IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) **FAO No.3434 of 2003 (O&M) and**
Cross Objection No.52-CII of 2005 (O&M)

Date of decision : 26.05.2016

Rupa Girdhar and others

......Appellants

Versus

Kanwar Bhan alias Kalu and others

...Respondents

(2) **FAO No.2587 of 2003 and**
Cross Objection No.53-CII of 2005(O&M)

Mrs. Kamlesh Chaudhary and others

......Appellants

Versus

Kanwar Bhan and another

...Respondents

(3) **FAO No.1878 of 2004 (O&M)**

Krishna Devi alias Shipali and others

......Appellants

Versus

Kanwar Bhan alias Kalu and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. *Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
2. *To be referred to the Reporters or not ? Yes*
3. *Whether the judgment should be reported in the Digest? Yes*

FAO No.2587 of 2003 &
Cross Objection No.53-CII of 2005(O&M) and

FAO No.1878 of 2004 (O&M)

Present: Ms. Anju Arora, Advocate for appellants in FAO No.3434-2003.

Mr. Rajesh Sethi, Advocate for appellants in FAO No.2587-2003.

Mr. Vishal Khatri, Advocate for appellants in FAO No.1878-2004.

Ms. Deepali Puri Advocate for respondents No.1 & 2/cross objectors.

Mr. Rajesh Sethi, Advocate for respondents No.3 to 6.

Mr. R.C. Kapoor, Advocate for respondent No.7.

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DARSHAN SINGH, J.

This judgment shall dispose of all the three appeals and the cross-objections mentioned above, as all of these have arisen out of the same awarded dated 23.04.2003 passed by the learned Motor Accidents Claims Tribunal, Hisar (hereinafter called the 'Tribunal'), vide which the appellants-claimants of FAO No.3434 of 2003 have been awarded compensation to the tune of Rs.9,68,342/- on account of death of Ravi Kant Girdhar; the appellants-claimants of FAO No.2587 have been awarded compensation to the tune of Rs.2,55,267/- on account of death of Parkash Vir Chaudhary and appellants-claimants of FAO No.1878 of 2004 have been awarded compensation to the tune of Rs.3,08,000/- as compensation on account of death of Navleen Chalana in the motor vehicular accident, which took place on 03.03.1995.

2. All these appeals have been filed by the respective appellants-claimants for enhancement of the amount of compensation.

3. The Cross Objections have been filed by the driver Kanwar

Bhan and owner Ram Chander of tractor bearing registration No.HYF-2084.

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

5. This fact is not disputed that FAO No.4322 of 2003 was filed against this very award by injured-claimant Hans Raj Narang and in that appeal also, the driver and owner of the tractor *i.e.* respondents No.1 & 2/cross-objectors have filed the cross objection No.64-CII of 2005 to contend that no negligence could be attributed to the driver of the tractor. The learned Tribunal has held the negligence of the driver of the car and tractor in the ratio of 80:20. In FAO No.4322 of 2003, the Coordinate Bench has upheld the findings of the learned Tribunal with respect to the contributory negligence of the drivers of the car and the tractor as per the ratio determined by the learned Tribunal and the cross objection filed by respondents No.1 & 2 were dismissed. It is not disputed that the findings recorded by the Coordinate Bench have not been challenged by the respondents-cross objectors and has attained finality. Thus, the findings recorded by the Coordinate Bench in FAO No.4322 of 2003 and Cross Objection No.64-CII of 2005 will be binding on the respondents/cross-objectors. Consequently, respondent No.1 & 2/cross-objectors cannot re-agitate the issue in the present appeal and cross-objections. Thus, the cross objections filed by respondent No.1 Kanwar Bhan and respondent No.2 Ram Chander, the driver and owner, respectively of the tractor bearing registration No.HYF-2084 are not legally maintainable.

6. Ms. Anju Arora, Advocate, learned counsel for the appellants in FAO No.3434 of 2003 contended that deceased Dr. Ravi Kant Girdhar was a qualified Homeopathic doctor and was earning Rs.15,000/- per month. He remained under coma for about two years after receiving the injuries. The learned Tribunal has taken the income of the deceased only Rs.50,000/- per annum, which is on the lower side. She further contended that the learned Tribunal has applied the wrong multiplier. The deduction towards the personal and living expenses have also been wrongly made. It should be $1/4^{th}$ instead of $1/3^{rd}$ keeping in view the number of the claimants/dependants. The learned Tribunal has not taken into consideration any future prospects towards the income of the deceased. The compensation awarded under the other conventional heads is highly inadequate. She further contended that the deceased remained under treatment for about two years as he was in coma. But no amount towards medicines has been awarded which were purchased from market. Thus, she contended that the compensation awarded to the claimants is highly inadequate.

