

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

**FAO No.7089 of 2015 (O&M)
Date of decision: 08.07.2019**

Kashmir Singh and others

....Appellants

Versus

Hakkam Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tapish Gupta, Advocate,
for the appellants.

Mr. Pradeep Kumar, 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, Patiala (hereinafter referred to as 'the Tribunal') vide award dated 04.02.2015 on account of death of Hoshiar Singh in a motor vehicular accident which took place on 09.11.2011. Appellant Nos.1 & 2 are parents, appellant No.3 is widow, and appellant No.4 is son, appellant No.5 and respondent No.4 are sisters of deceased-Hoshiar Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 09.11.2011, Hoshiar Singh (since deceased) along with one Harwinder Singh was coming to village Saraula from Cheeka via Dharamheri on a motorcycle (TVS Apache) bearing Temporary No. PB-11 (T)-AR-2319. Harwinder Singh was driving

the said motorcycle. Resham Singh, father of Harwinder Singh, along with Swaran Singh was following them on his own motorcycle. At about 07.00 P.M., when they reached near village Dharamheri, in the meantime, a tractor, make Escort, bearing registration No. HR-13-9571, being driven by Hakkam Singh-respondent No.1 in a rash and negligent manner, came from the wrong side and struck against the motorcycle of Harwinder Singh, as a result of which, both Harwinder Singh and Hoshiar Singh fell on the road along with their motorcycle and sustained multiple grievous injuries. Both of them died at the spot. With regard to the incident, FIR No.201 dated 09.11.2011, under Sections 304-A/427 IPC was registered against respondent No.1 at Police Station, Samana. 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 Kashmir Singh-claimant No.1 (PW-1), Swaran Singh, eye witness (PW-2) and Resham Singh, eye witness (PW-3). Claimants have also proved on record copy of FIR Ex.P1, charge sheet Ex.P2, certified copy of postmortem report of Hoshiar Singh Ex.P3 and certified copy of postmortem report of Harwinder Singh Ex.P4.

In the absence of any documentary evidence, income of the deceased was assessed as Rs.4500/- per month as that of a daily wager, out of which, one-fourth amount has been deducted towards personal expenses of the deceased. The Tribunal has held that claimant Nos.5 & 6 being sisters

of deceased, were not dependent upon him. Hence, they were not held entitled to get compensation. Only claimant Nos. 1 to 4 (parents, widow and son) have been held entitled to receive the compensation. As per postmortem report Ex.P4, deceased was 25 years of age at the time of death/accident. Accordingly, multiplier of 18 was applied. After applying the multiplier of 18, dependency of claimant Nos.1 to 4 came to Rs.7,29,000/- (4500 x 1/4 x 12 x 18). In addition to it, Rs.50,000/- have been awarded to claimant Nos. 1 and 2 towards loss of love and affection, Rs.20,000/- as funeral expenses and Rs.10,000/- as loss of consortium to claimant No.3 (widow). Hence, claimant Nos. 1 to 4 were found entitled to a total compensation of Rs.8,09,000/- along with interest at the rate of 9% 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 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.4500/- per month
(ii)	40% of (i) above to be added as future prospects	4500 + 1800 = Rs.6300/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	6300 – 1575 = Rs.4725/-
(iv)	Compensation after multiplier of 18 is applied	Rs.4725/- x 12 x 18 = Rs.10,20,600/-
(v)	Compensation under the conventional heads	Rs.70,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.10,90,600/-
(vii)	Enhanced amount of compensation	Rs.10,90,600 – 8,09,000 = Rs.2,81,600/-

The enhanced amount of compensation of **Rs.2,81,600/-** 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 @ 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