

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

F.A.O No. 4885 of 2016

Date of decision:- 07.03.2018

Smt. Maijun Nisha and others

...Appellants

Versus

Sarwan Kumar and Others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Jasuja, Advocate,
for the appellants.

Mr. Navin Kapur, Advocate,
for the 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, Gurgaon (hereinafter referred to as 'the Tribunal') vide award dated 14.07.2015, on account of death of Bazaru Khan in a motor vehicular accident which took place on 06.10.2011.

FACTS NOT IN DISPUTE

Brief facts of the case are that, on 06.10.2011, Claimant Masood Alam alongwith deceased Mohd. Asgar had gone to Railway station, Gurgaon for dropping his Bhabi. Bazuru Khan, since deceased, met them at the Railway Station and boarded their motorcycle and they were returning to Sector-81, Gurgaon. At about, 9/10.00 P.M., when they took U turn near village Rampura, Narungpur. In the meantime, offending bus driven by respondent No. 2 in a rash and negligent manner and at a very fast speed, came from Manesar side and hit the motorcycle from behind. As a result of accident they fell down on the road and received grievous injuries all over their bodies and the

motorcycle went under the bus. Bazaru died on the way to the hospital while Mohd. Asgar died in the hospital during treatment. In this regard, an FIR No. 261 dated 07.10.2011 under Sections 279, 337 and 304-A IPC was registered against respondent No. 1 regarding the accident in question.

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 25 years of age and he was earning Rs.11,000/- per month by working as a Supervisor with contractor Mohd. Sahanul.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the claimants. Tribunal took income of the deceased for the purpose of calculating compensation can be taken as that of a labour i.e. Rs.5,000/- per month. 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 25 years, multiplier of 18 would be applicable, to calculate the amount of compensation payable to the claimants. Hence, Tribunal assessed the compensation as under:

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs. 5,000/-
(ii)	1/2 nd deducting from (i) towards personal expenses	Rs.5,000-2,500=Rs.2,500/-
(iii)	Multiplier applied	Rs.2,500X12X18=5,40,000/-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(iv)	Compensation towards last rites and funeral expenses	Rs.25,000/-
(v)	Compensation towards expenses for transportation of dead body to kathihar, Bihar	Rs.40,000/-
(vi)	Compensation towards love and affection for claimants	Rs.1,50,000/-
	Total Compensation	Rs. 7,55,000/-

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 40% future prospects added as per the judgments mentioned above:-

Sr. No.	Heads	Calculations
(i)	Salary	Rs.5,000/-
(ii)	40% added in (i) towards future prospects	Rs.5,000 + 2,000=Rs.7,000/-
(iii)	1/2 nd deducting from (ii) towards personal expenses	Rs.7,000 -Rs. 3,500= Rs.3,500/-
(iv)	Multiplier applied	Rs.3,500X12X18=7,56,000/-
(v)	Compensation towards conventional heads	Rs. 30,000/-
	Total reassessed compensation	Rs.7,86,000/-
	Enhanced amount of compensation	Rs.7,86,000 -7,55,000=Rs.31,000/-

The enhanced amount of compensation of **Rs.31,000/-** 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.

07.03.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No