

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

FAO No.5796 of 2014

Date of Decision: 17.01.2018

Janni and others

.....Appellants

Vs.

Yunus and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ashish Gupta, Advocate,
for the appellants.

Mr.Sanjeev Goyal, Advocate, for
respondent No.2-insurance company.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant (for short 'the appellant'), against award dated 02.05.2014, passed by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') vide which compensation to the tune of Rs.8,55,000/- was awarded to the claimants on account of death of Akbar.

FACTS NOT IN DISPUTE

On 23.11.2012, the deceased was going to his house on his motorcycle No.HR-51R-8367 from village Bhiduki after finishing his work. Sabbir was following the deceased on his motorcycle. As per claimants, Akbar was driving the motorcycle on correct left side of the road at a moderate speed. At about 5.30 P.M when they reached a little ahead of village Neemka near factory, a Scorpio Car bearing registration No.HR-50C-9900 came from Punhana side. The said vehicle was being driven in a rash and negligent manner by respondent No.1 and struck against the

motorcycle. Resultantly, Akbar fell down on the road alongwith the motorcycle and sustained serious injuries and died on the spot. An FIR No.466 dated 23.11.2012 under Sections 279, 427 and 304-A IPC.

COMPENSATION ASSESSED BY MACT

The Tribunal held that the deceased was 36 years old and the claimants failed to produce on the record any documentary evidence regarding income of the deceased. The factum of accident had been proved and the offending vehicle was insured with respondent No.2-Insurance Company.

Learned Tribunal has held that since this accident was a head-on-collision, negligence between respondent No.1 (driver of Scorpio care bearing registration No.HR-50C-9900) and the deceased Akbar was apportioned in the ratio of 50:50. In view of the same, the compensation has been assessed by the learned Tribunal as under:

Sr.No.	Heads of compensation	Amount
1	Income as per daily wages	Rs.5000/- per month
2.	Deduction 1/5th	Rs.5000/- --- Rs.1000= Rs.4000/-
3.	Annual loss of dependency after applying the multiplier	Rs.4000/- X 12 X 15= Rs.7,20,000/-
4.	Loss of consortium	Rs.1,00,000/-
5.	Loss of estate	Rs.10,000/-
6.	Funeral Expenses	Rs.25,000/-
	Total	Rs.8,55,000/-
	Compensation in view of contributory negligence 50:50	Rs.4,27,500/-

Learned counsel for the claimant-appellant contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced, in view of the judgment **National Insurance Company Ltd.**

Vs. Pranay Sethi and others SLP(C) 25590 of 2014 decided on 31.10.2017. On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the record. A perusal of FIR (Annexure P-12) shows that the eye-witness Sabbir had specifically stated that he was travelling behind the motorcycle and saw that the driver of Scorpio bearing No.HR-50C-9900 had come from opposite side in a rush and negligent manner and hit the motorcycle of deceased Akbar. This fact has been further admitted by him in his cross-examination as PW-1. As such, finding with regard to contributory negligence is modified to the extent that 80% amount of compensation will have to be paid by Insurance Company to the claimants and 20% will have to bear by the claimants by their own. The amount awarded by the learned Tribunal on account of loss of consortium, loss of estate and funeral expenses shall remain the same.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Income as per daily wages	Rs.5000/- per month
2.	Future prospect 40%	Rs.5,000/- + Rs.2000= Rs.7,000/-
2.	Deduction 1/5th	Rs.7000/- --- Rs.1400= Rs.5600/-
3.	Annual loss of dependency after applying the multiplier	Rs.5600/- X 12 X 15= Rs.10,08,000/-
4	Loss of consortium	Rs.1,00,000/-

5.	Loss of estate	Rs.10,000/-
6.	Funeral Expenses	Rs.25,000/-
	Total amount	Rs.11,43,000/-
	The amount of compensation payable to the claimants in view of contributory negligence 80:20	Rs.9,14,400/- (80% of the Total amount)
	The enhanced amount of compensation	Rs.9,14,400/- ----- Rs.4,27,500/- = Rs.4,86,900/-

Resultantly, the enhanced amount of compensation i.e. Rs.4,86,900/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% 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 a case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

17.01.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No