month, out of which, 1/4th amount was deducted towards

personal expenses of the deceased. By doing so, remaining amount came to Rs.12,375/- per month. As per postmortem report Ex.P13, deceased was 35 years of age at the time of accident/death. Therefore, multiplier of 16 was applied. After applying the multiplier of 16, dependency of claimants (appellants) came to Rs.23,76,000/- (12,375 x 12 x 16). In addition to it, Rs.1,00,000/- were awarded towards loss of consortium, Rs.1,00,000/- as loss of care and guidance for minor children, Rs.25,000/- as funeral expenses, Rs.25,000/- towards pain, loss and sufferings and Rs.3000/- towards transportation expenses. Hence, appellant-claimants were found entitled to total compensation of Rs.26,29,000/- 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-appellant has 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.16,500/- per month
(ii)	40% of (i) above to be added as future prospects	16,500 + 6600 = Rs.23,100/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	23,100 – 5775 = Rs.17,325/-
(iv)	Compensation after multiplier of 16 is applied	Rs.17,325/- x 12 x 16 = Rs.33,26,400/-
(v)	Compensation under the conventional heads	Rs.70,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.33,96,400/-
(vii)	Enhanced amount of compensation	Rs.33,96,400 – 26,29,000 = Rs.7,67,400/-

The enhanced amount of compensation of **Rs.7,67,400/-** 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

16.04.2018
ajp

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