

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. FAO No. 1356 of 1994 (O&M)
Date of Decision : 30.03.2016**

Kanta Kumari Bhatia & anotherAppellants

Versus

Baljit Singh and othersRespondents

2. FAO No. 40 of 1995 (O&M)

Madan Lal GauriAppellant

Versus

Baljit Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arnav Sood, Advocate
for the appellants in both appeals.

Mr. Gurpreet Jayia, Advocate
For Mr. Jagdish Manchanda, Advocate
for respondent no. 1 in both appeals.

Mr. R.C. Kapoor, Advocate
for respondent no. 4-Insurance Company
in both appeals.

Surinder Gupta, J.

This judgment will dispose of above captioned two appeals filed by the claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Sonapat (later referred to as 'the Tribunal')

2. Deceased Kundan Lal Bhatia was a member of Legislative Assembly, Haryana, who died in an accident on the intervening night of 05/06.11.1990, while he was travelling in Maruti Van No. DNS-1253. As per claimants, in FAO No. 1356 of 1994, vehicle of the deceased was hit by truck bearing

registration No. DIL-5108 (later referred to as 'the offending vehicle'), which was being driven by respondent no. 1-Baljit Singh in a rash and negligent manner. The offending vehicle came from opposite side and tried to overtake the truck going ahead of it and in the process hit the Maruti Van in which deceased Kundan Lal Bhatia alongwith Madan Lal Gauri were travelling. In the accident both Kundan Lal Bhatia and Madan Lal Gauri received injuries. Kundan Lal Bhatia succumbed to the injuries at the spot while Madan Lal Gauri was taken to General Hospital, Sonapat in a serious condition. The matter was reported to police vide FIR No. 305 dated 06.11.1990, registered at Police Station Ganaur.

3. Madan Lal Gauri (appellant in FAO No. 40 of 1995) filed petition claiming compensation for the injuries suffered by him in accident with offending vehicle. As per claimant-Madan Lal Gauri, he had suffered multiple injuries resulting in fracture of shaft of the right humerus, fracture of right condyle of the right humerus, fracture of right ulna with cutting of radial nerve and fracture of the right side ribs of chest. He also received cuts on the face resulting in disfiguration. He was initially admitted in General Hospital, Sonapat from where he was shifted to Mehta Nursing Home, Faridabad where he was operated and plating of right humerus and insertion of rod was carried out. The injuries have incapacitated and made him handicapped. He cannot use his right hand even for writing and appending his signatures. He was aged 47 years at the time of accident and was employed with State Bank of India, having a monthly income of ₹7000/-.

4. Claimant-Kanta Kumari Bhatia (appellant in FAO No. 1356 of 1994) alleged that deceased Kundan Lal Bhatia was aged 45 years. Being a member of Legislative Assembly, Haryana he was active politician, social worker and businessman having monthly income of ₹15,000/-. He was also partner in M/s Shankar Housing Corporation and was having regular income of ₹5000/- per month. Being legislator he was getting ₹2500/- per month besides telephone expenses, house rent, T.A., D.A. and allowance of ₹1000/- per meeting.

5. Respondents contested the claim petitions *inter alia* pleading that no accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1. The accident had rather taken place on account of rash and negligent driving of Maruti Van by Kundan Lal Bhatia (deceased), who was driving this vehicle rashly and negligently at a high speed and hit the offending vehicle.

6. On appraisal of evidence, the Tribunal recorded the finding that the accident was caused due to rash and negligent driving of the offending vehicle by its driver. The Tribunal allowed compensation of ₹1 lac for the injuries suffered by claimant-Madan Lal Gauri while claimant-Kanta Devi Bhatia and another were allowed compensation of ₹3,84,000/-.

7. Not satisfied, claimants have come up with above captioned separate appeals seeking enhancement of compensation as allowed by the Tribunal.

