

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

**FAO NO. 1397 OF 2002 (O&M)
DECIDED ON : 04.05.2015**

Raju

...Appellant

versus

Kamlesh and others

...Respondents

and

FAO NO. 1400 OF 2002 (O&M)

Surekha Devi @ Surekha Mehta

...Appellant

versus

Kamlesh and others

...Respondents

and

FAO NO. 1401 OF 2002 (O&M)

Kumari Mahima

...Appellant

versus

Kamlesh and others

...Respondents

and

FAO NO. 1402 OF 2002 (O&M)

Narjeet Thapa @ Monu Thapa and another

...Appellants

versus

Kamlesh and others

...Respondents

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

Present : Mr. Hari Om Sharma, Advocate,
for the appellants.

Mr. R. M. Suri, Advocate,
for the Insurance company.

K. C. PURI, J. (ORAL)

Vide this common judgment, I intend to dispose of four appeals bearing **FAO No. 1397 of 2002** titled as, "**Raju vs. Kamlesh and others**", **FAO No. 1400 of 2002** titled as, "**Surekha Rani vs. Kamlesh and others**", **FAO No. 1401 of 2002** titled as, "**Kumari Mahima vs. Kamlesh and others**" for enhancement of compensation in respect of injuries sustained by them in a motor vehicular accident and **FAO No. 1402 of 2002** titled as, "**Narjeet Thapa @ Monu Thapa and another vs. Kamlesh and others**" claiming compensation on account of death of Veeru Thapa in a motor vehicular accident, as all these

appeals have arisen out of the common Award dated 03.10.2001 passed by Motor Accident Claims Tribunal, Sonapat. For reference, the facts are being taken from FAO No. 1402 of 2002.

Briefly stated, on 04.02.2000, claimants Surekha Devi, Kumari Mahima, Raju, Krishma were going to Delhi in Tata Estate car bearing registration No. CH03-7074 being driven by Veeru Thapa (since deceased). Veeru Thapa was driving the vehicle at very moderate speed and with all care and caution. At about 3.45 PM, when they reached in the area of Kundli, G.T Road, District Sonapat, one truck bearing registration No. HR-38C-4323 being driven by respondent No.1-Kamlesh rashly and negligently and at a very high speed came from Delhi side and hit the car of Veeru Thapa. The occupants of the car received greivous injuries, whereas Veeru Thapa received fatal injuries and died at the spot. The matter was reported to the police on the basis of which FIR No.29 dated 04.02.2000 under Sections 279/338/304-A of the Indian Penal Code was registered at Police Station Rai.

The claimant Surekha Devi @ Surekha Mehta averred that she suffered multiple and greivous injuries all over her body including fracture in right elbow, ribs and clavicle bone. She was 39 years of age at the time of accident. Soon after the accident, she was taken to Parnami Hospital, Kundli, District Sonapat and after giving first aid, she was referred to Apollo Hospital, Delhi and she is still under treatment of that hospital. She has allegedly incurred a sum of ₹1,50,000/- on her treatment, medicines,

special diet etc and has to spend more amount also. She further averred that she was in Galaxy Computer System Pvt. Ltd. SCO No. 2423, Sector-22/C, Chandigarh, at the time of accident. She was allegedly getting ₹6000/- per month plus other allowances from the said company. She has claimed a compensation amount of ₹7 lacs.

Claimant Narjeet Thapa @ Monu Thapa averred that his son Veeru Thapa also died in the said accident. He was 26 years of age and was computer mechanic as well as driver in Galaxy Computer System, Chandigarh and was getting ₹4500/- per month. He is survived by claimants Narjeet Thapa @ Monu Thapa, his father and Resham Thapa- his minor son. The claimants have claimed a sum of ₹10 lacs as compensation in this case.

Claimant Kumari Mahima- minor daughter of Bharat Bhushan Mehta through her father, averred that she suffered multiple and serious injuries over her body including injuries on chest, mouth and fractures in jaw and head. After the accident, she was taken to Parnami Hospital, Kundli and thereafter, she was referred to Apollo Hospital, Delhi. A sum of ₹50,000/- was allegedly incurred on her treatment, medicines, special diet etc. She has claimed a compensation amount of ₹5 lacs.

Claimant Raju averred that he also received injuries on his chest, left hand and surface injuries including fracture in ribs.

He was also taken to Parnami Hospital, Kundli, from where he

was referred to Apollo Hospital, Delhi, where he remained admitted from 05.02.2000 to 06.02.2000. He is still under treatment at Chandigarh. He further averred that he was 25 years of age at the time of accident and was a computer mechanic in Galaxy Computer System Pvt. Ltd., Chandigarh and was getting a sum of ₹4000/- per month as salary. He has claimed a compensation amount of ₹5 lacs.

