

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

FAO-1815-2017(O&M)

Date of decision: January 11, 2023

Poonam Gupta (now deceased) through LRs and others

....Appellants

versus

Jitender Pal Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ishan Singh Cooner, Advocate for the appellants.

Mr. Sanjay Jain, Advocate for respondents No.1 and 2.

Mr. Paul S. Saini, Advocate and
Mr. Vipul, Advocate for respondent No.3.

ARUN MONGA, J. (ORAL)

Aggrieved with impugned award dated 07.01.2016 passed by the learned Motor Accident Claims Tribunal, Ambala, appellant/claimants, are before this Court by way of an appeal seeking enhancement of compensation.

2. Succinct facts as noted by the Tribunal are as below:

“Brief facts of the case are that the day 17.04.2013 proved unfortunate for the petitioners-claimants who lost their sole earning member Manish Mittal @ Sanju, husband of claimant no. 1 and father of claimant no.2, who was going on his work place at Kharga Sports Complex, Ambala Cantt. on his motor cycle bearing registration number PB11AR(T)-9460 from Lalru Mandi along with his friends Major Singh and Vijay Kumar and the said motor cycle was being driven by Manish Mittal alias Sanju and Major Singh and Vijay Kumar were pillion riders on this motor cycle. At about 11.30 a.m. when they reached near MT Crossing, near Air Force Station, Ambala and took turn towards Air Force Station in the meanwhile a TATA ACE bearing registration No.HR 37-C-5578, which was being driven by respondent no.1 in a very high speed without observing the traffic rules in a rash and negligent manner came from Air Force Station side and struck with the motor cycle of the deceased from driver side and

due to that impact, all the occupants of the motor cycle along with the motor cycle fell down and Vijay Kumar suffered jaw fracture, deceased Manish Mittal alias Sanju suffered internal head injuries and other injuries on his person and Major Singh suffered scratches on his person. Respondent no. 1 stopped for a moment and then fled away from the spot along with his offending vehicle. Injured Vijay Kumar was taken to Civil Hospital, Ambala City by Manish Mittal and Major Singh from where he was referred to GMCH, Sector 32, Chandigarh due to grievous and serious injuries on his person. Major Singh also took first aid from the hospital due to having scratches on his person and then Major Singh and deceased went to their respective houses but after reaching in house the deceased Manish Mittal alias Sanju suffered severe pain in his head due to internal injuries and due to having unbearable pain from internal head injuries he succumbed to the accidental injuries at home and was removed to Civil Hospital, Ambala City where doctor declared him brought dead and Post mortem on his dead body was conducted there. His motor cycle was also badly damaged in this accident. It was further averred that claimants have spent more than Rs.One lac on transportation, cremation and last rites of the deceased.”

3. Upon notice, respondents Jitender Pal Singh (driver) and Insurance Company appeared and contested the petition. Respondent No.2-owner did not appear despite service and he was proceeded against *ex parte*. Proforma respondent No.4 (father of deceased) filed separate written statement admitting the claim of the claimants. Respondent No.1 denied the factum of accident and involvement of TATA ACE bearing registration No.HR-37-C-5578.

4. Respondent-Insurance Company also denied the factum of accident and involvement of said vehicle. It was averred that deceased suffered alleged injuries and death, but the same was due to his own rash and negligent driving with two pillion riders. It was alleged that respondent No.1-Driver was not having valid driving licence. Pro forma respondent No.4 pleaded that claimants spent Rs.One lac on the treatment of deceased and claimants are entitled to the compensation amount.

5. Learned Tribunal framed the following issues:

- “1. *Whether an accident took place on 17.04.2013 due to rash and negligent driving of TATA ACE bearing registration No.HR 37-C-5578 by respondent no.1 resulting in to death of Manish Mittal, as alleged?OPP*
2. *If issue no.1 is proved then to what amount of compensation and from whom, the claimants are entitled to receive it?OPP*
3. *Whether the claim petition is not maintainable in its present form ?OPR*
4. *Whether the respondent no.1 who was driving the vehicle in question at the time of alleged accident was not holding a valid and effective driving licence at the time of alleged accident? OPR*
5. *Relief.”*

6. On appraisal of record/ evidence, learned Tribunal decided issues No.1 & 3 in favour of claimants. Issue No.4 was decided against respondents No.1 and 2 and in favour of respondent No.3. Consequently, compensation of Rs.9,93,000/- was awarded in favour of the claimants to be paid by respondent-insurance company at the first instance, along with interest @7.5% p.a. from the date of petition till actual payment, with rights of recovery from respondents No.1 and 2 jointly and severally together with costs.

7. Learned counsel for the appellant/claimants contends that learned Tribunal has not granted anything towards future prospects and the same needs to be enhanced by way of 40%. Nothing has been awarded on account of loss of consortium and estate and love and affection. Funeral expenses also need to be enhanced.

8. It is, however, pointed out by leaned counsel for the respondents and so is also borne out from the award that the compensation of Rs.9,93,000/- computed by the learned Tribunal includes a sum of Rs. One lakh for petitioner No.1 (widow) for loss of consortium and loss of estate.

Likewise, another sum of Rs. One lakh for petitioner No.2 (minor daughter) for loss of love and affection. Of course, no addition of income has been allowed for future prospects of deceased. Indisputably, his age was about 32 years at the time of death. To that extent, the manifest error committed by the MACT warrants rectification and award needs to be re computed.

9. Having heard learned counsel for the parties and applying the principles in the cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **National Insurance Co. Ltd. v. Pranay Sethi**, reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**, the same are being recalculated as below:

Deceased	Manish Mittal @ Sanju
Date of accident/death	17.04.2013
Age	32 years
Claimants	2 (Wife and minor daughter)
Annual Income of the deceased	Rs.6,000/- per month x 12 = Rs.72,000/-
Future prospects	40% (Rs.72,000+28,800) = Rs.1,00,800/-
Deduction in dependency	1/3 rd (1,00,800-33,600)=Rs.67,200/-
Multiplier @ 16	Rs.10,75,200/- (Rs.67,200/- x 16)
Loss of love and affection	Nil
Consortium & estate	Rs.88,000/-(Rs.44,000 x 2)+ Rs.16,500/-
Funeral expenses	Rs.16,500/-
Total	Rs.11,96,200/- (Rs.10,75,200 + Rs.88,000 + Rs.16,500 + Rs.16,500)
Compensation awarded by the Tribunal	Rs.9,93,000/-
Enhanced amount of compensation to be paid	Rs.2,03,200/- (Rs.11,96,200-Rs.9,93,000/-)

10. Accordingly, the impugned award is modified in terms of the above computations. Revised compensation shall be payable to the claimants along with interest, as already imposed by the learned Tribunal, from the date of filing of the claim petition till the actual date of payment. The same shall be payable to the claimants within a period of 2 months of their approaching the insurance company along with web print of the instant order, failing which additional penal interest of 3% p.a. shall be leviable on the amount to be paid from the date of filing of the claim petition. Revised compensation amount be disbursed to the claimants in terms of the apportionment as already determined by the Tribunal.

11. Disposed of in above terms.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No