

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

**F.A.O No. 9744 of 2014 (O&M)
Date of decision:- 29.01.2018**

Prabhjot Kaur and others

...Appellants

Versus

Puran Singh and others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Munish Gupta, Advocate,
for the appellants.

Mr. R. K.Bashamboo, Advocate,
for respondent No.3.

Mr. Sudershan Makkar, Advocate,
for respondent No. 6-National Insurance Company.

RITU BAHRI J. (Oral)

CM No. 26918-CII of 2014 :

For the reasons mentioned in the application same is allowed and
delay of 170 days in filing the present appeal is condoned.

Accordingly, the present application stands disposed of.

CM No. 24155-CII of 2017

For the reasons mentioned in the application, same is allowed and
service of respondent No. 4 is dispensed herewith.

Accordingly, application stands disposed of.

Main Case:

This appeal has been filed by the claimant-appellants seeking

enhancement of compensation awarded by Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal') vide Award dated 11.12.2013, on account of death of Krishan Lal Dhand in a motor vehicular accident which took place on 06.08.2011.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 06.08.2011, deceased along with his client Harjang Singh were going from Samrala to Khanna for attending court case at Khanna. They were traveling in Tata indica car bearing No. CH-03F-0984 being driven by Harjang Singh and when they reached in the area of Village Lalorhi Kalan, a truck bearing No. PB-06B-5407 was wrongly parked on the road. As another truck was coming from opposite side, car was turned to save collision with the truck but it hit against the parked truck as a result of which both the occupants of the car received multiple injuries and deceased Krishan Lal Dhand died while on the way to Civil Hospital Samrala whereas, Harjang Singh who was driving the car also died on the spot. It is further averred that accident has taken place due to rash and negligent act of the respondent No.1 on account of the wrong parking of the offending vehicle. The matter was reported to the Police and in this regard FIR No. 159 dated 06.08.2011 was registered against respondent No. 1 at Police Station Samrala District Ludhiana.

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 contributory negligence by both the drivers. In paragraph 23 of award, It has been held

that truck was lying parked on the road as the red lights of the truck were not on and as per photographs which shows that on the border line of the road, there is white line and the truck is lying parked beyond that white line and finally concluded that it was contributory negligence on the part of the driver of the car also. Owner of the vehicle respondent No. 5-Harjang Singh died on the spot and his LRs-Kulwinder Singh was preceded against ex parte before the Tribunal. While assessing the compensation, Insurance company of the car has brought on record that Harjang Singh driver of the car at that time was not having legal and valid driving license when the accident has taken place. In this regard Usha Rani license clerk of DTO, Ludhiana was examined as RW 1 and she has categorically deposed that the license which has been propounded to be license of late Harjang Singh son of Kehar Singh has not been issued by the license authority, Ludhiana and findings to the effect that the responsibility is 50:50 being contributory negligence, the Tribunal has directed the respondent No. 1 to 3 to pay 50 % of the claim amount jointly and severally and remaining be paid by driver and owner of the vehicle. The deceased was 35 years of age at the time of accident/death and was earning Rs.30-35,000/- per month.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the claimants. No proof of income of deceased has been found. Krishan Lal Dhand (since deceased) has five dependents including wife, two minor children and parents of the deceased. As per the law laid down in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77, compensation assessed by the Tribunal as under :

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs. 1,70,000/- per annum
(ii)	30% added in (i) towards future prospects	Rs.1,70,000+51,000=2,21,000/- p.a.
(iii)	1/4 th deducting from (ii) towards personal expenses	Rs. 2,21,000-55,250= 1,65,750/-p.a.
(iv)	Multiplier applied	Rs.1,65,750X16= 26,52,000/-
(v)	Loss of consortium	Rs. 1,00,000/-
(vi)	Funeral Expenses	Rs. 25,000/-
(vii)	Transportation Charges	Rs. 5,000/-
	Total Compensation Awarded	Rs.27,82,000/-

Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

In the present appeal, learned Counsel for the appellant argued that even though the accident has been took place due to contributory negligence by both drivers of the vehicles and it also proved by RW-1 that the driver of the car had no valid licenece at the time of accident, in that event the liability should be put on the Insurance Company first then they should be granted liberty to recovery. He further reliance upon the judgment of Hon'bl Supreme Court in case titled as **S.Iyyapan versus M/ United India Insurance Company Ltd. And Anr** wherein it has been held that in any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer.

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

REASSESSED COMPENSATION

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. In the peculiar facts and circumstances of the case, to meet the ends of justice and

keeping in view that As the claimants has already received the compensation amount as the award of the year 2013, the compensation is hereby reassessed only in respect to 40% as future prospects 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)*. Reassessed compensation amount as under:

Sr. No.	Heads	Calculations
(i)	Salary	Rs. 1,70,000/- per annum
(ii)	40% added in (i) towards future prospects	Rs.1,70,000+68,000=2,38,000/- p.a.
(iii)	1/4 th deducting from (ii) towards personal expenses	Rs. 2,38,000-59,500= 1,78,500/-p.a.
(iv)	Multiplier applied	Rs.1,78,500X16= 28,56,000/-
(v)	Loss of consortium	Rs. 1,00,000/-
(vi)	Funeral Expenses	Rs. 25,000/-
(vii)	Transportation Charges	Rs. 5,000/-(compensation awarded in the heads i.e. (v), (vi) and (vii) will remain same as the amount of these heads has already been released in favour of the claimants).
	Total Compensation Awarded	Rs.29,86,000/-
	Total Enhanced Amount	Rs. 29,86,000-27,82,000=2,04,000/-

The enhanced amount of compensation of **Rs.2,04,000/-** 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 @ 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 the 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.

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

29.01.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No