

FAO-5938-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5938-2018 (O&M)

Date of decision: May 11, 2023

Jagir Kaur and another

....Appellants

versus

Gurpreet Singh (since deceased) through his wife and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Anil Kumar Spehia, Advocate for appellants.Mr. Sahil Khunger, Advocate
for respondent No.3-M/s Bajaj Finance Ltd.Mr. R.C. Gupta, Advocate
for respondent No.4-M/s Oriental Insurance Company Ltd.Service upon respondents No.1 and 2, dispensed with vide order dated
29.08.2019.

ARUN MONGA, J. (ORAL)

Little did the parents of their only son Makhan Singh, a young man of 20 years old working as a Mechanic, know that on the fateful day they would be seeing him for the last time, when he left home not to ever return as he was hit by a motor-cycle when he was cycling on his way-back. More of it later.

Appellants who are parents are before this Court assailing impugned award dated 05.04.2018 rendered by learned Motor Accidents Claims Tribunal, Jalandhar (for brevity, "Tribunal") for enhancement of compensation.

2. Succinct facts, as noted by learned Tribunal in para-2 of its award, are as below:

"2. *It is further case of the claimants that on 14.5.2016 at about 8:00 PM Makhan Singh was going on his cycle near Rana Ka Dhaba of village Kullar, then a motorcycle being driven by Gurpreet Singh came there. Claimants further stated that Gurpreet Singh was driving the motorcycle in a rash and negligent manner and thereafter he struck the motorcycle in the cycle of deceased Makhan Singh. Claimants further stated that due to struck deceased Makhan Singh suffered multiple injuries. Claimants further stated that thereafter Makhan Singh was admitted in Civil Hospital, Jalandhar, where Makhan Singh died. Claimants further stated that accident took place due to rash and*

negligent driving of Gurpreet Singh. Claimants further stated that postmortem of dead body of deceased was got conducted from Civil Hospital, Jalandhar. Claimants further stated that Gurpreet Singh husband of respondent no.1 was owner of the motorcycle Bajaj CT-100 Deluxe which was purchased from respondent no.2 and financed by respondent no.3. Claimants further stated that thereafter DDR no.13 dated 15.5.2016 was registered. Claimants further stated that they were dependent on the income of deceased. Claimants further stated that Gurpreet Singh was owner of the vehicle. Claimants further stated that deceased Makhan Singh was unmarried. Claimants further stated that respondents are jointly and severally liable to pay the compensation amount along with interest.”

3. Respondent No.1 filed written statement before the MACT raising preliminary objections that claim petition was not maintainable. It was stated that husband of respondent No.1 namely Gurpreet Singh also died in the same very accident which took place on 14.5.2016. Gurpreet Singh was not driving the motorcycle in a rash and negligent manner. It was admitted that Gurpreet Singh was driver and owner of the said vehicle.

3.1. Respondent No.4-Insurance company filed separate written reply taking preliminary objections that driver of the motorcycle was not holding any valid and effective driving licence to drive vehicle at the time of alleged accident. There was breach of conditions of the insurance policy; accident, if any took place due to negligence of bicycle rider; police officials did not comply with the provisions of section 158 (6) of the Motor Vehicles Act. Insurance Company was thus not liable to pay any amount of compensation. On merits, it was denied that deceased was earning Rs.20,000/- per month.

4. Learned Tribunal framed the following issues:

- “1. *Whether Makhan Singh son of Swaran Singh died in a Motor Vehicle Accident caused by husband of respondent no.1 with his rash or negligent driving of vehicle make motorcycle CT-100 Deluxe Bajaj bearing Engine No.57134 and Frame no.01733 colour black/blue make 2016 on 14.5.2016 and thereafter he died on 15.5.2016 due to injuries suffered by him in the accident.*
2. *Whether claimants are entitled to compensation for the death of Makhan Singh, if so, to what extent and from whom?OPP.*
3. *Whether claim present petition is not maintainable in the present form?OPR.*
4. *Relief.”*

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5. Claim petition against respondent No.3 (M/s Bajaj Finance Ltd.) was dismissed as withdrawn by the claimants. No relief was sought against it.

