

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

**FAO No.1218 of 2015
Date of decision: 02.09.2019**

Kamlesh and others

....Appellants

Versus

Balbir and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. I.P. Goyal, Advocate,
for the appellants.

Mr. Chander Pal Tiwana, Advocate,
for respondent Nos. 1 and 2.

Mr. Shubham Jain, Advocate,
for Mr. Suman Jain, 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, Kaithal (hereinafter referred to as 'the Tribunal') vide award dated 28.05.2014, on account of death of Baljit in a motor vehicular accident which took place on 03.12.2012. Appellants are widow, sons and parents of deceased Baljit.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 03.12.2012, after performing his daily duty, Baljit (since deceased) was going towards his village on a motorcycle. Anil Kumar (employer of Baljit) and Suresh Kumar were going to Narwana in a Scorpio bearing registration No. HR-32-1799. At about

registration No. HR-09-K-0425 being driven by Balbir-respondent No.1 in a rash and negligent manner, came from the side of Narwana and struck against the motorcycle of Baljit, as a result of which, he fell down and received serious, multiple and grievous injuries. Baljit was taken to CHC Kalayat, from where, he was referred to General Hospital, Kaithal. However, Baljit succumbed to the injuries. On the statement of Anil, FIR No.180 dated 04.12.2012, under Section 279/304-A IPC was registered at Police Station, Kalayat. 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 Baljit 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 Kumar (PW-1), who was eye witness of the accident and on whose statement, FIR Ex.P2 was registered. Further, the claimants have proved on record copy of report under Section 173 Cr.P.C. Ex.P1 and postmortem report as Ex.P3...

In the absence of any documentary proof, income of the deceased was assessed by the Tribunal as Rs.5400/- per month, out of which, 1/4th amount was deducted towards his personal expenses. By doing so, remaining income came to Rs.4050/- per month i.e. Rs.48,600/- per annum. The deceased was 37 years of age at the time of accident/death. Multiplier of 15 was applied by the Tribunal. After applying the multiplier of 15, dependency of claimants came to Rs.7,29,000/- (48,600 x 15). In

addition to it, Rs.15,000/- were awarded on account of funeral expenses, Rs.20,000/- to claimant No.1-widow as loss of consortium and Rs.20,000/- on account of love and affection. Hence, appellant-claimants were found entitled to total compensation of Rs.7,84,000/- 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. 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.

Accident, in the present case, took place on 03.12.2012. As per deposition of Anil Kumar (PW-1), deceased-Baljit was working as driver with him. Further, the claimants have relied upon the salary certificate Mark-A, which was issued by Anil Kumar. As per this certificate, deceased was getting salary of Rs.15,000/- per month. A perusal of cross-examination of Anil Kumar (PW-1) shows that his shop is situated in Kaithal. However, PW-1 states that he had not maintained any account regarding his business. No account regarding salary/employment of Baljit had been maintained. Hence, there is no direct evidence on the file to show that the deceased was being paid salary of Rs.15,000/- per month. At the same time, deceased-Baljit being a driver, has to be treated as skilled

labourer. As per minimum wages prevalent at that time, income of deceased can be taken as Rs.7000/- per month. Accordingly, the income of the deceased is being assessed as Rs.7000/- per month. Hence, 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.7000/- per month
(ii)	40% of (i) above to be added as future prospects	7000 + 2800 = Rs.9800/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	9800 – 2450 = Rs.7350/-
(iv)	Compensation after multiplier of 15 is applied	Rs.7350/- x 12 x 15 = Rs.13,23,000/-
(v)	Compensation on account of loss of estate	Rs.15,000/-
(vi)	Loss of consortium to widow-claimant No.1.	Rs.40,000/-
(vii)	Loss of filial consortium to the parents (claimant-appellant Nos.4 and 5)	Rs.80,000/- (Rs.40,000/- each)
(viii)	Loss of consortium to the children (claimant-appellant No.2 and 3)	Rs.80,000/- (Rs.40,000/- each)
(ix)	Funeral expenses	Rs.15,000/-
(x)	TOTAL COMPENSATION AWARDED	Rs.15,53,000/-
(xi)	Enhanced amount of compensation	Rs.15,53,000 – 7,84,000 = Rs.7,69,000/-

The enhanced amount of compensation of **Rs.7,69,000/-** 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

02.09.2019
ajp

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