

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

**Review Application No.106-CII of 2018 in/and
FAO No.3736 of 2016 (O&M)
Date of decision: 08.07.2019**

Parvesh and others

....Appellants

Versus

Raj Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Kundu, Advocate,
and Mr. Piyush Khanna, Advocate,
for applicant-appellants.

Ms. Vandana Malhotra, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

Review Application No.106-CII of 2018

Applicant-appellants seek review/recalling of the order dated 30.04.2018 passed by this Court in the main appeal i.e. FAO No.3736 of 2016.

In view of the averments mentioned in the application, order dated 30.04.2018 is recalled and the main appeal is restored to its original number and stage.

Allowed accordingly.

FAO No.3736 of 2016

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal,

Panipat (hereinafter referred to as 'the Tribunal') vide award dated 19.11.2015 on account of death of Kulbir in a motor vehicular accident which took place on 18.03.2014. Appellants widow and children of deceased-Kulbir.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 18.03.2014, after finishing work in the fields, Kulbir (since deceased) was returning home on a motorcycle. His cousin Amit was following him on a separate motorcycle bearing No. HR-06-AA-0542. When they were turning towards their village, a Swift car bearing registration No. HR-06-S-5959 being driven by respondent No.1-Raj Kumar in a rash and negligent manner, came and struck against the motorcycle of Kulbir and dragged him to a long distance. As a result of which accident, Kulbir received multiple injuries and was taken to Prem Hospital, Panipat, but he succumbed to the injuries on 19.03.2014. With regard to the incident, an FIR 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 i.e. respondent No.1. This finding was rightly given on the basis of deposition of Amit (PW-6), who was eye witnesses of the accident and on whose statement FIR was registered against respondent No.1. Claimants have also proved on record documents Ex.P24 to Ex.P26, which showed that the police had registered a case against respondent No.1 on the statement of Amit (PW-6).

The deceased was an agriculturist. After going through the evidence led by the parties, Tribunal had assessed the income of deceased as Rs.1,25,000/- per annum. In this income, 30% addition was made on account of future prospects. By doing so, income of deceased came to Rs.1,62,500 (Rs.1,25,000 + 37,500) per annum. Out of this income, 1/3rd amount was deducted towards personal expenses of the deceased, which came to Rs.1,08,333/- (1,62,500 – 54,167) per annum. The Tribunal had observed that the deceased was 41 years of age at the time of death/accident. Accordingly, multiplier of 14 was applied. After applying the multiplier of 14, dependency of claimants came to Rs.15,16,662/-. In addition to it, Rs.50,000/- have been awarded towards loss of consortium, Rs.5000/- towards loss of estate, Rs.5000/- as funeral expenses, Rs.10,000/- as litigation expenses and Rs.1,17,662/- as treatment expenses. Hence, claimant were found entitled to a total compensation of Rs.17,04,324/- along with interest at the rate of 7.5% per annum from the date of filing of claim 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 regard to the findings given by Tribunal on issue No.1 that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1. In the present case, Tribunal has taken the age of deceased as 41 years. A perusal of the impugned award

shows that as per driving licence Ex.P20 and middle examination certificate Ex.P23, date of birth of the deceased was 12.06.1973. The accident had taken place on 18.03.2014. Meaning thereby, on the date of death, he was aged about 40 years and 09 months. Therefore, multiplier of 15 ought to have been applied in this case. Learned counsel for insurance company contends that deceased was an agriculturist (self employed) and addition of 25% should have been made in his income towards future prospects. 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 and **National Insurance Company Limited Vs. Pranay Sethi and others**, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.1,25,000/- per annum
(ii)	25% of (i) above to be added as future prospects	1,25,000 + 31,250 = Rs.1,56,250/-
(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	1,56,250 – 52,083 = Rs.1,04,167/-
(iv)	Compensation after multiplier of 15 is applied	Rs.1,04,167/- x 15 = Rs.15,62,505/-
(v)	Compensation on account of medical expenses (as per medical bills)	Rs.1,17,662/-
(vi)	Loss of consortium	Rs.50,000/-
(vii)	Litigation expenses	Rs.10,000/-
(viii)	Loss of estate	Rs.5000/-
(ix)	Funeral expenses	Rs.5000/-
(x)	TOTAL COMPENSATION AWARDED	Rs.17,50,167/-
(vii)	Enhanced amount of compensation	Rs.17,50,167 – 17,04,324 = Rs.45,843/-

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 @ 7.5% 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 “**Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others**, Civil Appeal No.448 of 2018 (arising out of SLP (C) No.26853 of 2016) decided on 19.01.2018.” 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

08.07.2019

ajp

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