

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

**FAO No.7918 of 2014 (O&M)
Date of decision: 23.01.2018**

Smt. Dinesh Devi and others

....Appellants

Versus

Ram Sagar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Atul Yadav, Advocate,
for the appellants.

Ms. Vandana Malhotra, Advocate,
for respondent No.3-insurance company.

RITU BAHRI J. (Oral)

CM No.21367-CII of 2014

In view of the averments mentioned in the application, same is allowed and delay of 119 days in filing of the appeal is condoned.

FAO No.7918 of 2014

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 06.12.2013, on account of death of Vinod Kumar in a motor vehicular accident which took place on 28.01.2010. Appellant No.1 is widow, appellant Nos.2 & 3 are daughters and appellant Nos.4 & 5 are parents of deceased Vinod Kumar.

FACTS NOT IN DISPUTE

P.M., Vinod Kumar (since deceased) was going towards his house at Rajiv Nagar from village Sukhrali on a motorcycle bearing registration No. HR-26-S-5915. His friend Vinod son of Ramesh Chand was following him in his own car. When Vinod Kumar was crossing the red light of Sector-17, in the meantime, a truck bearing registration No. NL-02-D-7310 (Trolla) being driven by Ram Sagar-respondent No.1 in a rash and negligent manner, came and hit Vinod Kumar from behind, as a result of which, he (Vinod Kumar) fell down on the road and received multiple grievous injuries. Vinod Kumar was got admitted in Max Hospital, Gurgaon by eye witness Vinod son of Ramesh Chand, where he was declared brought dead. With regard to the accident, FIR No.48 dated 28.01.2010 was registered at Police Station, Civil Lines, Gurgaon against respondent No.1. 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 taken place on account of rash and negligent driving of offending truck by its driver-respondent No.1. This finding was rightly given on the basis of statement of Vinod Kumar (PW-3), who was eye witness of the accident and on whose statement FIR No.48 dated 28.01.2010 was registered.

In the absence of any documentary proof, income of deceased was assessed as Rs.6000/- per month i.e. Rs.72,000/- per annum. Out of this income, 1/4th amount was deducted towards his personal expenses. The annual dependency of claimants, thus, came to Rs.4500 x 12 = Rs.54,000/-. As per postmortem report Ex.P1, the deceased was 44 years of age at the time of accident/death and the multiplier of 14 was applied. Thus, the

claimants were found entitled to compensation of Rs.7,56,000/- (Rs.54,000/- x 14). In addition to it, Rs.25,000/- were awarded towards funeral expenses, Rs.1,00,000/- on account of loss of consortium to claimant No.1 (widow) and Rs.10,000/- on account of loss of estate. Hence, the claimants were found entitled to a total compensation of Rs.8,91,000/- 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-appellants have preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

Learned counsel for the appellants states that the deceased was doing the business of tour and travels under the name and style of 'Surjit Travels'. He has referred to the bank statement Ex.P5 and memo of understanding, which was executed on 09.05.2007 Ex.P6.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. A perusal of bank statement Ex.P5 shows that since March 2008 till 2009, there were entries with regard to deposit of Rs.15,000/- per month. However, memo of understanding Ex.P6 is not a registered document, therefore, this would not be much relevant for assessing the income of deceased. Keeping in view bank statement Ex.P5, the income of deceased is being taken as Rs.10,000/- per month. 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 **National Insurance**

Company Limited Vs. Pranay Sethi and others, Special Leave Petition

(Civil) No.25590 of 2014 (decided on 31.10.2017) and Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil)

Page 77, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.10,000/- per month
(ii)	25% of (i) above to be added as future prospects	10,000 + 2500 = Rs.12,500/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	12,500 – 3125 = Rs.9375/-
(iv)	Compensation after multiplier of 14 is applied	Rs.9375/- x 12 x 14 = Rs.15,75,000/-
(v)	Compensation towards conventional heads	Rs.70,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.16,45,000/-
(vii)	Enhanced amount of compensation	Rs.16,45,000 – 8,91,000 = Rs.7,54,000/-

The enhanced amount of compensation of **Rs.7,54,000/-** 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 (arising out of SLP (C) No.26853 of 2016) 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

23.01.2018
ajp