

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3190 of 2001

Date of Decision.19.02.2016

Gurcharan Kaur and others

.....Appellants

Vs.

Shangara Ram and others

.....Respondents

2. FAO No.3191 of 2001

Naresh Kumar Bansal

.....Appellant

Vs.

Shangara Ram and others

.....Respondents

Present: Mr. Aaskash Singla, Advocate for
Mr. Ashok Singla, Advocate
for the appellants.

Mr. J.K. Singla, Advocate
for respondent No.2.

Mr. Vinod Gupta, Advocate and
Mr. Sukhdarshan Singh, Advocate
for respondent No.3-insurance company.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. Both these cases are connected and it is a case of driver of the scooter having received grievous injuries which is subject of appeal in FAO No.3191 of 2001 and another case of death of a pillion rider which is subject of appeal in FAO No.3190 of 2001. Both the deceased and the injured person were Junior Engineers in the Punjab State Electricity Department.

2. As regards the claim for death in FAO No.3190 of 2001, the claimants were widow, two minor children and mother. The name of the mother was later struck off when she died during the pendency of the claim petition. There was evidence to the effect that the deceased was earning ₹8600/- per month. The Tribunal provided for compensation of ₹1,60,000/- towards medical expenses and for other heads for loss of love and affection and loss of consortium and did not provide any amount for loss of dependence on account of the salary earned. This was on account of the fact that the wife had been given compassionate monetary assistance under the compassionate scheme of Punjab State Electricity Department.

3. The manner of assessment of compensation by the Tribunal is erroneous and it is bound to be set aside in the light of the law laid down by the Division Bench of this Court in **Reliance General Insurance Company Limited Vs. Purnima and others** in FAO No.1322 of 2010 and other connected cases on 21.12.2012. The Division Bench has held that a tortfeasor will not have the benefit of making any deduction for a compassionate assistance which is given by the State and shall be taken as independent of any assessment that the Court will bound to make. I will take, therefore, the income as ₹8600/- per month, and make a provision for increase at 30%. I will adopt a multiplier of 14 and assess the loss of dependence at ₹10,64,336/-. I will also provide for ₹1 lac each for loss of consortium and loss of love and affection, ₹10,000/- for funeral expenses and ₹5000/- for loss to estate. The various heads of claims are tabulated as under:-

FATAL ACCIDENT 19.10.1992			
Age	42 years		
Occupation	Junior Engineer		
Claimants	Widow, two minor children		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income		8600
2	Add, % of increase 30%		11,180
3	Less, Deduction		6335.33
4	Multiplicand (annualized by multiplying 12)		76,023.96
5	Multiplier		14
6	Loss of dependence		10,64,336
7	Medical Expenses	60,000	60,000
8	Loss of Consortium	1,00,000	1,00,000
9	Loss of love and affection		1,00,000
10	Loss to estate		5000
11	Funeral expenses		10,000
	Total	1,60,000	13,39,336

4. The total compensation payable shall be ₹13,39,336/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of petition till the date of payment. The compensation shall be distributed equally amongst the claimants. The liability shall remain the same as determined by the Tribunal.

5. The award passed by the Tribunal is modified and the appeal in FAO No.3190 of 2001 is allowed to the above extent.

6. As regards the claim in FAO No.3191 of 2001, the injured was 38 years of age and he was admitted in the hospital between 19.10.1997 to 15.03.1998 for a period of five months. He was said to be earning ₹8685/- per month and the Tribunal provided for ₹43,000/- as the loss of income and proceeded to assess ₹76,278/- as medical

expenses and ₹2,30,400/- as loss of amenities on account of disability. The disability complained of was on account of three fractures: (i) fracture on the left scapula; (ii) fracture of left rib and (iii) fracture of the right humerus. There had been a compression of the spinal cord as well and he was advised to be careful not to aggravate the problem. However, he had resumed duty but the Tribunal had made some calculation which his incomprehensible to an extent of ₹2,30,400/- as going towards amenities. The total compensation was assessed at ₹3,50,000/-.

7. If the compensation were to be assessed on any scientific basis, there are well known heads which have been recognized through several decisions of the Supreme Court and particularly with reference to Raj Kumar Vs. Ajay Kumar and another (2011) 1 SCC 343. I will rework the compensation on the following basis and tabulate as follows:-

INJURY CASES			
Age	38 years		
Period of Hospitalization 19.10.1997 to 15.03.1998			
Occupation	Junior Engineer		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Loss of income		43,000
2	Medical expenses		
(i)	Medicines		76,278
(ii)	Hospital Charges	76,278	34,000
(iii)	Attendant Charges		10,000
(iv)	Special Diet		10,000
(v)	Transport		5,000
3	Pain & Suffering-per fracture/per surgery @ ₹7500/- and ₹5000/- respectively		40,000

INJURY CASES			
4	Disability assessed at 20%	2,30,400	40,000
5	Loss of earning capacity		
	income		
	Multiplier		
	% of loss of earning capacity		
6.	Loss of amenities		
7	Reduction in life expectancy		
8	Loss of prospect of marriage		
	Total	3,50,000	2,58,278

8. The amount if it should be calculated on various heads works out to ₹2,58,278/- which is less than what has already been provided by the Tribunal. There is no scope for further increase and therefore, the appeal in FAO No.3191 of 2001 is dismissed.

(K. KANNAN)
JUDGE

February 19, 2016
Pankaj*