7. Mr. Rajesh Sethi, Advocate learned counsel for appellants-claimants in FAO No.2587 of 2003 contended that deceased Parkash Vir Chaudhary was an Accountant in Union Bank of India and was earning Rs.11,695/- per month. The learned Tribunal has not added anything towards future prospects of the income of the deceased. The multiplier has been applied wrongly. Very less amount has been awarded towards the conventional heads.

8. Mr. Vishal Khatri, Advocate, learned counsel for the appellants-claimants in FAO No.1878 of 2004 contended that deceased Navleen Chalana was a partner in M/s Asian Marbles and was also a skilled worker. The learned Tribunal has taken the income of the deceased on the lower side. The learned Tribunal has not added anything towards future prospects of the income of the deceased. The multiplier has been applied wrongly. Very less amount has been awarded towards the conventional heads.

9. On the other hand, learned counsel for respondent-Insurance Company contended that the learned Tribunal has awarded compensation by taking into consideration all the heads. Just amount of compensation has been awarded in all the cases. He further contended that there was no reliable evidence with respect to the income and profession of deceased Ravi Kant Girdhar and Navleen Chalana. Claimant Rupa Girdhar and others have not placed on file any documentary evidence to show that deceased Ravi Kant Girdhar was a qualified Homeopathic doctor and was practicing as a doctor. Thus, he contended that no fault can be found with the income of the deceased determined by the learned Tribunal. He further contended that deceased Ravi Kant Girdhar and Navleen Chalana were not holding any permanent job. So, no future prospects were admissible towards their income. He contended that the issue regarding future prospects has been referred to the Larger Bench of the Hon'ble Apex Court and in some of the cases, the disbursement of the future prospects have been stayed by the

Hon'ble Apex Court. Thus, he contended that the appellants-claimants are not entitled for addition of the future prospects to the income of the deceased.

10. I have duly considered the aforesaid contentions.

11. Firstly, I have take up FAO No.3434 of 2003 filed by Smt.Rupa Girdhar and others. This fact is not disputed that Ravi Kant Girdhar has suffered the injuries in the motor vehicular accident, which took place on 03.03.1995. It is also not disputed that he died on 10.04.1997 on account of the injuries received in that accident. As a result of the injuries received in the accident, he become unconscious and remained admitted to various hospitals. Immediately, after the accident he was taken to Civil Hospital, Hisar and then to C.M.C. Hisar, where he remained admitted from 04.03.1995 to 22.04.1995 as indoor patient. Thereafter, he was shifted to Kolmat Hospital, Delhi and then to Sir Ganga Ram Hospital, New Delhi. He remained in coma throughout till the date of his death. The doctors have advised the alpha bed, AC room. Generator was also required. Deceased Ravi Kant Girdhar remained under long treatment for more than two years before his death. The learned Tribunal has awarded Rs.4,45,000/- towards medical expenses. Learned counsel for the appellant has contended that the learned Tribunal has awarded the aforesaid medical expenses only on the basis of the bills placed on record, which mostly relate to the hospital charges. She contended that deceased remained under treatment for more than two years. He has to purchase medicines from outside during his

treatment. PW4 Dr. Solomol Chatterjee has categorically stated that the medicines were brought by the patient. Thus, certainly the claimants have to spent considerable amount on the purchase of medicines for treatment of the deceased who remained confined to bed for a long period. It is not necessary that the production of the medicines bills is a condition precedent to claim the compensation on account of the medicine charges. The Tribunal can even assess the expenses for purchase of medicines by taking into consideration the nature of the injuries, the nature of the treatment and the period of hospitalization. In the instant case, in view of aforesaid circumstances, in addition to the medical expenses awarded by the learned Tribunal Rs.50,000/- more are awarded towards the medical expenses raising the total amount under the head of medical expenses to Rs.4,95,000/-.

12. Learned Tribunal has awarded Rs.20,000/- towards special diet. The deceased was under coma. So, he must have been prescribed the liquid diet by the doctors. The deceased remained confined to bed for a period of about 25 months before his death. So, the claimants shall be entitled to Rs.2500/- per month towards special diet, which comes to Rs.62,500/- in total. Thus, instead of Rs.20,000/- awarded by the learned Tribunal, the claimants shall be entitled to Rs.62,500/- towards special diet.

13. The claimants have also not been awarded any attendant Charges. It is an admitted fact that deceased remained confined to bed for more than 25 months. He must have required the services of attendant to

look after him. So, the claimants shall be entitled to a sum of Rs.1500/- per month towards attendant charges. The total amount comes to Rs.37,500/- (1500 x 25).

14. The Tribunal has also not awarded any compensation to the claimants towards transportation charges. On receiving the injuries, firstly the deceased was taken to Hisar, then to Delhi and then from Delhi to Dabwali Distt. Sirsa (Haryana). Keeping in view the condition of the deceased, the claimants have to avail the facility of ambulance. So, the claimants shall be entitled to Rs.15,000/- towards transportation charges.

