

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

FAO No.6623 of 2014 (O&M)
Date of decision: 31.10.2015

Oriental Insurance Company Limited

....Appellant

Versus

Meena Rani and others

....Respondents

2) FAO No.928 of 2014 (O&M)

Karnail Kaur and another

....Appellants

Versus

Gurpreet Singh and others

....Respondents

3) FAO No.5073 of 2014 (O&M)

Meena Rani and others

....Appellant

Versus

Gurpreet Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Navin Kapur, Advocate
for the appellant (in FAO No.6623 of 2014)
and for respondent No.3
(in FAO Nos.928 and 5073 of 2014)

Mr. Vikram Bali, Advocate
for respondents No.1 to 5 (in FAO No.6623 of 2014)
for respondents No.4 to 8 (in FAO No.928 of 2014)
and for the appellants (in FAO No.5073 of 2014)

Ms. Ekta Thakur, Advocate
for respondents No.8 and 9 (in FAO No.6623 of 2014)
and for the appellants (in FAO No.928 of 2014)

None for remaining respondents.

RITU BAHRI J. (Oral)

By this single judgment I intend to dispose of three appeals i.e. FAO No.6623 of 2014 titled as “*Oriental Insurance Company Limited vs Meena Rani and others*”, FAO No.928 of 2014 titled as “*Karnail Kaur and another vs Gurpreet Singh and others*” and FAO No.5073 of 2014 titled as “*Meena Rani and others vs Gurpreet Singh and others*” as all these appeals have arisen out of the same award dated 28.01.2014.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 28.10.2011, Balkar Singh (deceased) was going on his motorcycle bearing registration No.PB-65-K-3275, from Derabassi to his village Kurranwala and he was followed by his real brother on a separate motorcycle, when they all of a sudden met on the road. In the darkness, when Balkar Singh reached near wine shop, village Kurranwala at about 07:30 p.m., due to other vehicles coming from the opposite directions, Balkar Singh could not judge that any vehicle was lying parked on the road and he collided in the rear portion of the offending truck bearing registration No.PB-13-F-3623, which was

lying parked negligently on the middle of the road. It was dark outside and the said truck was parked without any blinking indicators, reflectors, which could reveal the road users that the truck had went out of order or the same was parked on the road. As a result of this impact, Balkar Singh sustained injuries and succumbed to said injuries in the GMCH-32, Chandigarh.

In this regard, an FIR No.241 dated 29.10.2011, under Sections 283, 304-A and 427 IPC, in respect of the accident in question was got registered at Police Station Sector-39, Chandigarh, at the instance of Jagtar Singh.

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

COMPENSATION ASSESSED BY MACT

Before the Tribunal, Jagtar Singh appeared as RW-1 and he has relied upon FIR No.241 dated 29.10.2011, under Sections 283, 304-A and 427 IPC (Ex.RW-1/B). He has also tendered his affidavit Ex.RW-1/A, 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 statement of RW-2 and the Tribunal has returned the finding on Issue No.1 in favour of the claimants.

The claim petition was accepted by the Tribunal and a sum of Rs.11,83,400/- was awarded as compensation on account of death of Balkar Singh along with future interest at the rate of

7.5% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.4,900/- x 12)	Rs.58,800/-
(ii)	50% of (i) above added as future prospects	(Rs.58,800/-) + (Rs.29,400/-) = Rs.88,200/-
(iii)	Dependency of the claimant after deducting 1/4th of (ii) towards personal expenses of the deceased	(Rs.88,200/-) - (Rs.22,050/-) = Rs.66,150/-
(iv)	Compensation after multiplier of 16 is applied	(Rs.66,150/- x 16) =Rs.10,58,400/-
(v)	Transportation and last rites expenses	Rs.25,000/-
(vi)	Compensation on account of consortium	Rs.1,00,000/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.11,83,400/-

Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the appeal i.e. **FAO No.6623 of 2014** titled as “***Oriental Insurance Company Limited vs Meena Rani and others***”, the claimants-appellants (parents of the deceased) have preferred the appeal i.e. **FAO No.928 of 2014** titled as “***Karnail Kaur and another vs Gurpreet Singh and others***” and the claimants-appellants, have preferred the appeal i.e. **FAO No.5073 of 2014** titled as “***Meena Rani and others vs Gurpreet Singh and others***”.

