

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

**(1)**

**FAO No.2178 of 2007 (O&M)**

Sunita alias Kavita

...Appellant

Versus

Nishan Singh and others

...Respondents

**(2)**

**FAO No.2182 of 2007 (O&M)**

Sunita alias Kavita and others

...Appellants

Versus

Nishan Singh and others

...Respondents

**Date of Decision: May 13, 2015**

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Gaurav Chopra, Advocate  
for the appellants.

Mr.R.C.Gupta, Advocate  
for respondent No.3.

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**INDERJIT SINGH, J.**

Both the above-mentioned FAOs are taken up together for disposal being arisen from same Award.

FAO No.2178 of 2007 has been filed by appellant-claimant challenging the impugned Award dated 06.01.2007 passed by learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'Tribunal'), for enhancement of the compensation

granted on the ground of injuries received by the claimant.

FAO No.2182 of 2007 has been filed by appellants-claimants challenging the above-said Award for enhancement of the compensation amount on the ground of death of Sandeep Kumar.

The common facts of both the cases as stated in the claim petition filed by appellants-claimants against Nishan Singh, driver of truck bearing registration No.HR-37A-6634 (offending vehicle), Bahadur Singh, owner and National Insurance Company Ltd., Insurer of the offending vehicle, are that on 14.10.2004, Sandeep Kumar along with his wife Sunita alias Kavita (injured-claimant) and two children was coming to Ambala from Rajpura on his scooter bearing registration No.PAB-6591. He was driving the scooter on correct left side at a moderate speed. They were followed by Suresh Kumar and Pawan Kumar on separate motorcycle. At about 4.30 P.M., after covering distance of about 1 km., when they reached in the area of village Mehtabgarh, a truck bearing registration No.HR-37A-6634, being driven by Nishan Singh respondent in a rash and negligent manner, came from behind and hit the scooter driven by Sandeep Kumar on the extreme left side of road on kacha berm, as a result of which, all the occupants of the scooter fell down and sustained injuries. Sandeep Kumar succumbed to the injuries at the spot. The accident was also witnessed by Dina Nath and Prem Rattan who were following the scooter of Sandeep Kumar on their separate scooter.

In the claim petition filed by the claimants regarding the death of Sandeep Kumar, it is stated that Sandeep Kumar was 35

years of age and he used to run a general store in rented premises at Kanwala road, Jandli and used to earn ₹8,000/- per month. It is further stated that claimants were fully dependent upon the income of the deceased and they claimed ₹15 lacs as compensation.

As regarding claim petition filed by appellant-claimant Sunita alias Kavita regarding injuries sustained by her, she has stated that she was 34 years of age and running a boutique and earning ₹5000/- per month. It is further stated that she also used to render services to the family to the tune of ₹4000/- per month. ₹2 lacs were spent by her on her treatment and she got treatment from A.P. Jain Civil Hospital, Rajpura, Govt. Medical College and Hospital, Sector-32, Chandigarh and PGI, Chandigarh. Her treatment is still continuing and she suffered permanent disability. She also claimed ₹15 lacs as compensation.

Upon notice, respondents-driver and owner filed written statement denying the very factum of the accident with offending vehicle driven by Nishan Singh driver. It is also stated that a false FIR has been got registered against respondent-Nishan Singh. Respondent-Insurance Company filed separate written statement also taking the plea that the offending vehicle was not involved in the accident and the truck and driver have been procured just to claim compensation from the Insurance Company. Both the parties led evidence and learned Tribunal vide Award dated 06.01.2007, awarded compensation of ₹4,18,000/- on account of death of Sandeep Kumar.

As regarding the claim petition filed by Sunita alias Kavita injured, the

Tribunal has awarded ₹3,80,000/- along with interest.

Aggrieved from the above-said Award, the claimants-appellants have filed these appeals for enhancement of the compensation.

Notice of motion was issued in both the appeals and learned counsel for respondent No.3-Insurance Company appeared and contested the appeals.

I have heard learned counsel for the appellants as well as learned counsel for Insurance Company and have gone through the record.