8. While allowing compensation of ₹1 lac to claimant Madan Lal Gauri, the Tribunal took into account following

factors:-

- (i) that he remained admitted in General Hospital, Sonapat and then in Mehta Nursing Home, Faridabad from 06.11.1990 to 30.11.1990;
- (ii) that he was operated upon for various fractures and rod was inserted. Besides that nailing and plating was also done;
- (iii) that he suffered 40% disability, which was not permanent disability;
- (iv) that claimant had spent on his treatment while bearing expenses of medicines and hospital charges etc. He also remained on leave for 25 days after the accident but had not suffered any financial loss as he received full salary during this period. Thereafter, he joined and attended his duties; and
- (v) that he was having some difficulty in writing and his right hand was not weight bearing.

9. While computing the amount of compensation awarded for death of Kundan Lal Bhatia, the Tribunal assessed his income as ₹3000/- per month from which 1/3rd amount was deducted towards his personal expenses and by applying the multiplier of 16, compensation of ₹3,84,000/- was allowed.

10. Learned counsel for the appellants has argued that in the case of Madan Lal Gauri, claimant has proved the period of his hospitalization, though complete expenses towards medical treatment could not be brought on record. He had also suffered disability which, though, was not declared as permanent disability but the Tribunal has not allowed any compensation towards hospital charges, medical expenses, future medical expenses, pain and suffering, attendant charges, nutritious diet, future prospects, loss of amenities of life, disability suffered by

claimant etc. It was proved on file that claimant had suffered seven fractures. He was operated for nailing, plating and insertion of rod to enable him to recover from fracture injuries. It is quite evident that a person even after discharge had to spend on future medical expenses, physiotherapy and removal of rod inserted by the doctor after re-union of his bone. Amount of ₹1 lac allowed by the Tribunal is not just and reasonable amount of compensation.

11. In the matter of death of Kundan Lal Bhatia, learned counsel for the appellants has argued that he was about 45 years of age. The Tribunal has taken his income as ₹3000/- per month which keeping in view status of the deceased was on lower side. The deceased was a member of Legislative Assembly, Haryana and was also a businessman. Though, claimants could not produce any evidence in this regard, and still the Tribunal relying on evidence on record could very well assess income of the deceased as ₹5000 /- per month. As per observations in the case of **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**, claimants are entitled to addition in income of the deceased towards future prospects, loss of love and affection, care and guidance for the minor child, loss of consortium for the wife and funeral expenses.

12. Learned counsel representing respondent no. 4- Insurance Company has argued that in the claim petition of claimant-Madan Lal Gauri (appellant in FAO No. 40 of 1995), the Tribunal has taken into account all the factors including his hospitalization, medical expenses, pain and suffering etc. while

awarding compensation of ₹1 lac in lump sum, which is just and reasonable and calls for no further enhancement.

13. Learned counsel for respondent no. 4-Insurance Company has further argued that the compensation allowed for death of Kundan Lal Bhatia, by the Tribunal is already on higher side as the Tribunal has applied multiplier of 16. In fact the multiplier attracted is of 11 as claimant-Kanta Devi Bhatia has given age of the deceased in her statement as 55 years. Amount of compensation allowed by the Tribunal as ₹3,84,000/- is just and reasonable calling for no enhancement.

14. I have given a careful thought to submissions of learned counsel for the parties and on perusal of record of the Tribunal find that compensation allowed by the Tribunal in both the cases call for enhancement as the Tribunal in the case of Madan Lal Gauri has not assessed amount of compensation by taking into account all the conventional heads separately. Though, Madan Lal Gauri was an employee of State Bank of India and has not suffered any loss of income due to leaves taken by him but this factor certainly calls for allowing of compensation. He has also suffered weakness of his right hand, which has affected not only his daily life but also his future prospects. The Tribunal took into account only the payments of operation charges received by the doctor. Admittedly, he remained admitted in the hospital for about 20 to 25 days and had to bear hospital expenses, attendant charges, nutritious diet and transportation charges etc. Even after discharge, a person, who had received multiple fractures, requires continuous

medical check up, treatment and also physiotherapy. Though, he had suffered 40% disability, which was not permanent, but this factor also calls for awarding some compensation on this account.