1. FAO No.6623 of 2014

Learned counsel for the insurance company has referred to the judgment “***Santosh Devi vs National Insurance Company Limited and others***”, 2012 (6) SCC 421, to contend that

the future prospects should have been awarded at the rate of 20% and not at the rate of 50%.

I have heard the contention of learned counsel for insurance company, but do not find any force in that submission as the facts of *Santosh Devi's case (supra)* are different from the present case. So, this judgment is not applicable in the present case. However, the Hon'ble Supreme Court in "*Savita vs Bindar Singh and others*", 2014 LawSuit (SC) 210, after considering the judgment of "*Rajesh and others vs. Rajbir Singh and others*", 2013 (9) SCC 54 as well as *Santosh Devi's case (supra)*, held that it was the duty of the Tribunal to award just, equitable, fair and reasonable compensation. The Hon'ble Supreme Court did not deviate from the principles laid down in the judgments of *Santosh Devi's case (supra)* and *Rajesh and others case (supra)*.

In the present case, as per the deposition of PW-2, Kamal K. Khanna, the deceased-Balkar Singh was earning Rs.4,900/- per month. He has proved the attendance sheet as Ex.PW-2/A and salary sheet as Ex.PW-2/B of the deceased-Balkar Singh for the month of October, 2011.

The income of the deceased was not a notional income and therefore, 50% future prospects has rightly been added by the Tribunal.

At this stage, learned counsel for the insurance company submits that the deceased was 36 years of age at the time

of his death and as per “*Sarla Verma and others vs. Delhi Transport Corporation and another*”, 2009 (3) RCR (Civil) Page 77, the multiplier of 15 is to be applied, however the Tribunal has wrongly applied the multiplier of 16.

As per the Performance Evaluation Form Ex.PW-2/C which was produced on record by PW-2-Kamal K. Khanna, the date of birth of the deceased was 04.04.1978 and his age comes to about 34 years on the date of accident. This Performance Evaluation Form was not accepted by the Tribunal as it was not proved. So, this Court is of the considered opinion that once the Tribunal has accepted the Salary-sheet and Attendance-sheet of the deceased, then, there was no ground to reject this Performance Evaluation Form Ex.PW-2/C. So, this argument is also liable to be rejected.

No other argument has been raised by learned counsel for insurance company, therefore, the appeal i.e. *FAO No.6623 of 2014*, filed by insurance company is hereby dismissed.

**REASSESSED COMPENSATION IN FAO Nos.928 AND
5073 OF 2014**

The fact of accident is admitted and proved. It stands established that Balkar Singh died, as a result of the accident.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is required to be re-assessed 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. Accordingly, the compensation in *FAO Nos.928 and 5073 of 2014*, is hereby re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income	Rs.58,800/-
(ii)	50% of (i) above to be added as future prospects (Age 34 years)	(Rs.58,800/-) + (Rs.29,400/-) = Rs.88,200/-
(iii)	Dependency of the claimant after deducting 1/5th (<i>since the parents of deceased were also dependents</i>) of (ii) towards personal expenses of the deceased	(Rs.88,200/-) - (Rs.17,640) = Rs.70,560/-
(iv)	Compensation after multiplier of 16 is applied	(Rs.70,560/- x 16) =Rs.11,28,960/-
(v)	Loss of consortium to widow	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection for minor children	Rs.3,00,000/- (Rs.1,00,000/- each)
(viii)	Loss of love and affection to parents	Rs.1,00,000/- (Rs.50,000/- each)
(ix)	Funeral expenses	Rs.25,000/-
(x)	TOTAL COMPENSATION AWARDED	Rs.17,53,960/-
(xi)	Enhanced amount of compensation	(Rs.17,53,960/-) – (Rs.11,83,400/-) =Rs.5,70,560/-

The enhanced amount of compensation of **Rs.5,70,560/-** shall be payable to the claimants-appellants 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 (*in FAO Nos.928 and 5073 of 2014*) stands modified to the above extent and both these appeal are partly allowed.

(RITU BAHRI)
JUDGE

31.10.2015

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