

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

**FAO No.1231 of 2016
Date of decision: 22.08.2019**

Kanta Devi and another

....Appellants

Versus

Mohammad Sultan @ Mohammad Mustakh & others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Himmat Singh, Advocate,
for Mr. Tarun Vir Singh Lehal, Advocate,
for the appellants.

Mr. Rahul Pathania, Advocate,
for Mr. R.C. Kapoor, 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, Gurdaspur (hereinafter referred to as 'the Tribunal') vide award dated 28.09.2015 on account of death of Raja in a motor vehicular accident which took place on 12.11.2014. Appellants are parents of deceased Raja.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 11.11.2014, Raja (since deceased) along with his friend Vikramjit Singh son of Harbhajan Lal had gone towards village Kishanpur on a motorcycle (Hero Honda Splendor) bearing registration No. PB-35-J-5808. After completing their work, they were returning to their home and said Vikramjit Singh was driving the motorcycle, whereas Raja was a pillion rider. At about 7.15 P.M., when they reached near the turn of village Pandher, in the meantime, a truck bearing registration No. JK-13-A-6011 being driven by Mohammad Sultan @

Mohammad Mustakh-respondent No.1 in a rash and negligent manner, came from the opposite side and struck against the motorcycle, as a result of which, Raja and Vikramjit Singh fell down and legs of deceased-Raja were crushed under the wheels of the offending truck. Vikramjit Singh also received multiple injuries. They were shifted to Civi Hospital, Gurdaspur, where Raja succumbed to the injuries. With regard to the incident, FIR No.77 dated 12.11.2014, under Sections 279/304-A/337/338 IPC was registered against respondent No.1 at Police Station, Tibber, on the statement of Vikramjit Singh. 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 and thus, returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Vikramjit Singh (CW-2), who was an eye witness of the accident and on whose statement, FIR Ex.C1 was registered. Further, the claimants have also proved copy of postmortem report of deceased as Ex.C2.

In the absence of any documentary evidence, income of the deceased was assessed as Rs.4500/- per month i.e. Rs.54,000/- per annum, out of which, one-half (50%) amount was deducted towards his personal expenses. By doing so, the total income of deceased came to Rs.2250/- per month. The Tribunal has held that father of deceased i.e. Claimant No.1 was not dependent upon him. Only, the mother-claimant No.1 was dependent upon her son and only she was held entitled to get the compensation. The

deceased 21 years of age at the time of death/accident. The multiplier of 14 was applied by the Tribunal. After applying the multiplier of 14, dependency of claimant No.1 came to Rs.3,78,000/- (2250 x 12 x 14). In addition to it, Rs.1,00,000/- were awarded on account of loss of love and affection, Rs.5000/- towards funeral expenses and Rs.5000/- for loss of estate. Hence, the claimant No.1 was found entitled to total compensation of Rs.4,88,000/- along with interest @ 7.5% 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.

I have heard learned counsel for the appellant 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 finding given by Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver-respondent No.1. As per claimants, deceased was doing the work of mobile repairing. He was a perfect mechanic of mobile repairs. Accident, in the present case, took place on 11.11.2014. As per minimum wages prevalent at that time, 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 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.7000/- per month
(ii)	40% of (i) above is added as future prospects	7000 + 2800 = Rs.9800/-
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	9800 – 4900 = Rs.4900/-
(iv)	Compensation after multiplier of 18 is applied	Rs.4900/- x 12 x 18 = Rs.10,58,400/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of consortium to the parents (claimant Nos.1 and 2)	Rs.80,000/- (Rs.40,000/- each)
(viii)	TOTAL COMPENSATION AWARDED	Rs.11,68,400/-
(ix)	Enhanced amount of compensation	Rs.11,68,400 – 4,88,000 = Rs.6,80,400/-

The enhanced amount of compensation of **Rs.6,80,400/-** 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, 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

22.08.2019
ajp