

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

FAO No.6695 of 2015 (O&M)

Date of decision: 16.09.2019

Santosh Devi and another

....Appellants

Versus

Krishan Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Yogesh Saini, Advocate,
for the appellants.

Mr. Manoj Pundir, Advocate,
for respondent Nos. 1 to 3.

Mr. Punit Jain, Advocate,
for respondent No.4-Insurance Company.

RITU BAHRI J. (Oral)

CM Nos.20745-20746-CII of 2015

For the reasons mentioned in the applications, same are allowed and delay of 626 days in filing and 58 days in re-filing of the appeal is condoned.

FAO No.6695 of 2015 (O&M)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as 'the Tribunal') vide award dated 18.04.2013 on account of death of Aman Kumar in a motor vehicular accident which took place on 04.01.2012. Appellants are parents of deceased Aman Kumar.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 04.01.2012, at about 8.00 P.M., Aman Kumar (since deceased) was going towards village Fatehpur on a bicycle in order to see his agricultural work. When he reached near Government School, Village Saran, a bull cart was going ahead of him. When he had crossed the same, in the meantime, a tractor-trolley, make Sawraj 735 (blue coloured), being driven by Krishan Kumar-respondent No.1, in a rash and negligent manner, came from the opposite side and struck against Aman Kumar, as a result of which, he (Aman Kumar) received head injury and died at the spot. The accident was witnessed by Naresh Kumar. With regard to the incident, FIR No.1 dated 04.01.2012, under Sections 279/304-A IPC was registered against respondent No.1 at Police Station, Chhappar. 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 Aman Kumar. This finding was rightly given on the basis of deposition of Naresh Kumar (PW-4), who was eye witnesses of the accident and on whose statement, the FIR Ex.P1 was registered. Further, the claimants have also proved on record documents charge sheet Ex.P12, superdginama Ex.P13, postmortem report Ex.P2 etc.

The deceased was a bachelor. In the absence of any documentary evidence, income of the deceased was assessed as Rs.4500/- per month, 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 i.e. Rs.27,000/- per annum. Deceased was more than 25 years of age at the time of death/accident. Accordingly, multiplier of 17 was applied by the Tribunal. After applying the multiplier of 17, dependency of claimants came to Rs.4,59,000/- (27,000 x 17). In addition to this, Rs.5000/- were awarded as funeral expenses. Hence, the claimants were found entitled to total compensation of Rs.4,64,000/- 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. In this case, income of deceased has been taken on the lower side. Keeping in view the minimum wages prevalent at that time, income of deceased is being taken as Rs.5000/- per month. Accordingly, 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.5000/- per month
(ii)	40% of (i) above to be added as future prospects	5000 + 2000 = Rs.7000/-
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	7000 – 3500 = Rs.3500/-
(iv)	Compensation after multiplier of 17 is applied	Rs.3500/- x 12 x 17 = Rs.7,14,000/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of filial consortium to the parents i.e. appellants	Rs.80,000/- (Rs.40,000/- each)
(ix)	TOTAL COMPENSATION AWARDED	Rs.8,24,000/-
(x)	Enhanced amount of compensation	Rs.8,24,000 – 4,64,000 = Rs.3,60,000/-

The enhanced amount of compensation of **Rs.3,60,000/-** 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

16.09.2019
ajp