

426 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) **FAO No. 1108 of 2000 (O&M)**
Decided on: 8.7.2015.

United India Insurance Company Limited

... Appellant

Versus

Smt. Suman Lata and others

... Respondents

(2) **FAO No. 1109 of 2000 (O&M)**

United India Insurance Company Limited

... Appellant

Versus

Lal Chand

... Respondent

(3) **FAO No. 1110 of 2000 (O&M)**

United India Insurance Company Limited

... Appellant

Versus

Santra and others

... Respondents

(4) **FAO No. 610 of 2002 (O&M)**

Santra and another

... Appellants

Versus

Mukesh Kumar and others

... Respondents

(5) **FAO No. 2481 of 2002 (O&M)**

Suman Lata and another

... Appellants

Versus

Mukesh Kumar and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. R.M. Suri, Advocate,
for the insurance company.

Mr. Arun Yadav, Advocate,
for the appellants in FAO No. 610 & 2481 of 2002.

K.C.PURI.J.

Vide this judgment, I intend to dispose of (i) FAO No. 1108 of 2000 titled as 'United India Insurance Company Limited vs. Smt. Suman Lata and other'; (ii) FAO No. 1109 of 2000 titled as 'United India Insurance Company Limited vs. Lal Chand'; (iii) FAO No.1110 of 2000 titled as 'United India Insurance Company Limited vs. Santra and others; (iv) FAO No.610 of 2002 titled as 'Santra and another vs. Mukesh Kumar and others; (v) FAO No.2481 of 2002 titled as 'Suman Lata and another vs. Mukesh Kumar and others' arising out of the same accident and same Award dated 7.12.1999 passed by Sh. Dharamvir Singh, Presiding Officer, Motor Accident Claims Tribunal, Rewari (for short “the Tribunal”).

Briefly stated, Santra mother and Jagdish father of Manoj Kumar (deceased) filed claim petition No. 70/1999 titled as 'Santra vs. Mukesh Kumar and others; claiming compensation on account of death of their son Manoj Kumar, aged 19 years, in a motor vehicular accident on 26.6.1996. Lal Chand and Chhota Devi parents of Ved Parkash and Babru Bhan younger brother of deceased Ved Parkash filed claim petition No. 87 of 1999 and Suman Lata widow,

Bimla mother and Yashpal father of deceased Inderpal filed claim

petition No. 300 of 1999. All these claim petitions were partly accepted vide Award dated 7.12.1999 passed by the Tribunal.

Feeling dis-satisfied with the said Award dated 7.12.1999, the insurance company has directed three appeals bearing FAO No.1108 to 1110 of 2000 as detailed above praying for dismissal of the claim petition.

Smt. Santra filed FAO No.610 of 2002 and Suman Lata filed FAO No.2481 of 2002 for enhancement of compensation. As these all appeals have arisen out of the same accident and same Award and as such these are being disposed of vide common order.

FAO No.1108-1110 of 2000

All these appeals have been directed by the insurance company against the Award dated 7.12.1999. Learned counsel for the insurance company has submitted that the Tribunal has committed grave error by deciding issue No.1 in favour of the claimants. The claimants have failed to prove the negligence of the offending vehicle. At the most, it is a case of contributory negligence as three persons were travelling on a motor cycle.

I have carefully considered the said submission but do not find any force in that submission.

The driver of the offending vehicle has not come into the witness box to depose about the manner of accident. The claimants have produced the evidence regarding negligence of driving of bus No.

HR-47-0743 by respondent No.1. The evidence produced by the

claimant goes un-rebutted. The FIR No.119 dated 26.6.1996 under Sections 279, 337 and 304-A IPC has been registered against respondent No.1.

So, in view of above discussion, finding on issue No.1 stands affirmed.

The other ground challenging the Award is that no proper opportunity was given to the respondent to lead evidence regarding driving licence. The occurrence relates to the year 1996 and the Award was passed on 7.12.1999. It does not lie in the mouth of the insurance company that no opportunity was given. Learned counsel for the insurance company could not demonstrate how proper opportunity was not accorded to the insurance company to lead evidence.

No other point has been urged before this Court. So, in view of above discussion, the appeals filed by the insurance company bearing FAO No. 1108 to 1110 of 2000 stands dismissed.

