

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

**FAO No.5354 of 2013
Date of decision: 03.11.2015**

Simarjit Kaur

....Appellant

Versus

Satpal Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Bhupender Singh Saroha, Advocate
for the appellant.

Mr. Eklavya K. Darshi, Advocate
for respondent No.3.

RITU BAHRI J. (Oral)

CM No.22851-CII of 2013

For the grounds mentioned in the application, the same is allowed and the delay of 49 days in filing the appeal stands condoned.

MAIN CASE

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Ropar (hereinafter referred to as 'the Tribunal') vide award dated 30.03.2013, on account of death of Kirandeep Kaur in a motor vehicular accident.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 29.01.2010, HC Surinder Singh, was posted in Police Station Chamkaur Sahib. On that day, he along with PHG Jarnail Singh was on ambulance bearing No.PB-12-G-3044 and was on patrolling duty. They patrolled villages Katlaur and Kandhola and were returning to Chamkaur Sahib. At about 04:45 p.m., they reached near culvert near rest house, Chamkaur Sahib then, in the meantime, one Tavera car bearing registration No.HR-68-4655, being driven by respondent No.1, crossed the ambulance of the police party. The said vehicle was being driven at high speed, rashly and negligently, by respondent No.1 and dashed against a tree standing on bank of canal. As a result of which, the Tavera car turned turtle in the canal and the passengers travelling in the said vehicle raised raula. In the meanwhile, the police party reached there and they with the help of passerby took out the passengers from the Tavera vehicle and brought them to Civil Hospital, Chamkaur Sahib. HC Surinder Singh revealed the names of the passengers as Rajwant Kaur wife of Manjit Singh, Satpal Singh son of Gurdial Singh, Buta son of Mukhtiar Singh, Simar Kaur wife of Sonu, Santokh Singh son of Najar, Babu Kaur wife of Santokh Singh, Vicky wife of Charanjit Singh, Jaswinder Singh son of Babu Singh, Gursewak Singh son of Gurpreet Kaur wife of Pinder Singh, Rajwinder Singh and Gurpreet Kaur sons of Sonu. They had received injuries

in the accident and Rajwinder Singh and Kirandeep Kaur died in the hospital.

In this regard, FIR No.19, dated 29.01.2010, under Sections 279, 337 and 304-A IPC, in respect of the accident in question was got registered at Police Station Chamkaur Sahib on the statement of HC Surinder Singh.

Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Simarjit Kaur appeared as PW-2 and HC Surinder Singh (eye-witness) appeared as PW-3 to prove the accident in question. Neither the driver of the offending vehicle nor any other person claiming to have witnessed the accident appeared in the witness-box to rebut the statements of PW-2 and PW-3. The Tribunal has returned the finding on Issues No.1 and 2 in favour of the claimant-appellant.

The claim petition was partly accepted by the Tribunal and a sum of Rs.3,00,000/- was awarded as compensation on account of death of Kirandeep Kaur along with future interest at the rate of 9% per annum from the date of filing of the petition till its realization.

The notional income of the deceased was taken as Rs.15,000/- per annum. Kirandeep Kaur (deceased) was 13 years of age at the time of the accident/death and the multiplier of 15

was applied as per the Second Schedule of Motor Vehicles Act, 1988 (for short 'the Act'). Thus, the claimants were found entitled to compensation of Rs.2,25,000/-. In addition to it, further compensation of Rs.75,000/- was awarded towards funeral expenses, mental agony, loss of love and affection and pain and sufferings. Hence, the claimant-appellant was found entitled to total compensation of Rs.3,00,000/-.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

Learned counsel for the appellant has submitted that as per School Certificate Ex.PX and Date of birth Certificate Ex.PY, the deceased-Kirandeep Kaur was born on 26.08.1996 and was about 13 years of age at the time of accident. Learned counsel for the appellant has referred to the judgment ***“Kishan Gopal and another vs Lala and others”***, 2013 (4) R.C.R. (Civil) 276, to contend that in case of death of a 10 years' old child, the Hon'ble Supreme Court has referred to the Second Schedule of the Act, and has taken the income of a non-earning person as Rs.30,000/- per annum instead of Rs.15,000/- per annum. This deviation was made by keeping in view the fact that the amendment in the Second Schedule of the Act, was made in the year 1994 and for the last 20-22 years, no further amendment was made and the value of a rupee had gone down considerably.

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.

In the present case, the deceased was about 13 years of age and was a non-earning person, therefore, the notional income of the deceased is to be taken as Rs.30,000/- per annum and the multiplier of 15 is to be applied as per Second Schedule of the Act.

The Hon'ble Supreme Court in ***“R.K. Malik and another vs Kiran Pal and others”***, 2009 (14) SCC 1, has affirmed the judgment passed by Delhi High Court, where in a claim petition filed under Section 163-A of the Motor Vehicles Act, the pecuniary damages to the extent of Rs.75,000/- has been allowed.

Accordingly, the compensation is re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income	Rs.30,000/-
(ii)	Compensation after multiplier of 15	Rs.4,50,000/- (Rs.30,000/- x 15)
(iii)	Pecuniary damages	Rs.75,000/-
(iv)	TOTAL COMPENSATION AWARDED	Rs.5,25,000/-
(v)	Enhanced amount of compensation	(Rs.5,25,000/-) – (Rs.3,00,000/-) =Rs.2,25,000/-

The enhanced amount of compensation of **Rs.2,25,000/-** 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 ***“Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others”***, 2015(1) SCC 539. 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

03.11.2015

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