

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO No.821 of 2015

Date of Decision: 08.02.2018

**Dalip Kumar Khattar and Anr.**

**.....Appellants**

**Vs.**

**Narender and Ors.**

**.....Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**Present:-** Mr.Kunal Dawar, Advocate, for the appellants.

Mr.D.K.Prajapati, Advocate, for  
Mr.R.S.Madan, Advocate, for respondent No.3.

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**RITU BAHRI, J. (ORAL)**

Present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 18.10.2014, passed by the learned Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal') vide which compensation to the tune of Rs.7,11,600/- was awarded to the claimants on account of death of their son Shivam in a motor vehicular accident.

**FACTS NOT IN DISPUTE**

On 13.01.2011, Shivam was coming from M.V.N.School, Sector 17, Faridabad on his Scooty bearing No.HR-29R/3783. At about 3:00 p.m., when he reached on dividing road of Sectors 14 and 15, Faridabad, a Swift Car bearing No.HR-51-AK-0527 being driven by respondent No.1 rashly and negligently and at high speed came from opposite side and hit his Activa as a result of which he suffered grievous injuries. Shivam was taken to Metro Hospital Sector 16-A, Faridabad where he remained admitted from 13.01.2011 to 23.01.2011 on which date he died. An FIR No.22 dated 14.01.2011, for the offence under Sections 279, 338, 427, 304A IPC, Police Station Central Faridabad was registered.

**COMPENSATION ASSESSED BY MACT**

The Tribunal held that the deceased was 17 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.3-Insurance Company. As per deposition of PW-7 Harish Kumar in his cross-examination, he admitted that the accident took place in the middle of the road and the offending vehicle came from opposite side. Since the accident took place in the middle of the road as both the drivers were driving their respective vehicles in a rash and negligent manner, learned Tribunal has held that it was a case of contributory negligence of the deceased as well as respondent No.1. The compensation has been assessed as under:

| Sr.No. | Heads of compensation                                               | Amount                                 |
|--------|---------------------------------------------------------------------|----------------------------------------|
| 1      | Income as per daily wages                                           | Rs.5000/-                              |
| 2.     | Future prospect 50%                                                 | Rs.5,000/- + Rs.2500/-=<br>Rs.7500/-   |
| 3.     | Deduction 50%                                                       | Rs.7500/- --- Rs.3750/-=<br>Rs.3750/-  |
| 4.     | Annual loss of dependency after applying multiplier                 | Rs.3750/- X 12 X 18=<br>Rs.8,10,000/-  |
| 5.     | Loss of love and affection                                          | Rs.1,00,000/-                          |
| 6.     | Transportation and last rites                                       | Rs.25,000/-                            |
| 7.     | Medical expenses on treatment of deceased                           | Rs.2,51,000/-                          |
|        | Total                                                               | Rs.11,86,000/-                         |
|        | Since contributory negligence of 60: 40, as such total compensation | Rs.11,86,000/- X 60%=<br>Rs.7,11,600/- |

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.** Learned counsel further submits that respondent No.1 was driving heavier vehicle in a rash and negligent manner as such, he is liable to receive whole amount of compensation. Therefore, the findings given by learned learned Tribunal with regard to contributory negligence as 40:60 is

liable to be set aside. 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.

Learned counsel for the appellant has referred to the judgment in the case of **Kumari Kiran Through her father Harinarayan Vs. Sajjan Singh and others 2015(1) LAR 620** wherein, appellant-minors who were the pillion riders cannot be held for contributory negligence as apportioned by the learned Tribunal even if their appellant-father who was the motorcyclist was at fault. Since, in this case deceased was minor at the time of accident and the offending vehicle was a car which was heavier then the scooty of the deceased, the finding with regard to contributory negligence is set aside and insurance company is liable to pay all the compensation.

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      | Salary per month                                    | Rs.5,000/- per month                               |
| 2.     | Future prospect (40%)                               | Rs.5,000/- + Rs.2000/-=<br>Rs.7,000/-              |
| 2.     | Deduction 1/2                                       | Rs.7,000/- --- Rs.3500/-=<br>Rs.3500               |
| 3.     | Annual loss of dependency after applying multiplier | Rs.3500 X 12 X 18=<br>Rs.7,56,000/-                |
| 4.     | Conventional heads                                  | Rs.30,000/-                                        |
| 5.     | Medical Expenses                                    | Rs.2,51,000/-                                      |
|        | Total                                               | Rs.10,37,000/-                                     |
|        | Enhanced compensation                               | Rs.10,37,000/- --- Rs.7,11,600/-=<br>Rs.3,25,400/- |

Resultantly, the enhanced amount of compensation of Rs.3,25,400/- 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 @ 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 a case of **Shri Nagar Mal and Ors Vs. The Oriental Insurance Company Ltd. And ors. in Civil Appeal No.448 of 2018.** 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**

**08.02.2018**  
*anil*

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|------------------------------------|---------------|
| <i>Whether speaking/reasoned :</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>          | <i>Yes/No</i> |