

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 3195 of 1999 (O&M)
Date of decision: 16.09.2019

Surjit Poonia and others

...Appellants

V/s.

Mohammad Nazim and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ajaivir Singh, Advocate for the appellants.

Mr. Deepak Chaudhari, Advocate and
Mr. Neeraj Khanna, Advocate for
respondent No. 3-insurance co.

RITU BAHRI, J. (Oral).

The claimants have come up in appeal against the award of the Tribunal dated 23.11.1998 whereby they have been awarded compensation of Rs.9,53,500/- on account of death of Brig. A.S. Poonia, who died in a road accident which took place on 13.02.1996.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 13.02.1996, Brig. A.S. Poonia, of Head Quarter Merrut, Sub area Cantonment, Meerut was going from Agra to Lucknow via Kanpur in Gypsy belonging to the headquarter Meerut sub area, which was being driven by him. At that time, he was accompanied by his wife Smt. Surjit Poonia, claimant No. 1. They had left Firozabad behind them and were travelling at a slow speed on their left hand side of the road. The escort car was following the Gypsy. In the meanwhile an ambassador car came from behind the Gypsy and followed by the escort car. A truck bearing No. UP-78N-1242 being driven by respondent No. 2

came from opposite side. The truck driver brought its truck towards its wrong hand side and first struck against the Gypsy and then against the ambassador car and dragged it till both the truck and ambassador car fell on the side. As a result, the deceased and his wife suffered multiple injuries. Brig. A.S. Poonia succumbed to his injuries at the spot. The accident in which Brig. A.s. Poonia lost his life had been caused by the rash and negligent driving of the offending truck by Jagdish respondent No. 2. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The parties are not in dispute with respect to finding on issue No. 1 that the accident took place on account of negligent driving by the driver of the offending vehicle. This finding has been rightly given in favour of the claimants keeping in view the FIR No. 19 of 1996 under Sections 279/338/304-A IPC was registered.

While assessing the compensation, the evidence of Brig. S.K. Gupta, PW-4, Director Resettlement, Western Zone, Chandigarh was relevant. He stated that he was due to be promoted to the post of Major General in July, 1991 vide Army Head Quarter letter dated 05.11.1998 (EX.PW4/1). On promotion as major General, his date of retirement would have been November, 2001. As per the 5th Pay Commission report, the pay and emoluments of Brigadiers are approximately Rs.24,000/- per month. He further stated that with the implement of recommendation of 5th Pay Commission, Brig. Poonia would have received higher pay and allowances as well as pension after retirement. With the revised pay scale, gratuity has also been enhanced from Rs. 2,50,000/- to Rs.3,50,000/- vide letter dated

25.11.1997. Its photostat copy is Ex.PW4/2. He further stated that the report of the 5th Pay Commission had been implemented w.e.f. 1.1.1996. So the deceased is entitled to the enhanced gratuity. As stated by Brig. D.S. Dhillon, AW1, the wife of the deceased would continue to draw 80% of the last pay drawn by the deceased, till the date of his retirement, which now could be November, 2001. As stated by PW4, the salary of Major General was Rs.25,000/-. Therefrom, from 13.02.1996 to 30.11.2001, the claimants would be suffering a loss of about Rs.5,000/- per month (which is 20% of Rs.25,000/-), because upto 30.11.2001 the wife of the deceased would be receiving 80% of the salary last drawn by the deceased. Thus, for approximately 70 months, the claimants would suffer a loss of Rs.5,000/- p.m or the total loss of Rs.3,50,000/-. Now the claimant would be getting only 1/3rd of the last drawn salary of Brig. A.S. Poonia as pension which comes to Rs.8,000/- p.m. If he had retired as Brig., her pension would have been 50% of his emoluments of the last drawn salary i.e. 50% of Rs.25,0000/- i.e. Rs.12,500/- per month. In this way, she has suffered a loss of Rs.4,500/- per month, or Rs.54,000/- per year as loss in pension. The deceased was 52 years of age at the time of accident. There fore, it would be just fair and reasonable to apply a multiplier of 11 (as per second schedule of Section 163-A of the Motor Vehicles Act). The Tribunal had assessed the following compensation:-

Sr. No.	HEADS	CALCULATIONS
(i)	Compensation for future income of Brig. A.S. Poonia, which is decreased on account of his death.	Rs.3,50,000/-
(ii)	Pecuniary loss suffered by the claimants by decreased pension (Rs.54,000 p.a.X11 multiplier)	Rs.5,94,000/-
(iii)	Loss of estate	Rs.2,500/-
(iv)	Funeral expenses	Rs.2,000/-

(v)	Loss of consortium	Rs.5,000/-
	TOTAL COMPENSATION AWARDED	Rs. 9,53,500/-

Hence, the claimants were found entitled to total compensation of Rs.9,53,500/- along with interest @ 12% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimants-appellants have 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. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

Hence, to meet the ends of justice, the compensation is hereby reassessed keeping in view the judgments passed by Hon'ble the Supreme Court in *Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others*, Civil Appeal No. 9581 of 2018 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)	Compensation for future income of Brig. A.S. Poonia which decreases on account of his death i.e. loss for 70 months (can be considered as future prospects)	Rs.3,50,000/-
(ii)	Monthly pension (after retirement, 50% of Rs.25,000/-p.m.)	Rs.12,500/-p.m.
(iii)	½ deduction for personal expenses	Rs.6,250/-p.m.
(iv)	Total annual loss of dependency after applying multiplier of 11	6,250X12X11=Rs.8,25,000/-
(v)	Funeral expenses	Rs.15,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of filial consortium	Rs.1,60,000/- (Rs.40,000/- each to all the appellants)
	TOTAL COMPENSATION AWARDED	Rs.13,65,000/-

	ENHANCED AMOUNT OF COMPENSATION	13,65,000- 9,53,500=Rs.4,11,500/-
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The enhanced amount of compensation of **Rs.4,11,500/-** 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 ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others***, Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

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

Pending application (if any), stands disposed of.

(RITU BAHRI)
JUDGE

16.09.2019
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No