

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

1. F.A.O No. 1167 of 2010

Raj Rani and ors. ...Appellants

Versus

Dhanu Ram and others ...Respondents

2. F.A.O No. 1168 of 2010

Raj Rani and ors. ...Appellants

Versus

Dhanu Ram and others ...Respondents

Date of decision:- 14.11.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sachin Dhull, Advocate
for the appellants

Ms. Vandana Malhotra, Advocate
for respondent/Insurance Co.

RITU BAHRI J. (Oral)

1. This order shall dispose of the above two appeals whereby the claimants are seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') to the tune of Rs.04,10,000/- in FAO No. 1167-2010 and Rs. 03,18,000/- in FAO No. 1168-2010, vide impugned awards dated 27.08.2009.

2. As per claimants, on 26.8.2007 Rajindedr Pal Sharda, Param Pal Sharda, Nitin Sharda and one Harmail Singh were returning to Patiala from Ludhiana in Accent Car No. PB-11-AE-9400 driven by Nitin Sharda.

When they reached near Harman Farm House Palace, Sirhind Road, Patiala,

then a scorpio car No. PB-23-D-0109 being driven by Harinder Singh came from the opposite side in a zig zag manner and struck against the above accent car. Due to the impact, Rajinder pal Sharda died at the spot. Nitin Sharda, Harmail Singh and Paral Pal Sharda were taken to Rajendra Hospital, Patiala where Nitin Sharda & Harmail Singh succumbed to their injuries. F.I.R No. 397 dated 27.08.2007 was registered under Sections 279/304-A IPC against respondent No. 2 at P.S. Sadar, Patiala.

3. While assessing compensation in claim petition No. 15T/19.12.07/23.12.08, the Tribunal took the income of the deceased-Nitin Sharda at Rs.6000/- per month and 1/2 was deducted towards personal expenses and applied the multiplier of 11 keeping in view the age of parents. Rs.14,000/- were awarded towards funeral expenses. The total compensation awarded to the claimants was Rs.04,10,000/-.

4. While assessing compensation in claim petition No. 23T/19.12.07/23.12.08, the Tribunal took the income of the deceased-Rajinder Pal Sharda at Rs.5150/- per month and 1/3rd was deducted towards personal expenses and applied the multiplier of 7 keeping in view the age of parents. Rs.14,000/- were awarded towards funeral expenses, Rs.10,000/- towards loss of consortium. The total compensation awarded to the claimants was Rs.03,18,000/-.

5. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, as no future prospects have been awarded.

6. On the other hand, the learned counsel for the respondent-driver has vehemently opposed the present appeal.

I have heard learned counsel for the parties

8. It is not in dispute between the parties that the accident had taken place, as the accident had been duly proved by the claimants/appellants.

8. Further the children as well as parents are also entitled for compensation of Rs.40,000/- each under the head of loss of consortium, in view of judgment of Hon'ble the Supreme Court of India in a case of ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram, 2018 (4) RCR Civil 837 .***

9. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** wherein the issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no

dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”.

10. In the present case, the compensation is being reassessed as per the judgments mentioned above :-

DECEASED-NITIN SHARDA

Sr. No.	Heads	Calculations
(i)	Income	Rs.6,000/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.6000+Rs.2400=Rs.8400/- per month

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.8400-Rs.4200=Rs.4200/- per month
(iv)	Compensation after multiplier of 18 is applied (deceased was 23 years of age)	Rs.4200 X 12 X 18= Rs.09,07,200/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Loss of consortium (appellant Nos. 2 to 4)	Rs.1,20,000/- (Rs.40,000/- each)
(vii)	Loss of consortium (mother-appellant No. 1)	Rs.40,000/-
	Total Compensation awarded	Rs.10,97,200/-
	Enhanced amount of compensation	10,97,200-04,10,000=Rs.06,87,200/- (rounded off to Rs.06,87,000/-)

DECEASED-RAJINDER PAL SHARDA

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.5150/- per month
(ii)	1/3 rd of (ii) deducted as personal expenses of the deceased=	Rs.5150-Rs.1716=Rs.3434/- per month
(iii)	Compensation after multiplier of 07 is applied	Rs.3434 X 12 X 7= Rs.02,88,456/-
(iv)	Conventional heads (Loss of estate, consortium and funeral expenses)	Rs.70,000/-
(v)	Loss of fillail consortium (appellant Nos. 2 to 4)	Rs.1,20,000/- (Rs.40,000/- each)
	Total Compensation awarded	Rs.04,78,456/-
	Enhanced amount of compensation	04,78,456-03,18,000=Rs.01,60,456/- (rounded off to Rs.01,60,000/-)

11. The enhanced amount of compensation of Rs.06,87,000/- in FAO No. 1167-2010 and Rs.01,60,000/- in FAO No. 1168-2010 shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% per annum in view of judgment of Hon'ble the Apex Court in Civil Appeal No.

4528-2019 titled as *Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019*. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

12. Accordingly, the award stands modified to the above extent and the present appeals are partly allowed.

14.11.2019
G Arora

Whether speaking/reasoned
Whether reportable

(RITU BAHRI)
JUDGE
Yes
No