

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

**FAO No.2404 of 2010 (O&M)
Date of decision: 24.10.2019**

Dharampal and others

....Appellants

Versus

Sunil and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Pankaj Midha, Advocate,
for the appellant.

Mr. Rahul Pathania, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM Nos.11927-11928-CII of 2010

For the reasons mentioned in the applications, same are allowed
and delay in filing and re-filing of the appeal is condoned.

FAO No.2404 of 2010

This appeal has been filed by the claimant-appellants seeking
enhancement of compensation awarded by Motor Accident Claims Tribunal,
Hisar (hereinafter referred to as 'the Tribunal') vide award dated 21.08.2008
on account of death of Raj Kumar @ Raju in a motor vehicular accident
which took place on 02.03.2002. Appellants Nos.1 & 2 are parents and
appellant Nos.3 to 6 are brothers and sisters of deceased Raj Kumar @ Raju.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 02.03.2002, Raj Kumar @

Dhana Kalan on a tractor-trolley to unload the bricks. The said vehicle was being driven by Sunil-respondent No.1, whereas Raj Kumar was sitting on the mudguard and Dharampal along with Suraj Bhan was sitting in the trolley. After unloading the bricks, they were on their way towards the brick kiln. Sunil was driving the tractor in a rash and negligent manner. At about 11.00 A.M., when they reached near village Anipura, Sunil-respondent No.1 (driver) suddenly turned the vehicle, as a result of which, Raj Kumar @ Raju fell down from the mudguard and was crushed under the wheels of offending vehicle. After the accident, respondent No.1 fled away from the spot. Raj Kumar was shifted to General Hospital, Hansi, where he was declared dead. With regard to the incident, FIR Ex.P1 was registered against respondent No.1. 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 the offending vehicle by its driver, which resulted into the death of Raj Kumar. This finding was rightly given on the basis of deposition of Dharampal (PW-2), who was eye witnesses of the accident and on whose statement, FIR Ex.P1 was recorded. Apart from this, claimants have also proved on record copy of postmortem report of deceased as Ex.P2.

In the absence of any documentary proof, income of the deceased was assessed as Rs.2500/- per month i.e. Rs.30,000/- per annum, as that of a casual labourer, out of which, one-third amount was deducted towards his personal expenses. By doing so, the total income of deceased

came to Rs.20,000/- per annum. The deceased was 18 years of age at the time of death/accident. However, multiplier of 11 was applied keeping in view the age of his parents. After applying the multiplier of 11, dependency of claimants came to Rs.2,20,000/- (20,000/- x 11). In addition to it, Rs.7,000/- were awarded on account of transportation & last rites, Rs.10,000/- to claimant Nos.1 and 2 on account of mental pain and sufferings. Hence, the claimants were found entitled to total compensation of Rs.2,37,000/- along with interest @ 7% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-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. 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 Company Ltd. vs. Nanu Ram alias Chuhru Ram and others, Civil Appeal No.9581 of 2018, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.2500/- per month
(ii)	40% of (i) above to be added as future prospects	2500 + 1000 = Rs.3500/-

(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	3500 – 1166 = Rs.2334/-
(iv)	Compensation after multiplier of 18 is applied	Rs.2334/- x 12 x 18 = Rs.5,04,144/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of filial consortium to the appellants.	Rs.2,40,000/- (Rs.40,000/- each)
(viii)	TOTAL COMPENSATION AWARDED	Rs.7,74,144/-
(ix)	Enhanced amount of compensation	Rs.7,74,144 – 2,37,000= Rs.5,37,144/-

The enhanced amount of compensation of **Rs.5,37,144/-** 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, in view of the judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and 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

24.10.2019
ajp

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