

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

**FAO No.16121 of 2018
Date of decision: 03.12.2019**

Smt. Binder and others

....Appellants

Versus

Rajesh Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Arora, Advocate,
for the appellants.

Mr. Yashasvi Kapila, Advocate,
for Mr. Gurmeet Singh Saini, Advocate,
for respondent Nos. 1 and 2.

Mr. Chandan Deep Singh, 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, Panchkula (hereinafter referred to as 'the Tribunal') vide award dated 30.07.2018 on account of death of Shinda Singh @ Shinda in a motor vehicular accident which took place on 26.04.2016. Appellant No.1 is widow, appellant Nos. 2 to 4 are children and appellant No.5 is mother of deceased Shinda Singh @ Shinda.

FACTS NOT IN DISPUTE

Brief facts of the case are that on the intervening night of

along with other police officials was on *naka* duty in the area of village Khai on Fazilka-Ferozepur, G.T. Road. At about 3.00 A.M., he stopped a truck bearing registration No.RJ-19-GA-4919 for checking. In the meantime, another truck bearing registration No. PB-46-M-9963 being driven by Rajesh Kumar-respondent No.1 in a rash and negligent manner, came from behind and struck against truck No.RJ-19-GA-4919, as a result of which, the said truck moved forward and ran over Shinda Singh @ Shinda. Due to this accident, he received serious injuries and died on the spot. With regard to the incident, FIR No.91 dated 26.04.2016, under Sections 279/304-A IPC was registered against respondent No.1 at Police Station, Sadar, Ferozepur. 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 Shinda Singh @ Shinda. This finding was rightly given on the basis of deposition of Tejinder Singh (PW-3), who was eye witnesses of the accident and on whose statement, the FIR was registered. Further, the claimants have also proved on record copy of postmortem report of deceased Ex.CW2/1, death certificate Ex.CW2/3, challan as Ex.CW3/1.

The deceased was posted as Home Guard (Volunteer) with Punjab Home Guards. On the basis of evidence adduced by the claimants, income of the deceased was assessed as Rs.13,930/- per month i.e. Rs.1,67,160/- per annum, out of which, one-fourth amount was deducted towards his personal expenses. By doing so, the total income of deceased

came to Rs.1,25,370/- per annum (Rs.1,67,160 – Rs.41,790). The deceased was 39 years of age at the time of death/accident. In this income, 50% addition was made on account of future prospects. Total dependency came to Rs.1,88,055/- (1,25,370 + 62,685). Keeping in view the age of deceased, multiplier of 15 was applied. After applying the multiplier of 15, dependency of claimants came to Rs.28,20,825/- (1,88,055 x 15). In addition to this, Rs.15,000/- were awarded as loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses. Hence, the claimants were found entitled to total compensation of Rs.28,90,825/- along with interest @ 6% 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. The enhancement is being sought on the short ground that income of the deceased was taken by the Tribunal as Rs.13,930/-, whereas after revision of the pay scale, his actual income w.e.f. 11.03.2015, was Rs.29,275/- per month. Accident, in the present case, took place on 25/26.04.2016. Hence, on the date of accident, the deceased was drawing higher salary of Rs.29,275/- per month.

A perusal of the impugned award shows that Smt. Binder,

widow of deceased-Shinda Singh, had received arrears of his salary amounting to Rs.2,13,926/-. In view of the said fact, income of the deceased, at the time of death, has to be taken as Rs.29,275/-, rounded of as Rs.29,300/- 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.29,300/- per month
(ii)	50% of (i) above to be added as future prospects	29,300 + 14,650 = Rs.43,950/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	43,950 – 10,987 = Rs.32,963/-
(iv)	Compensation after multiplier of 15 is applied	Rs.32,963/- x 12 x 15 = Rs.59,33,340/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of consortium to widow-appellant No.1	Rs.40,000/-
(viii)	Loss of filial consortium to the children-appellant Nos.2, 3 & 4.	Rs.1,20,000/- (Rs.40,000/- each)
(ix)	Loss of filial consortium to the mother-appellant No.5	Rs.40,000/-
(x)	TOTAL COMPENSATION AWARDED	Rs.61,63,340/-
(xi)	Enhanced amount of compensation	Rs.61,63,340 – 28,90,825 = Rs.32,72,515/-

The enhanced amount of compensation of Rs.32,72,515/- 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

03.12.2019
ajp

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