

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

**FAO No.5603 of 2018
Date of decision: 31.10.2019**

Irshad and others

....Appellants

Versus

Umar Daraj and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Amit K. Goyal, Advocate,
for respondent No.4-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, Mewat (hereinafter referred to as 'the Tribunal') vide award dated 05.04.2018 on account of death of Noshad in a motor vehicular accident which took place on 04.01.2017. Appellant Nos.1 & 2 are parents and appellant Nos. 3 to 5 are sister and brothers of deceased Noshad.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 04.01.2017, Mubeen son of Akhtar was going to Nuh on his motorcycle. At about 9.30 A.M., when he reached near CDS Plant, a Canter (Eicher) bearing registration No. HR-73-1950, being driven by Umar Daraj-respondent No.1 in a rash and negligent

manner came from the side of Adbar and struck against one auto bearing

registration No.HR-74-A1676, as a result of which, 6-7 persons, including Noshad (since deceased), who were travelling in the auto, received serious, grievous and multiple injuries. Unfortunately, Noshad succumbed to the injuries. 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, which resulted into the death of Noshad. This finding was rightly given on the basis of deposition of Mubeen (PW-1), who was eye witnesses of the accident. Apart from this, claimants have also proved on record copy of report under Section 173 Cr.P.C. Ex.P9, FIR Ex.P15 etc.

The deceased was a student of 12th standard (Medical Stream). On the basis of evidence adduced by the claimants, income of the deceased was assessed as Rs.8000/- per month. In this income, 40% addition was made on account of future prospect and total income of deceased came to Rs.11,200/- per month, out of which, one-half amount was deducted towards his personal expenses. By doing so, remaining income of deceased came to Rs.5600/- per month. The deceased was 18½ years of age at the time of death/accident. Accordingly, multiplier of 18 was applied. After applying the multiplier of 18, dependency of claimants came to Rs.12,09,600/- (5600/- x 12 x 18). In addition to it, Rs.15,000/- were awarded on account of loss of love and affection and Rs.15,000/- as funeral expenses. Hence, the claimants were found entitled to total compensation of

Rs.12,39,600/- along with interest @ 7% 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. Keeping in view that the deceased was a student of 12th standard (Medical Stream), his income has to be assessed as a highly skilled labourer. Thus, keeping in view the minimum wages prevalent at that time, income of deceased is being taken as Rs.10,500/- 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:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.10,500/- per month
(ii)	40% of (i) above to be added as future prospects	10,500 + 4200 = Rs.14,700/-
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	14,700 – 7350 = Rs.7350/-

(iv)	Compensation after multiplier of 18 is applied	Rs.7350/- x 12 x 18 = Rs.15,87,600/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of filial consortium to the parents i.e. appellant-claimant Nos.1 and 2	Rs.80,000/- (Rs.40,000/- each)
(viii)	Loss of filial consortium to sister and brothers i.e. appellant Nos.3, 4 and 5	Rs.1,20,000/- (Rs.40,000/- each)
(ix)	TOTAL COMPENSATION AWARDED	Rs.18,17,600/-
(x)	Enhanced amount of compensation	Rs.18,17,600 – 12,39,600 = Rs.5,78,000/-

The enhanced amount of compensation of **Rs.5,78,000/-** 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

31.10.2019
ajp

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