

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

FAO No.8870 of 2014 (O&M)

Date of decision: 17.10.2019

Girraj and others

....Appellants

Versus

Surender and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.S. Hooda, Advocate,
for the appellants.

Mr. Rajiv Sharma, Advocate,
for respondent No.2.

Mr. Rajesh Bansal, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.24163-CII of 2014

For the reasons mentioned in the application, same is allowed and delay of 229 days in filing of the appeal is condoned.

FAO No.8870 of 2014 (O&M)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') vide award dated 01.11.2013 on account of death of Zile Singh in a motor vehicular accident which took place on 06.11.2010. Appellant No.1 is father and appellant Nos. 2 & 3 are sons of deceased Zile Singh.

FACTS NOT IN DISPUTE

noon, Zile Singh (since deceased) along with Nitin was going towards the petrol pump on a motorcycle. The said motorcycle was being driven by Zile Singh himself. When they reached near Petrol Pump of village Mitnol, a tractor-trolley bearing registration No.HR-50-B-6238 being driven by Surender-respondent No.1 in a rash and negligent manner, came from the side of Palwal and turned turtle. Zile Singh along with his motorcycle came under the trolley, whereas Nitin fell down at some distance. Zile Singh was taken to the hospital, where he was declared brought dead. With regard to the incident, an FIR No. 438 dated 06.11.2010, under Sections 279/337/304-A IPC was registered at Police Station, Sadar, Palwal, 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 Zile Singh. This finding was rightly given on the basis of deposition of Rohtash (PW-3), who was eye witnesses of the accident. Apart from this, claimants have also proved on record copy of FIR Ex.P2 and postmortem report as Ex.P59.

In the absence of any documentary evidence, income of the deceased was taken by the Tribunal as Rs.4000/- per month i.e. Rs.48,000/- per annum, out of which, one-third (1/3) amount was deducted towards his personal expenses. By doing so, remaining income of deceased came to Rs.2667/- per month i.e. Rs.32,000/- per annum. As per postmortem report Ex.P59, at the time of death/accident, deceased was aged about 47 years.

Multiplier of 13 was applied. After applying the multiplier of 13, dependency of claimants came to Rs.4,16,000/- (32,000/- x 13). In addition to it, Rs.10,000/- were awarded on account of funeral expenses. Hence, the claimants were found entitled to total compensation of Rs.4,26,000/- 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 respect to the finding given by the Tribunal on issue No.1 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 the deceased has been taken by the Tribunal on the lower side. Keeping in view the minimum wages prevalent at that time, income of deceased is being assessed as Rs.4500/- per month. 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:-

AJAY PRASHER 2020.01.09 11:13 I attest to the accuracy and integrity of this document	Sr. No.	HEADS	CALCULATIONS
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(i)	Income	Rs.4500/- per month
(ii)	25% of (i) above to be added as future prospects	$4500 + 1125 = \text{Rs.}5625/-$
(iii)	1/3 rd of (ii) above is deducted as personal expenses of the deceased	$5625 - 1875 = \text{Rs.}3750/-$
(iv)	Compensation after multiplier of 13 is applied	$\text{Rs.}3750/- \times 12 \times 13 = \text{Rs.}5,85,000/-$
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of filial consortium to the claimants-appellant Nos.1 to 3	Rs.1,20,000/- (Rs.40,000/- each)
(viii)	TOTAL COMPENSATION AWARDED	Rs.7,35,000/-
(ix)	Enhanced amount of compensation	$\text{Rs.}7,35,000 - 4,26,000 = \text{Rs.}3,09,000/-$

The enhanced amount of compensation of **Rs.3,09,000/-** 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

17.10.2019

ajp

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