

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.7297 of 2016
Date of Decision: 06.03.2018

Nirmala and Ors.

.....Appellants

Vs.

Baldev Singh and Ors.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Raj Kapoor Malik, Advocate, for the appellants.

Mr.Vinod Gupta, Advocate, for the respondent/Insurance Co.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 06.01.2016, passed by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') vide which compensation to the tune of Rs.17,25,000/- was awarded to the claimants on account of death of Kapil Dev.

FACTS NOT IN DISPUTE

On 30.12.2014 complainant Ram Niwas was present at Titram turn and was purchasing some household articles, that at that time, he saw a motorcycle bearing No.HR-08L-1706 Hero Honda Splendor driven by Kapil and occupied by deceased Manoj as pillion rider, came from Kaithal side and turned towards Narwana side, that in the mean time, a truck bearing registration No.PG-23G-7505 being driven by its driver respondent No.1 in a rash and negligent manner and at a high speed and without blowing any

1706 from behind while going on wrong side that as a result of said impact, both occupants of above said motorcycle fell down on the road an sustained multiple, serious and grievous injuries. The driver of offending vehicle fled away after leaving the offending vehicle there at the spot. The deceased Kapil Dev was died on the same day. An FIR No.106 dated 30.12.2014 for the offence under Sections 279/337/304-A IPC was registered in the Police Station Titram against respondent No.1.

COMPENSATION ASSESSED BY MACT

The Tribunal held that the deceased was 28 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.

Sr.No.	Heads of compensation	Amount
1	Income per month	Rs.10,000/-
2.	Deduction 1/4	Rs.10000/- ----Rs.2500/-= Rs.7500/-
3.	Annual loss of dependency after applying multiplier	Rs.7500/- X 12 X 17= Rs.15,30,000
4.	Loss of love and affection	Rs.1,00,000/-
5.	Last rites and transportation	Rs.20,000/-
6.	Consortium	Rs.75,000/-
	Total	Rs.17,25,000/-

Learned counsel for the claimant-appellant contends that as per statement made by PW1 Nirmala Devi/appellant No.1 in her affidavit (Ex.PW1/A) that Sonia- proforma respondent No.4 and widow of deceased- Kapil Dev had left her matrimonial house after the death of Kapil Dev and had been living at her parental house and her minor child Mahak was

residing with her under her care and custody. A perusal of the Award shows that proforma respondent No.4-Sonia has not been represented by any counsel and counsel for the respondent/Insurance Company has informed to this Court that compensation of Rs.2 lacs has not been released to her and stands deposited in MACT. He further submits that as per latest judgment of the Hon'ble Supreme Court in the case of **Pranay Sethi supra**, appellants No.4 and 5 who are major sisters of deceased Kapil Dev are not entitled for getting any compensation.

RE-ASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the record.

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	Income per month	Rs.10,000/-
2.	Future prospect 40%	Rs.10,000/- + Rs.4,000/-= Rs.14,000/-
3.	Deduction 1/3 rd	Rs.14000/- ----Rs.4667/-= Rs.9333/-
4.	Annual loss of dependency after applying multiplier	Rs.9333/- X 12 X 17= Rs.19,03,932/-
5.	Conventional heads	Rs.30,000/-
	Total	Rs.19,33,932/-
	Enhanced amount of compensation	Rs.19,33,932/- ---- Rs.17,25,000/-= Rs.2,08,932/-

Keeping in view the above, the amount of Rs.2 Lacs which had been deposited by the Insurance Company before the learned Tribunal in

favour of proforma respondent No.4 i.e. Sonia now be released in favour of appellant No.3/Mahak as her mother is not entitled for the same and with respect of enhanced amount of compensation, rest of the conditions of payment will be same.

Appellants No.4 and 5 i.e. sister of the deceased-Kapil Dev shall not be entitled for any compensation in view of the larger Bench of the judgment of Supreme Court in the case of **Pranay Sethi supra**.

Resultantly, the enhanced amount of compensation of **Rs.2,08,932/-** 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

06.03.2018

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No