

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

FAO-5854-2014

Date of decision: 02.05.2018

Deepti Sharma and others

...Appellants

V/s.

Kartar Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Akash Sridhar, Advocate for the appellants.

Mr. Ajay Singla, Advocate for
respondent No. 3-insurance co.

RITU BAHRI, J. (Oral).

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') vide award dated 20.03.2014 on account of death of Amit Kumar Sharma in a motor vehicular accident which took place on 06.09.2012. Appellant No.1 Deepti Sharma is the widow of the deceased Amit Kumar Sharma, while appellants No. 2 and 3 are the children and appellant Nos. 4 and 5 are parents of the deceased.

FACTS NOT IN DISPUTE

Brief facts of the case are that Amit Kumar Sharma who died in a road accident which took place on 06.09.2012 when he was going to Panipat from Kairana, District Shamli on his Pulsar motorcycle bearing registration No. UP12R-9176, while his father-Swaraj Sharma was pillion rider. At about 10:30 am, when they reached on the Ganda Nala bridge of

Kurar, a canter came from Panipat side, being driven at very high speed, rashly and negligently and directly hit the motorcycle, due to which, his father fell down on his left side, while Amit Kumar Sharma was crushed by the canter along with motorcycle and died at the spot.

With regard to the accident, FIR No. 266 dated 06.09.2012 under Sections 279, 337 and 304-A IPC, was registered at Police Station Sadar, Panipat, on the statement of his father i.e. Swaraj Sharma against the driver of the offending vehicle. Consequently, the claimant-appellants filed a claim petition before the Tribunal.

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. canter by its driver-respondent No.1 Kartar Singh and returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of PW-4 Swaraj Sharma, who was eye witnesses of the accident. Further the claimants have also relied upon certified copy of charge-sheet Ex.P13, certified copy of report under Section 173 Cr.P.C., Ex.P14, certified copy of site plan Ex.P15, certified copies of mechanical examination reports Ex. P16 and Ex. P17 and copy of FIR Ex. P19.

COMPENSATION ASSESSED BY THE MACT

A perusal of the award shows that the claimants have led evidence in the form of income tax return for the assessment years 2009-10, 2010-11 and 2011-12 depicting the income of the deceased. The claimants further stated that the deceased was running a handloom shop in the name of Amba Textiles and PW5 Raman Kumar Jain, Junior Accountant, The Panipat Urban Co-operative Bank Ltd. Kishanpura, Panipat deposed that

Amit Kumar Sharma was the proprietor of Amba Textiles but no documentary evidence was produced to show that the said firm was under the proprietorship of Amit Kumar Sharma and the income of the deceased was taken as Rs.6,000/- p.m. out of which, 1/3rd amount was deducted towards his personal expenses, which came to be Rs.4,000/- per month. The deceased was 35 years of age at the time of death. The Tribunal has applied the multiplier of 16, dependency of claimants came to Rs.7,68,000/- (4000 X12 X16). Accordingly, total compensation has been assessed as under:-

Loss of dependency	Rs.7,68,000/-
Loss of love/affection	Rs.10,000/-
Loss of estate	Rs.10,000/-
Loss of consortium (widow)	Rs.10,000/-
Transportation	Rs.10,000/-
Funeral and last rites	Rs.10,000/-
Total	Rs.8,18,000/-

Hence, the claimants were found entitled to total compensation of Rs.8,18,000/- along with interest @ 7.5% per annum if paid in three months and thereafter @ 9% 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. Finding of negligence has rightly been given by the Tribunal and it does not require

any interference on that account. The income assessed by the Tribunal requires to be modified keeping in view the deposition of PW1 Raj Kumar, Senior Tax Assistant, Office of Joint Commissioner of Income Tax, Panipat who produced the income tax returns of the deceased Amit Kumar for the assessment years 2009-10, 2010-11 and 2011-12, depicting net income of the deceased as Rs.1,62,507/-, Rs.1,50,250/- and Rs.1,64,750/- respectively. Hence the average income can be assessed as Rs.13,264/- ($\text{Rs.1,62,507} + \text{Rs.1,50,250} + \text{Rs.1,64,750} = 4,77,507 / 3 = 1,59,169 / 12$). Rs.13,265 (in round figure) net income is assessed so there will not be any tax deduction. 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:-

HEADS	CALCULATIONS
Income	Rs.13,265/- per month
40% of (ii) above to be added as future prospects	$\text{Rs.13265} + 5306 = \text{Rs.18,571}$
1/3 rd of (iii) above is deducted as personal expenses of the deceased	$\text{Rs.18571} - 6190 = 12,381$
Compensation after multiplier of 16 applied	$\text{Rs.12381} \times 12 \times 16 = 23,77,152$
Compensation under conventional heads	Rs.70,000/-
TOTAL COMPENSATION AWARDED	Rs. 24,47,152/-
ENHANCED AMOUNT OF COMPENSATION	Rs.24,47,152-8,18,000- = Rs.16,29,152/-

The enhanced amount of compensation of **Rs.16,29,152/-** 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 V/s. The Oriental Insurance Company Ltd. and others in Civil Appeal No. 448 of 2018.*”

Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

May 02, 2018
Divyanshi

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