

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

**FAO No.7862 of 2016 (O&M)
Date of decision: 04.05.2018**

Ramesh and others

....Appellants

Versus

Hari Om and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Tripathi, Advocate,
for Mr. Arun Singal, Advocate,
for the appellants.

Mr. Vinod Gupta, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.26588-CII of 2016

In view of the averments mentioned in the application, same is allowed and delay of 591 days in filing of the appeal is condoned.

FAO No.7862 of 2016

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') vide award dated 11.09.2014, on account of death of Kewal in a motor vehicular accident which took place on 09.01.2013. Appellant No.1 is father and appellant Nos.2 and 3 are sisters of deceased Kewal.

FACTS NOT IN DISPUTE

deceased) along with his younger brother Akshay (pillion rider) was going from Panipat towards Gohana on a motorcycle bearing registration No. HR-05-P-6044, make Hero Honda Passion. At about 3.30 P.M., when they reached on Gohana Road, near village Mehrana in front of Kaushik Vaishno Dhaba, a Trola bearing registration No. HR-46-C-6481 being driven by Hari Om-respondent No.1 in a rash and negligent manner, came from the side of Panipat and struck against their motorcycle, as a result of which, both the occupants of motorcycle fell down on the road and wheels of the Trola crushed the head of Kewal and legs of Pillion rider namely Akshay. Both of them succumbed to the injuries on the spot. After the accident, driver of offending vehicle fled away from the spot. The accident was witnessed by Madan son of Rajender Singh, resident of village Dahar, District Panipat. With regard to the incident, FIR No.21 dated 09.01.2013, under Sections 279/304-A IPC was registered against respondent No.1 on the statement of Madan. Consequently, the claimant-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 vehicle by respondent No.1, as a result of which Kewal and Akshay have died and thus, returned the finding on issue no.1 in favour of the claimants. This finding was rightly given on the basis of the deposition of Madan (PW-2), who was an eye witness of the accident and on whose statement, FIR Ex.P1 was registered. The claimants have also proved on record copy of report under Section 173 CPC Ex.P4 and certified copy of site plan Ex.P5.

In the absence of any documentary proof, income of the deceased was assessed as Rs.4500/- per month as that of a unskilled labourer. Out of this, 50% amount was deducted towards personal expenses of the deceased, which came to Rs.2250/- per month i.e. Rs.27,000/- per annum. The deceased was 21 years of age at the time of accident/death. He was a bachelor. After applying the multiplier of 18, dependency of claimants (appellants) came to Rs.4,86,000/- (27,000 x 18). In addition to it, Rs.10,000/- were awarded on account of funeral expenses, Rs.20,000/- towards loss of love/affection and Rs.10,000/- on account of transportation. Hence, appellant-claimants were found entitled to total compensation of Rs.5,26,000/- 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-appellant has preferred the present appeal.

REASSESSED COMPENSATION

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

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Parties are not in dispute with respect to the findings given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1. 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 **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77 and **National Insurance Company Limited Vs. Pranay Sethi and others**, Special Leave

Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.4500/- per month
(ii)	40% of (i) above to be added as future prospects	4500 + 1800 = Rs.6300/-
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	6300 – 3150 = Rs.3150/-
(iv)	Compensation after multiplier of 18 is applied	Rs.3150/- x 12 x 18 = Rs.6,80,400/-
(v)	Compensation under the conventional heads	Rs.30,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.7,10,400/-
(vii)	Enhanced amount of compensation	Rs.7,10,400 – 5,26,000 = Rs.1,84,400/-

The enhanced amount of compensation of **Rs.1,84,400/-** 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 (decided on 19.01.2018). However, claimant-appellants will not be entitled to get interest beyond the period of 300 days' delay. 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

04.05.2018
ajp