Respondents were served. Respondents No.1 and 2 filed their joint written statement contending that the accident was not caused due to rash and negligent driving of respondent No.1 while driving truck No. HR-38C-4323, rather the same was occurred due to rash and negligent driving of Tata Estate Car No. CH03-7074 by deceased Veeru Thapa and a false case has been got registered against respondent No.1 for causing the said accident.

National Insurance Company Limited-respondent No.3 filed its separate written statement contending that respondent No.1 was neither rash nor negligent in his driving of truck, rather the driver of car Veeru Thapa (since deceased) was rash and negligent in driving the car and caused the accident. It is further contended that an exaggerated amount has been claimed by the claimants. The Insurance company further averred that respondent No.1 was not having a valid driving license at the time of accident and as such, the company is not liable to indemnify the claim.

From the pleadings of parties, following issues were framed :-

- 1) Whether Surekha Devi, Kumari Mahima and Raju sustained injuries and Veeru Thapa died in motor vehicle accident caused on account of rash and negligent driving of truck No. HR-38C-4323, owned by respondent No.2, insured with respondent No.3 and being driven by respondent No.1 on 04.02.2000 in the area of G.T Road, Kundli ? OPP
- 2) If Issue No.1 is proved, to what amount of compensation, the petitioners in each case, are entitled, if so, from whom ? OPP
- 3) Whether the respondent No.1 was not holding any valid driving license on the date of accident, if so, its effect ? OPR 3
- 4) Relief.

Learned Tribunal returned the findings on Issues No.1 in favour of the claimants and ultimately, the claim petitions were partly accepted. Now the above mentioned four appeals have been filed for enhancement of compensation. Now each case has to be taken separately.

FAO NO. 1397 OF 2002

This appeal has been directed by Raju for enhancement of compensation. Raju has been allowed a sum of

₹40,000/- detailed as under :-

S. No.	Head	Amount (in ₹)
01.	Pain and suffering	25,000/-
02.	Expenses on medical treatment	8000/-
03.	Loss of salary	7000/-
	Total	40,000/-

Learned counsel for the appellant has submitted that Raju suffered injuries in the accident. Firstly, he was taken to Parnami Hospital, Kundli, District Sonapat, from where he was referred to Apollo Hospital, Delhi, where he remained admitted for three days, His three ribs were fractured and stitches were also applied on his right eye brow. It is further submitted that the appellant was working as Computer Engineer in Galaxy Computer System Pvt. Ltd., Chandigarh, and was drawing the salary of ₹4000/- per month. He could not attend his duty for nine months and he has spent ₹29,000/- on his treatment. It is further submitted that the amount of ₹40,000/- is on lower side.

On the other hand, learned counsel for the respondent- Insurance Company, has submitted that the amount granted to the appellant Raju is sufficient.

I have heard learned counsel for the parties and have gone through the records of the case.

The claimant/appellant has examined PW-6 Dr.Mukesh Aggarwal, who has stated that contusion of chest and right hand were found on the person of Raju. He remained admitted in hospital from 05.02.2000 to 06.02.2000. The medical bills have been placed on record. The claimants have failed to prove the fracture in his ribs. There is no evidence regarding permanent disability. So, in these circumstances, the amount of ₹40,000/- allowed as compensation in respect of injuries sustained by him which were contusion of chest and right hand cannot be said to be on lower side.

In view of the above discussion, FAO No. 1397 2002 is without any merit and the same stands dismissed.

FAO NO. 1400 OF 2002

Surekha Devi @ Surekha Mehta claimant has directed this appeal for enhancement of compensation. It is pleaded that she has suffered multiple and greivous injuries including fracture in right elbow, ribs and clavicle bone. She has further pleaded that she was taken to Parnami Hospital, Kundli, from where she was taken to Apollo Hospital. She has further alleged that she spent ₹1,50,000/- on her treatment. She has further stated that she remained admitted in Apollo Hospital from 04.02.2000 to 11.02.2000. She was working as Director in Galaxy Computer System Pvt. Ltd. And was drawing a salary of ₹6000/- per month. She has been allowed a sum of ₹2,75,000/- which is detailed as

under :-

S.No.	Head	Amount (in ₹)
01.	Pain & sufferings (past, present & future)	75,000/-
02.	Medical expenses, transportation expenses & other misc. expenses	2,00,000/-
	Total	2,75,000/-

As per the evidence available on record, she also suffered 15% permanent disability. PW-6 Dr. Mukesh Aggarwal, has stated that Surekha Devi suffered fracture in right elbow and one cut on her right cheek and one cut on the right eye brow. So, the amount of ₹2,75,000/- granted in respect of one fracture cannot be said to be on lower side.