15. Keeping in view all the above factors, the amount of compensation to which claimant-Madan Lal Gauri is entitled, is reassessed as follows:-

Sr. No.	Heads	Calculation
(i)	Medical expenses	₹9700 (proved on file)
(ii)	Hospital charges and medical expenses @ ₹500/- per day for 25 days	₹500x25=12500
(iii)	Future medical expenses	₹10000
(iv)	Pain and suffering	₹10000
(v)	Nutritious diet	₹10000
(vi)	Attendant charges	₹10000
(vii)	Transportation charges	₹5000
(viii)	Loss of future prospects	₹30000
(ix)	Loss of amenities of life	₹20000
(x)	Compensation for 40% disability	₹25000
<i>Total</i>		₹142200

16. In the case of death of Kundan Lal Bhatia, the Tribunal took his income as ₹3000/- per month which appears to be on lower side keeping in view status of the deceased, who was a member of Legislative Assembly, Haryana and was getting various allowances. Claimants have alleged that the deceased also in business and was income tax payee but could not produce evidence of his income from business and income tax return on record.

17. As a member of Legislative Assembly, he was getting a

lot of allowances besides salary. Keeping in view the status of deceased, his income is taken as ₹5000/- per month and after making deduction of 1/3rd from income of the deceased towards personal expenses, amount of dependency works out to be (₹5000-1666) ₹3334/- per month. As per medicolegal report, the Tribunal has taken age of the deceased as 47 years but claimant-Kanta Devi Bhatia while appearing as PW-1 has stated age of the deceased as 55 years. Being wife, she is the best person to tell age of her husband. Even otherwise, the deceased was a member of Legislative Assembly and there were number of documents available to prove age of the deceased, which have not been placed on record. Mentioning of age of the deceased in the postmortem report as 47/48 years loses significance in view of the statement of wife of the deceased, as such, age of the deceased is taken as 55 years. As per norms laid down in **Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, multiplier of 11 is applicable to work out the amount of dependency. As per observations in the case of **Rajesh (supra)**, claimants are also entitled to 15% addition in income of the deceased towards future prospects. The accident had taken place in the year 1990. In the case of **Rajesh (supra)**, where the accident had taken place in the year 2007, the amount of compensation towards loss of love and affection, care and guidance for minor children was allowed as ₹1 lac. Keeping in view the price index in the year 1996, claimants are entitled to ₹50,000/- towards loss of love and affection, care and guidance for the child and another sum of ₹50,000/- towards

loss of consortium for the wife and ₹10,000/- for the funeral expenses. The amount of compensation to which claimants are entitled, is tabulated as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased Kundan Lal Bhatia	₹5000 per month
(ii)	15% of (i) above to be added as future prospects	₹5000 + ₹750 = ₹5750 per month
(iii)	1/3 rd of (ii) deducted as personal expenses of the deceased	₹5750 - ₹1916 = ₹3834 per month
(iv)	Compensation after multiplier of 11 is applied	(₹3834X12X11) = ₹506088 rounded off 506100
(v)	Loss of estate, love and affection	₹50000
(vi)	Loss of consortium	₹50000
(vii)	Funeral expenses	₹10000
<i>Total</i>		₹616100

18. As a sequel of my above discussion, both the appeals are accepted. Award of the Tribunal is modified and the compensation allowed to claimant-Madan Lal Guari (in FAO No. 40 of 1995) is enhanced from ₹1,00,000/- to ₹1,42,200/- and for death of Kundan Lal Bhatia (in FAO No. 1356 of 1994) compensation allowed by the Tribunal is enhanced from ₹3,84,000/- to ₹6,16,100/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization.

March 30, 2016
jk

(SURINDER GUPTA)
JUDGE