

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

**FAO No.5661 of 2013 (O&M)
Date of decision: 16.09.2019**

Jaswinder Kaur and another

....Appellants

Versus

Rakesh Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek Suri, Advocate,
for the appellants.

Mr. Dixit Garg, Advocate,
for Mr. Aman Bansal, Advocate,
for respondent No. 1.

Mr. Rajbir Singh, Advocate,
for respondent No.2-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, Panchkula (hereinafter referred to as 'the Tribunal') vide award dated 29.08.2013 on account of death of Mehar Singh in a motor vehicular accident which took place on 29.10.2010. Appellant No.1 is widow, appellant No. 2 is son and respondent Nos.3 & 4 are parents of deceased Mehar Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 29.10.2010, Mehar Singh

Gurudwara, was crossing the national highway, in the meantime, a truck bearing registration No. HP-69-2779 being driven by Rakesh Kumar-respondent No.1 in a rash and negligent manner, came from the side of Ramgarh and struck against Mehar Singh, as a result of which, he (Mehar Singh) was crushed under the tyres and died at the spot. With regard to the incident, FIR No.201 dated 29.10.2010, under Sections 279/304-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 the offending vehicle by its driver, which resulted into the death of Mehar Singh. This finding was rightly given on the basis of deposition of Bhupinder Pal Singh (PW-6), who was eye witnesses of the accident and on whose statement, the FIR Ex.PW6/2 was registered. Further, the claimants have also proved on record documents Ex.P1 to Ex.P11.

The deceased was working as paid *Sewadar* in the Gurudwara Nadda Sahib and was getting a salary of Rs.9000/- per month. On the basis of evidence adduced by the claimants, income of the deceased was assessed as Rs.9000/- per month, out of which, one-fourth amount was deducted towards his personal expenses. By doing so, the total income of deceased came to Rs.6750/- per month i.e. Rs.81,000/- per annum. As per postmortem report Ex.P11, deceased was 47 years of age at the time of death/accident. Multiplier of 11 was applied by the Tribunal. After applying the multiplier of 11, dependency of claimants came to Rs.8,91,000/- (81,000

x 11). In addition to this, Rs.25,000/- were awarded as funeral expenses and Rs.1,00,000/- to claimant No.1-Jaswinder Kaur (widow) on account of loss of consortium. Hence, the claimants were found entitled to total compensation of Rs.10,16,000/- 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.

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 regard to the finding given by Tribunal that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver. While issuing notice of motion on 27.11.2013, parents of deceased were allowed to withdraw Rs.1,00,000/- each out of the total compensation and the remaining amount was to be deposited in fixed deposit scheme in the name of the Tribunal. A perusal of the impugned award shows that after the death of Mehar Singh, his employer i.e. SGPC had already granted Rs.9,00,000/- to the widow-claimant 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 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.9000/- per month
(ii)	25% of (i) above to be added as future prospects	9000 + 2250 = Rs.11,250/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	11,250 – 2812 = Rs.8438/-
(iv)	Compensation after multiplier of 13 is applied	Rs.8438/- x 12 x 13 = Rs.13,16,328/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of consortium to widow-appellant No.1	Rs.40,000/-
(viii)	Loss of filial consortium to the son-appellant No.2.	Rs.Rs.40,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.14,26,328/-
(x)	Enhanced amount of compensation	Rs.14,26,328 – 10,16,000 = Rs.4,10,328/-

The enhanced amount of compensation of **Rs.4,10,328/-** 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). It is made clear that out of the total amount of compensation, Rs.2,00,000/- each will be given to the parents of deceased i.e. respondent Nos.3 and 4 after deducting Rs.1,00,000/- each, which has already been allowed to withdraw vide order dated 27.11.2013.

Rest of the amount be released in favour of the present appellants i.e. widow

and son respectively. 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

16.09.2019
ajp

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