In these circumstances, FAO No. 1400 of 2002 is also without any merit and the same stands dismissed.

FAO NO. 1401 OF 2002

Kumari Mahima minor has directed this appeal through her father Bhara Bhushan.

The claimant has been allowed a sum of ₹30,000/- which is detailed as under :-

S. No.	Head	Amount (in ₹)
01.	Pain and sufferings	10,000/-

02.	Expenses on medical treatment	20,000/-

	Total	30,000/-

As per the medical evidence produced on record by the claimant in the shape of PW-6 Dr. Mukesh Aggarwal, the claimant suffered contusion over the chest. There was no permanent disability as per the statement of the doctor and as such, a sum of ₹30,000/- awarded by the Tribunal cannot be said to be on lower side.

Consequently, FAO No. 1401 of 2002 is without any merit and the same stands dismissed.

FAO NO. 1402 OF 2002

Father and son of the deceased Veeru Thapa have directed this appeal for enhancement of compensation.

A sum of ₹3,84,000/- has been allowed to the claimants. The income of the deceased has been taken as ₹3000/- per month. 1/3rd amount has been deducted in respect of personal expenses. The monthly dependency has been taken as ₹2000/-. The yearly dependency has been taken as ₹24,000/- (2000 x 12). The deceased was 26 years old at the time of accident and as such, the multiplier of 16 has been applied by the Tribunal. In this manner, a sum of ₹3,84,000/- (24000 x 16) has been allowed to the claimants.

Learned counsel for the claimants/appellants has submitted that no amount in respect of future prospects has been allowed. It is further contended that no amount in respect of last rites and transportation has been allowed. It is further contended that no amount in respect of loss of love and affection has been allowed. To support his contention, he has relied upon authority **"Rajesh and others v. Rajbir Singh and others" 2012 (2) Apex Court Judgments 245 (SC)**. It is further contended that multiplier applicable at the age of 26 is 17, in view of authority **"Sarla Verma and others vs. Delhi Transport Corporation and anr." 2009 (3) RCR (Civil) 77** and the Tribunal has wrongly applied the multiplier of 16.

Learned counsel for the Insurance Company has supported the judgment passed by the Tribunal and has contended that adequate amount has been granted to the claimants. He has further contended that regarding future prospects the matter is pending with the Hon'ble Apex Court.

I have given my thoughtful consideration to the rival submissions made by both the sides and have gone through the records of the case.

The income of deceased Veeru Thapa has been taken as ₹3000/- per month in the year 2000 and that cannot be said to be on lower side. So, the income of deceased is taken as ₹3000/- per month. However, future prospects should have been taken into account in view of **Rajesh and others' case (supra)**.

This Court in **FAO No. 3903 of 2012 decided on 15.01.2014 titled as "Balbir Kaur and others vs. State of Haryana and others"**, has held that future prospects should be taken into account.

Learned counsel for respondent-Insurance company is fair enough to concede that there is no order regarding staying the operation of **Rajesh and others' case (supra)**. So, in this manner, the income of deceased is taken as ₹4500/- per month by adding 50% in respect of future prospects. $\frac{1}{3}^{\text{rd}}$ has to be deducted in respect of personal expenses and as such, after deducting $\frac{1}{3}^{\text{rd}}$, the monthly dependency comes to ₹3000/-. The yearly dependency comes to ₹36000/- (12 x 3000). The multiplier applicable at the age of 26 according to **Sarla Verma and others' case (supra)** is 17. So by applying the multiplier of 17, the amount comes to ₹6,12,000/- (36000 x 17). Another sum of ₹10,000/- stands allowed in respect of last rites and transportation etc. The claimants are also held entitle to claim ₹25,000/- in respect of loss of love and affection due to untimely death of the deceased. In this manner, the claimants are held entitled to claim ₹6,47,000/-. The amount already paid shall be adjusted towards that amount. The enhanced amount shall carry interest @ 7.5 % per annum from the date of application till its payment. Out of the enhanced amount, a sum of ₹60,000/- shall be paid to the father of deceased namely Narjeet Thapa, in case he is alive. If he is not alive, whole of the amount shall be paid to

Resham Thapa-claimant. The liability to pay the amount shall remain the same as ordered by the Tribunal.

All the appeals stand disposed of accordingly.

MAY 04, 2015
shalini

(K. C. PURI)
JUDGE