Firstly, as regarding the appeal filed for enhancement of compensation regarding death of Sandeep Kumar, I find that as per the post mortem examination report Ex.PH, the age of the deceased has been mentioned as 34 years but in the claim petition, the age has been stated to be 35 years. Therefore, the Tribunal has rightly taken the age of deceased as 35 years. The income of the deceased was assessed by the Tribunal as ₹3000/- per month. As per the evidence, the Tribunal held that the claimants have been able to prove by examining Virender Sharma that Sandeep Kumar used to run a small shop in village after taking the same on rent of ₹850/- per month. The Tribunal said that no account of the shop has been produced. If the deceased was running a shop, then income assessed by the Tribunal @ ₹3000/- per month is on lower side. The accident has taken place in the year 2004. Even at that time, labourer used to earn ₹3000/- per month by doing manual labour. In the present case, the deceased

was running a shop, therefore, the income assessed by the Tribunal is on lower side and it should have been taken at least as ₹4500/-, which Sandeep Kumar might have been earning. As there are four claimants in this case, therefore, the Tribunal has wrongly deducted amount as  $\frac{1}{3}^{\text{rd}}$ , which should have been  $\frac{1}{4}^{\text{th}}$  as per the law laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*** there being four dependents i.e. widow and three minor children. Therefore, by applying deduction of  $\frac{1}{4}^{\text{th}}$ , the annual dependency comes to ₹40,500/-. As per the ***Sarla Verma's case (supra)***, multiplier of 16 is to be applied, therefore, compensation comes to ₹6,48,000/-. As no compensation has been given on the grounds of funeral expenses, loss of consortium, therefore, the claimants are entitled to ₹25,000/- as funeral expenses and ₹1 lac on ground of loss of consortium as per law laid down by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170***. As there are three minor children, therefore, ₹1 lac each is granted to each of the minor on ground of loss of love and affection.

In view of the above, the claimants-appellants are entitled to total compensation of ₹10,73,000/- along with interest @ 7.5 % per annum on the enhanced from the date of filing of the claim petition till realization. The enhanced amount be disbursed to the claimants proportionately as per Award of the Tribunal.

Therefore, FAO No.2182 of 2007 is allowed accordingly.

As regarding FAO No.2178 of 2013 filed by claimant-

appellant Sunita alias Kavita injured, I find that as per the evidence of doctor on record, it was found by the Tribunal that she was having knee disarticulation right side (amputation at knee joint) and her disability was assessed as 75%. Disability certificate as Ex.PB has been proved. The Tribunal has assessed the income of the claimant-appellant as ₹2500/- per month, which is on lower side. Even the services provided by the housewife to the family as per law is assessed @ ₹3000/- per month. Therefore, the income of the claimant-appellant is taken as ₹3000/- per month. She has suffered permanent disability to the extent of 75% i.e. amputation of leg upto knee, therefore, the loss of income is assessed @ ₹2250/- per month and the annual loss comes to ₹27,000/-. By applying the multiplier of 16 as per **Sarla Verma's case (supra)**, the compensation comes to ₹4,32,000/- to which claimant-appellant is entitled. Further, the Tribunal has only awarded lumpsum amount of ₹30,000/- on ground of treatment and purchasing of medicines, special diet, transportation and attendant charges etc., which is also on lower side and secondly, under all these grounds, the compensation is to be given separately. The Tribunal has further given compensation of ₹30,000/- for pain and sufferings etc. and ₹3,20,000/- on ground of permanent disability, which is also on lower side.

Keeping in view the facts and circumstances of the present case and the fact that leg has been amputated, the claimant-appellant is entitled to compensation of ₹50,000/- on the ground of pain and sufferings, ₹20,000/- as special diet which she might have taken for a

long period. Further, ₹20,000/- is awarded as attendant charges, ₹50,000/- for loss of enjoyment of life and on account of the amount which she might have spent on medical expenses and treatment and for future treatment, ₹50,000/- is awarded and total compensation comes to ₹6,22,000/-.

In view of the above, the claimant-appellant Sunita alias Kavita is entitled to total compensation of ₹6,22,000/- along with interest @ 7.5 % per annum on the enhanced amount from the date of filing of the claim petition till realization.

Therefore, FAO No.2178 of 2007 is allowed accordingly.

**May 13, 2015**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**