

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

**FAO No.213 of 1997 (O&M)
Date of decision: 23.09.2015**

Kavita Sharda and anotherAppellants

Versus

Nafe Singh and othersRespondents

2) FAO No.214 of 1997 (O&M)

Pawan ShardaAppellant

Versus

Nafe Singh and othersRespondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vikas Kumar, Advocate
for the appellants (in both the appeals).

Mr. Akshay Jain, Advocate
for respondent No.1(in both the appeals).

Mr. N.K. Sharma, DAG, Haryana
for the State.

RITU BAHRI J. (Oral)

By this single judgment I intend to dispose of two appeals i.e. FAO No.213 of 1997 titled as “*Kavita Sharda and another vs Nafe Singh and others*” and FAO No.214 of 1997 titled as “*Pawan Sharda vs Nafe Singh and others*” as both these appeals have arisen out of the same award dated 02.09.1996.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 08.02.1994 at about 12:15 p.m. Gobind Sharda (deceased) along with some other occupants was travelling in his Ambassador car bearing registration No.HR-24-B-0981 being driven by Ram Rakh on its correct left side and at a very moderate speed in the area of village Sahwala. A bus bearing registration No.HR-20-A-9526 being driven by Nafe Singh-respondent No.1 in a rash and negligent manner struck into the Ambassador car by coming from the wrong side of the road and without leaving permissible area for his car on the road. Due to said impact, all the occupants of the car received multiple grievous and serious injuries on their persons. Ram Rakh (driver of the car) died at the spot. Gobind Sharda including other occupants of the car were got admitted at General Hospital, Sirsa and after considering the condition of Gobind Sharda, he was referred to Sehgal's Neurological Research Institute, Delhi where he succumbed to his injuries and died on 16.02.1994. In the said accident, Pawan Sharda (brother of the deceased) also received multiple grievous injuries.

In this regard, FIR No.20 dated 08.02.1994, under Sections 279, 337, 338, 304-A and 427 IPC, in respect of the accident in question was got registered at Police Station Baragudha, Haryana.

Consequently, the claimants-appellants filed a claim

petition before the Tribunal.

COMPENSATION ASSESSED BY MACT

Gobind Sharda's case

On the basis of evidence led by the parties, the Tribunal has returned the finding on Issue No.1 in favour of the claimants-appellants. The claim petition was accepted by the Tribunal and a sum of Rs.5,73,400/- was awarded as compensation on account of death of Gobind Sharda along with future interest at the rate of 12% per annum from the date of filing of the petition till its realization.

The annual income of the deceased was assessed at Rs.42,000/- per annum, out of which 1/3rd amount was deducted towards personal expenses. The dependency of claimants, thus, came to Rs.28,000/- per annum. Gobind Sharda (deceased) was 23 years of age at the time of the accident/death and the multiplier of 16 was applied. Thus, the claimants were found entitled to compensation of Rs.4,48,000/-(Rs.28,000 x 16). In addition to it, a compensation of Rs.1,20,000/- was awarded towards medical treatment, special diet, attendant's expenses, transportation and a sum of Rs.5,000/- was allowed in respect of funeral expenses. Hence, the claimants were found entitled to total compensation of Rs.5,73,400/-.

Feeling dissatisfied with the impugned award, the claimants-appellants has preferred the appeal i.e. **FAO No.213 of**

1997 titled as *“Kavita Sharda and another vs Nafe Singh and others”* and the injured-claimant, namely, Pawan Sharda preferred appeal i.e. FAO No.214 of 1997 titled as *“Pawan Sharda vs Nafe Singh and others”*.

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-Gobind Sharda, as a result of the accident.

FAO No.213 of 1997

The Tribunal while assessing the annual income of the deceased-Gobind Sharda has not been taken into consideration the fact that the deceased was a partner of the following partnership firms:-

1. *M/s Ganga Sagar Trading Company;*
2. *M/s Sat Narain Ram Chander, Nai-Mandi, Dabwali;*
3. *M/s Sat Narain Ram Chander, Sirsa and*
4. *M/s Sat Narain Ram Chander, Dabwali.*

As per the deposition of PW-1 Kavita Sharda, the deceased had earned a profit of Rs.15,175/- from the aforesaid four firms.

Hence, the existence and income from these firms are not in doubt, therefore, the income from these four firms is

required to be added in the annual income of the deceased.

