

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

FAO No.2116 of 2014 (O&M)

Date of decision: 03.07.2019

Sukhwinder Kaur and others

....Appellants

Versus

Dilbag Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the appellants.

Mr. Sehaj Bir Singh, Advocate,
for respondent No.1.

Mr. D.S. Patwalia, Senior Advocate,
with Mr. Harsh Mehla, Advocate,
for respondent No.2.

Mr. Punit 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, Sirsa (hereinafter referred to as 'the Tribunal') vide award dated 12.08.2013, on account of death of Malkiat Singh @ Popy Singh in a motor vehicular accident which took place on 25.04.2010. Appellant No.1 is widow and appellant Nos. 2 to 4 are children of deceased Malkiat Singh @ Popy Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 25.04.2010, Malkiat Singh (since deceased) was going towards village Surtia on a Bullet Motorcycle. When he heard near Old Bus Stand of village Surtia, a Tanker Trolly bearing registration No. PAT-2193, being driven by respondent No.1-

Dilbag Singh in a rash and negligent manner, came from the side of village Surtia and struck against the motorcycle, as a result of which, Malkiat Singh fell down and received injuries. This accident was witnessed by Gurdial Singh and Gurjant Singh. Injured-Malkiat Singh was shifted to Civil Hospita, Sardulgarh, where he succumbed to the injuries. With regard to the accident, FIR No.53 dated 25.04.2010, under Sections 279/337/304-A IPC 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 offending vehicle by respondent No.1, as a result of which Malkiat Singh 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 Gurdial Singh (PW-1), who was an eye witness of the accident. Further, the claimants have proved on record copy of report under Section 173 Cr.P.C. Ex.P1, copy of FIR Ex.P2 and copy of postmortem report as Ex.P3.

In the absence of any documentary proof, income of the deceased was assessed as Rs.4500/- per month. Out of this income, 1/3rd amount was deducted towards personal expenses of the deceased, which came to Rs.3000/- per month (4500 – 1500) i.e. Rs.36,000/- per annum. As per postmortem report Ex.P3, deceased was 35 years of age at the time of accident/death. Therefore, multiplier of 16 was applied. After applying the multiplier of 16, dependency of claimants (appellants) came to Rs.5,76,000/- (36,000 x 16). In addition to it, Rs.10,000/- were awarded on

account of funeral expenses. Hence, appellant-claimants were found entitled to total compensation of Rs.5,86,000/- along with interest @ 7½% 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.

Learned counsel for respondent No.2-owner of offending vehicle states that while passing the impugned award, Tribunal had wrongly given recovery rights to the Insurance Company. Against the said finding, The Bathinda District Co-operative Milk Producer Union Ltd.-owner had filed FAO No.6061 of 2013, which has been allowed vide judgment dated 02.04.2014 passed by this Court. Vide said judgment, present respondent No.2-owner has been absolved of its liability to pay compensation.

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.4500/- per month
(ii)	40% of (i) above to be added as future prospects	4500 + 1800 = Rs.6300/-
(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	6300 – 2100 = Rs.4200/-
(iv)	Compensation after multiplier of 16 is applied	Rs.4200/- x 12 x 16 = Rs.8,06,400/-
(v)	Loss of consortium to widow	Rs.40,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of love and affection to the children i.e. claimants Nos.2 to 4	Rs.1,50,000/- (i.e. Rs.50,000/- each)
(viii)	Funeral expenses	Rs.15,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.10,26,400/-
(x)	Enhanced amount of compensation	Rs.10,26,400 – 5,86,000 = Rs.4,40,400/-

The enhanced amount of compensation of **Rs.4,40,400/-** 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. 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

03.07.2019
ajp

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