

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

FAO No.8730 of 2014 (O&M)

Date of decision: 16.07.2019

Smt. Darshani Devi and others

....Appellants

Versus

Dinesh Aggarwal and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Inderjeet Sharma, Advocate,
for the appellants.

Mr. J.S. Khattar, Advocate,
for Mr. Deepak Sharma, Advocate,
for respondent Nos. 1 and 2.

Mr. Lalit Narang, Advocate,
for Mr. Ashwani Talwar, 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, Ambala (hereinafter referred to as 'the Tribunal') vide award dated 08.08.2014, on account of death of Harinder Singh @ Vicky in a motor vehicular accident which took place on 30.09.2010. Appellant No.1 is widow, appellant Nos. 2 & 3 are children and appellant Nos. 4 & 5 are parents of deceased Harinder Singh @ Vicky.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 30.09.2010, Harinder Singh @ Vicky (since deceased) was coming back to his house at Ambala City from Chandigarh on a motorcycle bearing No. HR-99-GH-3694. At about 11.00 P.M., when he had covered some distance towards Ambala City on

standing on the left side of the road without any indication such as bricks, stones, branches of trees safety cones, reflectors, burning of fire or by taking any such precaution, which might suggest the road user that the said truck tanker had been parked on the road. Due to negligent act of parking of truck tanker by its driver Ajay Kumar-respondent No.2 and due to dazzling lights of the vehicles coming from the opposite side, Harinder Singh @ Vicky could not notice the stationary truck tanker and he struck against the rear portion of the said truck, as a result of which, he suffered injuries and died on the spot. The accident was witnessed by Malkiat Singh, father of deceased and one Balbir Singh son of Gurbax Singh, who were also coming from Chandigarh towards Ambala by a car. With regard to the accident, FIR No.107 dated 01.10.2010 was registered against the driver of offending vehicle. 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 negligent parking of offending vehicle by its driver-respondent No.2, as a result of which Harinder Singh @ Vicky has died and thus, returned finding on issue no.1 in favour of the claimants. This finding was rightly given on the basis of the deposition of Malkiat Singh (PW-2), who was an eye witness of the accident. Further, the claimants have proved on record documents Ex.P1 to Ex.P12.

Deceased-Harinder Singh had got a diploma in Civil Engineering from Govt. Polytechnic, Ambala in June, 1999. On the basis of evidence adduced by the parties, Tribunal had taken his carry home salary to

the tune of Rs.4,59,725/-, rounded off to Rs.4,60,000/- per annum as shown for the assessment year 2010-2011. Out of this income, 1/4th amount was deducted towards personal expenses of the deceased. By doing so, remaining income came to Rs.3,45,000/- per annum. As per postmortem report Ex.P9, deceased was 33 years of age at the time of accident/death. Accordingly, multiplier of 16 was applied by the Tribunal. After applying the multiplier of 16, dependency of claimants came to Rs.55,20,000/- (3,45,000 x 16). In addition to it, Rs.20,000/- were awarded on account of transportation, funeral and last rites of the deceased and Rs.20,000/- on account of loss of consortium to claimant No.1-widow. Hence, appellant-claimants were found entitled to total compensation of Rs.55,60,000/- 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-appellant has preferred the present appeal.

Learned counsel for the appellants contends that as per Ex.PW5/C and Ex.PW5/D, salary of Rs.65,000/- was deposited in the account of deceased Harinder Singh as salary for the month of August, 2010, vide cheque No.914954 and for the month of September, 2010, vide cheque No.914971. Hence, before he died on 30.09.2010, Harinder Singh was paid salary of Rs.65,000/- per month. Further, a perusal of Form-16 Ex.PW5/G shows that deceased-Harinder Singh had a gross income of Rs.3,05,000/- for the assessment year 2011-2012. During this period, deceased was alive for five months as he died on 30.09.2010. Before his death, he worked only for five months in that year. Out of these five months, he got salary of Rs.65,000/- per month for two months as is evident from Ex.PW5/C and Ex.PW5/D. Hence, salary of the deceased has to be taken as

Rs.65,000/- per month for calculating correct compensation, which is to be paid to the claimants.

Learned counsel for the Insurance Company has argued that Form-16 Ex.PW5/G was filed on 31.05.2011 i.e. after the death of deceased. Even if, Form-16 was filed on 31.05.2011, income of deceased could not be taken for more than five months.

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 respect to the findings given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent parking of the offending vehicle by its driver. The argument raised by learned counsel for the Insurance Company is liable to be rejected as Form-16 has to be filled for the purpose of Tax deduction of an employee. Since the income of deceased was Rs.65,000/- per month for two months, as is evident from Ex.PW5C and Ex.PW5/D, this income has been taken for the purpose of calculating the compensation. After deduction of TDS, income of deceased comes to Rs.58,992/-, rounded off to Rs.59,000/-. 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 Co. Ltd. vs. Nanu Ram alias Chuhru Ram**

& Ors., 2018 (4) RCR (Civil) 333, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.59,000/- per month
(ii)	40% of (i) above to be added as future prospects	59,000 + 23,600 = Rs.82,600/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	82,600 – 20,650 = Rs.61,950/-
(iv)	Compensation after multiplier of 16 is applied	Rs.61,950/- x 12 x 16 = Rs.1,18,94,400/-
(v)	Loss of consortium to widow-claimant No.1	Rs.40,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of filial consortium to children and parents i.e. claimant-appellant Nos. 2 to 5	Rs.1,60,000/- (Rs.40,000/- each)
(viii)	Funeral expenses	Rs.15,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.1,21,24,400/-
(x)	Enhanced amount of compensation	Rs.1,21,24,400 – 55,60,000 = Rs.65,64,400/-

The enhanced amount of compensation of **Rs.65,64,400/-** 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 keeping in view the judgment passed by Hon'ble the Supreme Court in **Dara Singh @ Dhara Banjara vs. Shyam Singh Verma & 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

16.07.2019
ajp