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 of *Asha Verman and others vs. Maharaj Singh and others*, 2015(2) RCR (Civil) 520, *Sarla Verma and others vs. Delhi Transport Corporation and another*, 2009 (3) RCR (Civil) Page 77, *Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54 and *Munna Lal Jain and another vs. Vipin Kumar Sharma and others*, 2015(3) Recent Apex Judgments 459. Keeping in view the facts mentioned above, Rs.15,000/- is added in the income of the deceased. So, the income of Gobind Sharda (deceased) comes to Rs.57,000/- per annum (Rs.42,000 + Rs.15,000). Accordingly, the compensation re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.42,000/- + Rs.15,000/-)	Rs.57,000/-
(ii)	50% of (i) above to be added as future prospects (Age 23 years)	(Rs.57,000/-) + (Rs.28,500/-) = Rs.85,500/-
(iii)	Dependency of the claimant after deducing 1/3rd of (ii) towards personal expenses of the deceased	(Rs.85,500/-) - (Rs.28,500/-) = Rs.57,000/-
(iv)	Compensation after multiplier of 18 is applied	(Rs.57,000/- x 18) =Rs.10,26,000/-
(v)	Loss of consortium to widow	Rs.1,00,000/-
(v)	Loss of estate	Rs.1,00,000/-
(vi)	Loss of love and affection for mother	Rs.50,000/-
(vii)	Funeral expenses	Rs.25,000/-
(viii)	TOTAL COMPENSATION AWARDED	Rs.13,01,000/-
(ix)	Enhanced amount of compensation	(Rs.13,01,000/-) – (Rs.5,73,400/-) =Rs.7,27,600/-

FAO No.214 of 1997

This appeal has been filed by claimant-injured, namely, Pawan Sharda for enhancement of compensation on account of permanent disability suffered by him to the extent of 43% in the aforesaid accident.

The amount of compensation awarded to Pawan Sharda-injured has been assessed by the Tribunal as under:-

SR. NO.	HEADS	AMOUNT
1.	For medical treatment	Rs.74,325.20/-
1.	Special diet upto 31.03.1994	Rs.5,000/-
2.	Payment of wages to an attendant for at least six months @ Rs.850/- per month	Rs.5,100/-
3.	For permanent disability to the extent of 43% vide Ex.PH, pain, shock and suffering, mental agony and other incidental expenses	Rs.50,000/-
4.	Loss of income	Rs.37,500/-
5.	TOTAL	Rs.1,71,925.20/- (say Rs.1,72,000/-)

The permanent disability suffered by the injured-claimant was 43%. Dr. M.K. Soni, has appeared as PW-3 and proved the Disability Certificate (Ex.PH).

A perusal of Disability Certificate (Ex.PH) shows that the injured-claimant has received 43% permanent disability as detailed below:-

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|----|--|------------|
| 1. | <i>Restriction of (R) knee motion 30% rating</i> | <i>9%</i> |
| 2. | <i>Restriction of (R) hip motion 20% rating</i> | <i>6%</i> |
| 3. | <i>Restriction of (R) wrist motions 50% rating</i> | <i>15%</i> |
| 4. | <i>Moderate pain interfering functions rating</i> | <i>6%</i> |
| 5. | <i>Shortening of (R) lower limb by 2 cm rating</i> | <i>4%</i> |

6. *Superficial complications of scaring rating* 3%

It stands established that the injured-Pawan Sharda received permanent disability to the extent of 43%, as a result of the accident.

Accordingly, the compensation awarded by the Tribunal is required to be re-assessed at the rate of Rs.2,000/- per percentage, so, the amount of compensation comes to Rs.86,000/- on account of 43% permanent disability received by him. A sum of Rs.74,325.20/- on account of medical treatment has rightly been awarded by the Tribunal. The injured-claimant remain admitted in the hospital for about five months, so, special diet is enhanced to Rs.15,000/-. Another Rs.15,000/- stands enhanced on account of payment of wages to injured-claimant. A sum of Rs.30,000/- in respect of pain and suffering and Rs.10,000/- in respect of transportation charges also stands allowed. So, the amount of compensation comes to Rs.2,30,325/- (Rs.86,000 + Rs.74,325.20 + Rs.15,000 + Rs.15,000 + Rs.30,000 + Rs.10,000) and after deducting Rs.1,72,000/- awarded by the Tribunal, the enhanced amount of compensation comes to Rs.58,325/-.

The enhanced amount of compensation of **Rs.7,27,600/-** shall be payable to the claimants-appellants and **Rs.58,325/-** shall be payable to injured-claimant, namely, Pawan Sharda, 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

23.09.2015

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