15. In order to compute the compensation on account of death of Ravi Kant Girdhar, we are to determine his income. As per the case of the claimants, deceased Ravi Kant Girdhar was a Homeopathic doctor and was earning Rs.15,000/- per month. The claimants have examined PW5 Ms. Satya Kohli who has deposed that the deceased used to earn Rs.15,000/- to Rs.18,000/- per month and Rs.2000/- per month were paid to her as salary as she was working as Assistant with deceased Ravi Kant Girdhar. But the claimants have not placed on record any documentary evidence to show that deceased Ravi Kant Girdhar was a qualified Homeopathic doctor and was registered as a medical practitioner. The claimants have also not placed on record the copy of his income tax return in order to establish his income. The learned Tribunal has determined the income of the deceased to be Rs.50,000/- per annum, but the income determined by the learned Tribunal seems to be on lower side in view of the statement made by PW9 Smt. Rupa

Girdhar the widow of deceased Ravi Kant Girdhar and PW5 Satya Kohili. Thus, the income of the deceased shall be taken to be Rs.60,000/- per annum.

16. Deceased Ravi Kant Girdhar was 33 years of age at the time of the accident. This fact was not disputed at the time of arguments that after receiving the injuries in this accident he went in coma and remained confined to bed for more than 25 months and ultimately died as a result of the injuries. So, at the time of his death, the deceased was below 40 years of age but the learned Tribunal has not added any future prospects to the income of the deceased. The deceased was an educated person who was a young man of 33 years of age at the time of the accident and slightly above 35 of years at the time of his death. There was bright prospects of appreciation of his income with the passage of time. It is a fact of common knowledge that the income of every person, whatever profession he might be carrying, is bound to increase with the passage of time. So, I do not find any substance in the plea raised by Mr. R.C. Kapoor Advocate, learned counsel for the respondent-Insurance Company that no future prospects should be added to the income of the deceased. The Hon'ble Apex Court in case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, allowed the future prospects in case of the self-employed person, following the observations in ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54***, wherein it was laid down as under :-

"11. As far as future prospects are concerned, in ***Rajesh and others Vs.***

Rajbir Singh and others (2013) 9 SCC 54, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:

> "8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

The deceased being of the age of 30 years, 50% is the required addition."

17. Thus, keeping in view the age of deceased Ravi Kant Girdhar, 50% of his income is required to be added towards future prospects. The total income of the deceased comes to Rs.90,000/- (60,000 + 30,000) per annum. There were five dependants on the income of the deceased i.e. his widow, two minor sons, father and mother. Even if his father is not considered to be his dependent, the deceased has four dependants. So, 1/4th of his income shall be deducted towards his living and personal expenses. The remainder comes to Rs.67,500/- per annum.

18. The learned Tribunal has wrongly applied the multiplier of 13 as the deceased was 33 years of age at the time of the accident. After receiving the injuries, he went in coma. So, practically Ravi Kant Girdhar

was dead at the age of 33 years itself as he remained in coma for about two years before his death. So, the multiplier of 16 shall be applicable. The compensation on account of loss of dependency comes to Rs.10,80,000/-.

19. The learned Tribunal has not awarded any amount of compensation on account of love and affection to the parents, loss of love, care and guidance to the minor children. Appellants-claimants Mathura Dass and Smt. Nirmala, parents of the deceased shall be entitled to Rs.1,00,000/- as compensation on account of loss of love and affection of their son. In case ***Rajesh and others Vs. Rajbir Singh and others*** (supra), there were three minor children of the deceased and the Hon'ble Apex Court has awarded Rs.1,00,000/- as compensation on account of loss of love, care and guidance to all the three minor children. So, in view of the aforesaid ratio of law, appellants-claimants Vineet Girdhar and Abhinab Girdhar, minor sons of the deceased shall also be entitled to Rs.1,00,000/- on account of loss of love, care and guidance. The learned Tribunal has awarded only Rs.10,000/- as loss of consortium to Smt. Rupa Girdhar, the widow of deceased. She will be entitled to Rs.1,00,000/- on account of loss of consortium. The claimants shall also be entitled to Rs.25000/- instead of Rs.10,000/- as awarded by the Tribunal towards funeral expenses. The claimants shall also be entitled to a sum of Rs.10,000/- as loss to estate. Thus, the compensation payable to appellants-claimants of FAO No.3434 of 2003 is tabulated as under:-

Sr. No.	Heads for compensation	Amount of compensation in rupees
1.	Medical expenses	4,95,000/-
2.	Special diet	62,000/-
3.	Attendant charges	37,500/-
4.	Transportation charges	15,000/-
5.	Loss of dependency	10,80,000/-
6.	Loss of love & affection to parents	1,00,000/-
7.	Loss of love, care & guidance to children	1,00,000/-
6.	Loss of consortium	1,00,000/-
7.	Funeral expenses	25,000/-
8.	Loss to estate	10,000/-
Total		**20,24,500/-**

