IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4673 of 2014 (O&M)
Date of decision: 27.09.2019

Shweta Kumari @ Shweta Chauhan and others
….Appellants
Versus

Smt. Sushma Devi and others
….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.C. Gupta, Advocate,
for the appellants.

Ms. Mona Goyal, Advocate,
for Mr. Ravish Bansal, Advocate,
for respondent Nos.2 and 3.
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RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') vide award dated 10.03.2014 on account of death of Vipin Kumar in a motor vehicular accident which took place on 22.07.2010. Appellants No.1 is widow and appellant Nos. 2 & 3 are children of deceased Vipin Kumar.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 22.07.2010, Vipin Kumar (since deceased) along with Vinod Kampani and Raspinder Singh, was going from Khanna to Nawanshahar in a Scorpio vehicle bearing registration No.HR-01-V-0084. The said vehicle was being driven by Vipin Kumar himself. One Ritesh Rana along with father of Raspinder Singh was

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following the Scorpio in his Indica car. At about 1.30 P.M., when the said Scorpio vehicle reached near village Hial, District Nawanshahar, a truck bearing registration No. PB-10-AC-9883 being driven by Om Parkash (husband and father of respondent Nos.1 to 3) in a rash and negligent manner, came from the opposite side and struck against the Scorpio vehicle, as a result of which, all the occupants of said vehicle received injuries. Ritesh Rana and Hardeep Singh, with the help of other people, pulled all the injured persons from Scorpio vehicle and took them to Raja Hospital, Nawanshahar, but Vipin Kumar succumbed to the injuries on the way to hospital. With regard to the incident, FIR No.67 dated 22.07.2010, under Sections 304-A/279/337/338/427 IPC was registered at Police Station, Sadar, SBS Nagar (Nawanshahar) against the driver of offending vehicle on the statement of Ritesh Rana. 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 Vipin Kumar. This finding was rightly given on the basis of deposition of Raspinder Singh (PW-6), who was an injured eye witnesses of the accident. Apart from this, claimants have also proved on record FIR Ex.P83, report under Section 173 Cr.P.C. Ex.P86 and postmortem report of deceased as Ex.P84.

Deceased-Vipin Kumar was income tax assessee. As per income tax return Ex.PW4/D, income of the deceased was assessed as Rs.86,000/- per annum, out of which, one-third (1/3rd) amount was deducted

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towards his personal expenses. By doing so, the total income of deceased came to Rs.57,334/- per annum. As per postmortem report, deceased was 32 years of age at the time of death/accident. Accordingly, multiplier of 16 was applied. After applying the multiplier of 16, dependency of claimants came to Rs.9,17,344/- (57,334/- x 16). In addition to it, Rs.20,000/- were awarded on account of last rites and Rs.20,000/- for loss of consortium to the widow-claimant No.1. Hence, the claimants were found entitled to total compensation of Rs.9,57,344/- 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.

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. There is no 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 the offending vehicle by its driver. Sh. Jagdish Prashad Sharma, Tax Assistant, Income Tax Office, Ambala Cantt (PW-4) had proved the income tax returns of Vipin Kumar for the assessment years 2007-2008, 2008-2009, 2009-2010 and 2010-2011 as Ex.PW4/B to Ex.PW4-E. As per income tax return for the year 2009-2010 Ex.PW4/D, income of the deceased to the tune of Rs.86,000/- was from the avocation of property dealing, whereas a sum of Rs.58,000/- as income was shown under the head 'any other income (including income from salary, commission, bonus and interest from firms etc.). However, the Tribunal has assessed his income as Rs.86,000/- only.

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For assessing correct and adequate compensation, income of deceased is being taken as Rs.86,000/- + Rs.58,000/- = Rs.1,44,000/- per annum. 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.1,44,000/- per annum
(ii)	40% of (i) above to be added as future prospects	1,44,000 + 57,600 = Rs.2,01,600/-
(iii)	1/3rd of (ii) above is deducted as personal expenses of the deceased	2,01,600 – 67,200 = Rs.1,34,400/-
(iv)	Compensation after multiplier of 16 is applied	Rs.1,34,400/- x 16 = Rs.21,50,400/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of filial consortium to the widow-claimant No.1	Rs.40,000/-
(viii)	Loss of filial consortium to the children (claimant Nos.2 and 3).	Rs.80,000/- (Rs.40,000/- each)
(ix)	**TOTAL COMPENSATION AWARDED**	**Rs.23,00,400/-**
(x)	**Enhanced amount of compensation**	**Rs.23,00,400 – 9,57,344 = Rs.13,43,056/-**

The enhanced amount of compensation of **Rs.13,43,056/-** 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,

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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

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

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