

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

FAO No.1082 of 2006 (O&M)

Date of decision: 17.07.2019

Jagwanti and others

....Appellants

Versus

Roshan and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. U.K. Agnihotri, Advocate,
for the appellants.

Mr. Lalit Garg, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as 'the Tribunal') vide award dated 05.11.2005, on account of death of Rajbir in a motor vehicular accident which took place on 28.08.2004. Appellant No.1 is widow and appellant Nos. 2 to 4 are children of deceased-Rajbir.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 28.08.2004, at about 5.00 P.M., Rajbir (since deceased) along with on Anil Kumar was going to village Naina Tatarpur, District Sonapat on a motorcycle bearing No. DL-9SQ-0479. Rajbir was driving the said motorcycle. When they reached at Sonapat-Gohana Road in the area of village Tihar Malik, a Maxi Cab (jeep) bearing registration No. HR-46-A-4924 being driven by Roshan-respondent No.1 in a rash and negligent manner, came from the side of

Sonepat and struck against the motorcycle of Rajbir, as a result of which, he (Rajbir) received multiple grievous injuries. He was removed to General Hospital, Sonepat, from where he was referred to PGIMS, Rohtak. Unfortunately, Rajbir succumbed to the injuries. With regard to the accident, FIR No.63 dated 28.08.2004 was registered against respondent No.1 at Police Station, Mohana, Sonepat. 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 Rajbir has died and thus, returned finding on issue no.1 in favour of the claimants. This finding was rightly given on the basis of the deposition of Anil (PW-1), who was an eye witness of the accident and on whose statement, the FIR Ex.P1 was registered. Further, the claimants have proved on record copy of postmortem report as Ex.P3.

Deceased-Rajbir was employed as driver with Delhi Transport Corporation. As per copy of salary register for the month of August, 2004, he was drawing a salary of Rs.9736/- per month. After making deductions, carry home salary of the deceased was Rs.6583/- per month. Out of this income, 1/3rd amount was deducted towards personal expenses of the deceased. By doing so, remaining income came to Rs.52,664/- per annum (Rs.6583/- x 2/3 x 12). As per postmortem report Ex.P3, deceased was 32 years of age at the time of accident/death. Accordingly, multiplier of 16 was applied by the Tribunal. After applying the multiplier of 16, dependency of claimant Nos.1 to 4 (widow and minor children) came to Rs.8,42,624/-

(52,664 x 16). In addition to it, Rs.5,000/- were awarded to claimant No.1-widow on account of loss of consortium and Rs.2376/- as funeral expenses. Hence, appellant-claimants were found entitled to total compensation of Rs.8,50,000/- along with interest @ 6% 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, National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) and Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018 (4) RCR (Civil) 333, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.6583/- per month
(ii)	50% of (i) above to be added as future prospects	6583 + 3292 = Rs.9875/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	9875 – 2468 = Rs.7407/-

(iv)	Compensation after multiplier of 16 is applied	Rs.7407/- x 12 x 16 = Rs.14,22,144/-
(v)	Loss of consortium to widow-claimant No.1	Rs.40,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of filial consortium to children i.e. claimant-appellant Nos. 2 to 4	Rs.1,20,000/- (Rs.40,000/- each)
(viii)	Funeral expenses	Rs.15,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.16,12,144/-
(x)	Enhanced amount of compensation	Rs.16,12,144 – 8,50,000 = Rs.7,62,144/-

The enhanced amount of compensation of **Rs.7,62,144/-** 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 keeping in view the judgment passed by Hon'ble the Supreme Court in **Dara Singh @ Dhara Banjara vs. Shyam Singh Verma & others,** Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019), decided on 01.05.2019. 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

17.07.2019
ajp

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