20. In FAO No.2587 of 2003, deceased Parkash Vir Chaudhary was employed in Union Bank of India and was getting salary at the rate of Rs.11,695/- per month. Rs.1113/-, to take it as a round figure as Rs.1200/-, was paid by the deceased as income tax for the assessment year 1992-93. So, the net income of the deceased comes to Rs.11,595. The annual income of deceased Parkash Vir Chaudhary comes to Rs.1,39,140/- (11,595 x 12). The learned Tribunal has not added anything towards the future prospects to the income of the deceased. The deceased was working as an Accountant in Union Bank of India, a nationalized bank. Certainly he was to rise in his career with the passage of time. He was to get promotion, increments and rise in his salaries. Deceased Parkash Vir Chaudhary was about 36 years of age at the time of his death. In view of his age, 50% of his income as future prospects should be added to his income. His total income comes to

Rs.2,08710/- (1,39,140 + 69,570). The claim petition has been filed by the widow and three minor children of deceased Parkash Vir Chaudahry. So, 1/4th of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.1,56,532.50. In view of the age of the deceased, the multiplier of 15 shall be applicable. The multiplicand comes to Rs.23,47,987.50. In addition to that, appellant-claimant Smt. Kamlesh Chaudhary shall be entitled to Rs.1,00,000/- towards loss of consortium. The minor children of deceased shall be entitled to Rs.1,00,000/- on account of loss of love, care and guidance. The claimants shall also be entitled to a sum of Rs.25,000/- towards funeral and last rites expenses and a sum of Rs.10,000/- towards loss to estate. Thus, the total amount of compensation comes to Rs.25,82,987.50.

21. As per the findings of the learned Tribunal, deceased Parkash Vir Chaudhary was 80% negligent for causing this accident, as he was driving the car involved in the accident and 20% negligence was attributed to the driver of the tractor. So, the claimant shall be entitled only to 20% of the aforesaid amount, which comes to Rs.5,16,597.50. Thus, the compensation payable to appellants-claimants of FAO No.2587 of 2003 comes to Rs.5,16,597.50.

22. As per the case of claimants-appellants of FAO No.1878 of 2004, deceased Navleen Chalana was partner in M/s Asian Marbles and was skilled worker and was earning Rs.12,000/- per month. Deceased was partner to the extent of 1/3rd share in M/s Asian Marbles and was an income

tax payee. Ex.P288 was the income tax return clearance certificate for the year 1993-94, wherein there was no taxable income. In these circumstances the learned Tribunal has taken the income of the deceased to be Rs.3000/- per month and no fault can be found with the income so determined by the learned Tribunal. So, the annual income of the deceased Navleen Chalana comes to Rs.36,000/-.

23. As the deceased was a partner in M/s Asian Marbles, so his income was bound to increase with the passage of time. The learned Tribunal has not added anything towards future prospects to the income of the deceased. The deceased was 38 years of age at the time of his death. 50% of his income is required to be added towards the future prospects. His total income comes to Rs.54,000/- per annum.

24. The claim petition has been filed by the widow, two minor sons and parents of deceased Navleen Chalana. So, $1/4^{th}$ of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.40,500/-. In view of the age of the deceased, the multiplier of 15 shall be applicable. The multiplicand comes to Rs.6,07,500/-. In addition to that, appellant-claimant Smt. Krishna Devi shall be entitled to Rs.1,00,000/- towards loss of consortium. The minor children of deceased shall be entitled to Rs.1,00,000/- on account of loss of love, care and guidance. The claimants/parents of the deceased shall also be entitled to a sum of Rs.1,00,000/- towards loss of love and affection to their son. The claimants shall also be entitled to a sum of Rs.25,000/- towards

funeral and last rites expenses and a sum of Rs.10,000/- towards loss to estate. Thus, the total amount of compensation comes to Rs.9,42,500/-.

25. Thus, keeping in view my aforesaid discussion, all the appeals are hereby partly allowed. In FAO No.3434 of 2003, the amount of compensation is enhanced to Rs.20,24,500/- from Rs.9,68,342/-; in In FAO No.2587 of 2003, the amount of compensation is enhanced to Rs.5,16,597.50 from Rs.2,55,267/-; and in FAO No.1878 of 2004, the amount of compensation is enhanced to Rs.9,42,500/- from Rs.3,08,000/-, as awarded by the learned Tribunal. The enhanced amount of compensation be deposited with the learned Tribunal within a period of 60 days from today, failing which the appellants-claimants shall be entitled to interest @ 7.5% per annum from the date of filing the claim petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award. The cross objections filed by the driver and owner of the tractor are hereby dismissed.

26.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**