6. On appraisal of record/ evidence, learned Tribunal decided issues No.1 to 3 in favour of claimants. Issue No.2 was decided partly against respondents. Consequently, award of Rs.9,74,550/- was pronounced in favour of claimants and they were held entitled equally to the same. Respondent No.4 was directed to pay compensation amount to the claimants within two months from the date of award, failing which claimants were held entitled to recover the above said award amount along with interest at the rate of 9% per annum from the date of claim petition till its realization. The amount of compensation was ordered to be directly remitted to the claimants in their bank accounts and they were directed to supply requisite particulars of their bank accounts to respondent No.4. Respondent No.4-Insurance Company was granted recovery rights to recover compensation amount from the property of deceased Gurpreet Singh (driver of the offending motorcycle).

7. Learned counsel for appellant-claimants contends that income of the deceased was wrongly assessed as Rs.6,247/- per month by wrongly applying minimum wages prescribed by Government of Punjab vide notification dated 15.11.2012. He would contend that from the documentary evidence placed before the learned Tribunal, it was clear that deceased was earning not less than Rs.20,000/- per month. He would urge that even if income was to be assessed on the basis of minimum wages, then too it ought to have been Rs.8,887.52 per month (for skilled worker) in terms of notification dated 30.11.2021 issued by the office of Labour Commissioner, Punjab applicable w.e.f. 01.03.2016. He would further contend that learned Tribunal did not grant anything towards loss of love and affection, loss of estate and funeral expenses, which ought to have been awarded. He would also urge that no interest was awarded to claimants on the compensation amount from the date of filing the claim petition. It was only conditionally directed that on failure to deposit

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the awarded compensation within two months, interest @ 9% per annum would be payable.

8. On the other hand, learned counsel for respondent No.4-Insurance Company opposes the appeal while supporting the award of learned Tribunal.

9. I have heard learned counsel for the parties and perused case file.

10. In view of the notification dated 30.11.2021 *ibid*, I am of the view that income of the deceased deserves to be assessed as Rs.9,000/- (by rounding of Rs.8,887.52) per month being minimum wages for the unskilled persons at the relevant time since deceased was working as a cycle mechanic.

11. Having heard rival contentions and on perusal of impugned award, I find that the submissions made by learned counsel for respondent No.4-Insurance Company before learned Tribunal were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the view taken by learned Tribunal.

12. In the premise, applying the principles in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another¹**, **National Insurance Co. Ltd. v. Pranay Sethi²** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others³**, I am of the view that compensation for the death of Makhan Singh deserves enhancement.

13. In view of the above discussion, various computations of compensation *qua* each head are modified as below:

Deceased	Makhan Singh
Date of accident/death	14.05.2016
Age	20 years
Claimants	Mother and father
Income of the deceased	Rs.9,000/- per month
Future prospects	40% (Rs.9,000+3,600) = Rs.12,600/-
Deduction in dependency for personal expenses	1/2 (12,600-6,300)=Rs.6,300/-

¹ 2009 (3) The Punjab Law Reporter 22

² 2017) 16 SCC 680

³ 2019 (3) SCC (Cri) 153

Annual dependency	Rs.75,600/- (6,300x 12)
Total loss of dependency with Multiplier of 18	Rs.13,60,800/-
Loss of Consortium	Rs.44,000/- x 2 = Rs.88,000/-
Loss of estate & funeral expenses	Rs.16,500/- + Rs.16,500/- = Rs.33,000/-
Total	Rs.14,81,800/- (Rs.13,60,800/- + Rs.88,000/- + Rs.33,000/-)
Compensation awarded by the Tribunal	Rs.9,74,550/-
Enhanced amount of compensation to be paid	Rs.5,07,250/- (Rs.14,81,800-Rs.9,74,550/-)

14. Accordingly, impugned award is modified to the extent of above computations. Entire compensation shall be payable to claimants along with interest @ 7% per annum, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional compensatory interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimants in the proportion determined by learned Tribunal.

15. In the premise, appeal filed by claimants stands disposed of in above terms.

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

(ARUN MONGA)
JUDGE

May 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No