FAO No.610 of 2002

This appeal has been filed by Smt. Santra and another. The deceased Manoj was aged 19 years and was a student and he is stated to be helping hand to his parents in the agriculture farming. The claimants have alleged that his income was Rs.2500/- per month. However, the income of the deceased has been taken as Rs.2100/- per month. So, the said amount cannot be said to be on lower side. Learned Tribunal has taken the dependency to the extent of 1/3rd and the amount

was calculated as 1400/- (2100-700) per month. The yearly dependency

has been taken as Rs.16,800/- for 6 years and thereafter the annual dependency has been taken as Rs.7200/- and multiplier of 12 has been applied. So, in this manner, the total amount of compensation was calculated as Rs.1,87,000/-.

The parents have prayed for enhancement of compensation.

Learned counsel for the appellants has submitted that future prospects should have been taken into account while granting the amount of compensation. The multiplier of 18 has already been applied in view of age of the deceased as 19 years. However, it is submitted that the dependency should have been calculated by deducting one half in respect of personal expenses. No amount in respect of funeral expenses and loss of love and affection has been allowed.

Learned counsel for the insurance company has supported the Award. He has relied upon authority **Universal Sampo General Insurance Company Limited vs. Satya Parkash and others** **2015 (3) PLR 89** and on the strength of the same, it is argued that future prospects cannot be granted.

I have given thoughtful consideration to the rival contentions of both the parties.

The income of the deceased has been taken as Rs.2100/- per month and the same cannot be said to be on lower side.

So, the income of the deceased is taken as Rs.2100/- per month.

However, in view of authorities (i) **Rajesh and others vs. Rajbir**

Singh and others 2013 ACJ 1403 and; (ii) Munna Lal Jain and another vs. Vipin Kumar Sharma and others in C.A. No.4497 of 2015 decided on 15.5.2015, future prospects have to be taken into account while calculating the amount. The future prospects at the age of 19 years is to the extent of 50%. So, by adding 50% the income of the deceased can be taken as Rs.3150 (2100+1050). Deduction in respect of personal expenses has to be made to the extent of 50% in view of authority Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(6) SCC 121. So, the yearly dependency comes to Rs.18,900/- (1575 x 12). The multiplier of 18 has rightly been applied by the Tribunal in view of Sarla Verma's case (supra) So, by applying that multiplier, the amount of compensation comes to Rs.3,40,200/-. Another sum of Rs.10,000/- stands allowed in respect of expenses on last rites and transportation of dead body. The claimants are also held entitled to claim Rs.25,000/- in respect of loss of love and affection. So, in this manner, the claimants are held entitled to claim Rs.3,75,200/-.

The enhanced amount shall carry interest @ 7.5% per annum from the date of application till payment. The liability to pay the amount shall be the same as ordered by the Tribunal.

FAO No.2481 of 2002

In this case, the claimants are widow and parents of the deceased Inderpal. The Tribunal has taken the income of the deceased as Rs.2100/- per month and 1/3rd amount has been deducted in

respect of personal expenses. The dependency was calculated as Rs.1400/- per month. The yearly dependency has been taken as Rs.16,800/-. The multiplier of 16 has been applied by the Tribunal. So, the amount of compensation was calculated as Rs.2,68,800/-. A sum of Rs.10,000/- was allowed towards cremation expenses etc. and in this manner, total amount calculated was Rs.2,78,000/-.

The arguments advanced by learned counsel for the appellants are same as in FAO No.610 of 2002.

Learned counsel for the insurance company has supported the Award.

After going through the record, the compensation requires re-calculation as under:-

The income of the deceased has been rightly taken as Rs.2100/- per month. The deceased was aged about 24 years and as such in view of authority **Rajesh's case (supra) and Munna 's case (supra)** 50% amount has to be added in respect of future prospects. So, by adding the amount of 50%, the income comes to Rs.3150/-. There are three claimants in the present case. So, the monthly dependency comes to Rs.2100/- after deducting 1/3rd in respect of personal expenses (3150-1050). The yearly dependency comes to Rs.25,200/-. The multiplier applicable at the age of 24 is 18 so, by applying that multiplier the amount of compensation comes to Rs.4,53,600/-. The Tribunal has rightly allowed a sum of Rs.10,000/- in respect of cremation expenses and last rights of the deceased. Widow Suman Lata

is held entitled to claim Rs.25,000/- on account of consortium. The claimants are also held entitled to claim Rs.25,000/- in respect of loss of love and affection. In this manner, the claimants are held entitled to claim Rs.5,13,600/-.

The enhanced amount shall carry interest @ 7.5% from the date of filing of claim application till realization. The liability to pay the amount shall be the same as ordered by the Tribunal.

The appeal stands accepted to that extent.

8.7.2015.
SN

(K.C.PURI)
JUDGE