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

**(i)** **FAO No. 5373 of 2004**
**Date of decision: 02.03.2016**

Satinder Kaur and another
...Appellant(s)
Versus

Neena Tiwana and others
...Respondent(s)

**(ii)** **FAO No. 5374 of 2004**
**Date of decision: 02.03.2016**

Sant Kaur and another
...Appellant(s)
Versus

Neena Tiwana and others
...Respondent(s)

**(iii)** **FAO No. 263 of 2005**
**Date of decision: 02.03.2016**

New India Assurance Co.
...Appellant(s)
Versus

Satinder Kaur and others
...Respondent(s)

**(iv)** **XOBJEC No. 35-CII of 2011 in/And**
**FAO No. 264 of 2005**
**Date of decision: 02.03.2016**

New India Assurance Co.
...Appellant(s)

Versus

Rajinder Kaur Dhillon and another ...Respondent(s)

**(v)** **FAO No. 265 of 2005**
**Date of decision: 02.03.2016**

New India Assurance Co. ...Appellant(s)

Versus

Sant Kaur and others ...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. Ashwani Arora, Advocate,
for the claimants.

Mr. A.S. Syan, Advocate,
for the petitioner.

Mr. Vinod Chaudhary, Advocate,
for the Insurance Company.

**<u>JITENDRA CHAUHAN, J.</u>**

This appeal shall dispose of afore-mentioned five appeals bearing (i) FAO No. 5373 of 2004 titled as “Satinder Kaur and another Vs. Neena Tiwana and others”, (ii) FAO No. 5374 of 2004 titled as “Sant Kaur and another Vs. Neena Tiwana and others”, (iii) FAO No. 263 of 2005 titled as “New India Assurance Co. Vs. Satinder Kaur and others”, (iv) FAO No. 264 of 2005 along with XOBJC-35-CII-2011 titled as “New India Assurance Co. Vs. Rajinder Kaur Dhillon and another” and (v) FAO No.265 of 2005 titled as “New India Assurance Vs. Sant Kaur and others” challenging the common award dated 11.09.2004 passed by the Motor Accident Claims Tribunal, Patiala (for short 'The Tribunal').

FAO No. 5373 of 2004 and FAO No. 5374 of 2004 have been filed by the claimants seeking enhancement of the compensation, whereas, FAO Nos. 263-65 of 2005 have been filed by the Insurance Company for setting aside of the award.

Three claim applications bearing No. 47, 49 and 52 of 2002 were filed by the parents of deceased Jatinder Singh, Manjit Kaur and Harpreet Kaur respectively.

In the claim petition No. 47 of 2002, it has been averred that on 19.05.2002, the deceased, Jitender Singh aged 22 years, an artist by profession was coming from Kangra to Patiala in Contessa car bearing No. PB-11H-300, which was being driven by Harpal Tiwana. The deceased was an artist who had played a role of Dewan Mokam Chand in the film "Ik-Akh-Ik Nazar Maharaja Ranjit Singh" directed by Harpal Tiwana. The car was being driven on its correct side. When they reached near village Sanet, a truck bearing No. HP-36-1907, being driven in a rash and negligent manner by the respondent No.3, Sanjiv Singh, was coming from the wrong side and struck against the car in which the deceased was sitting. As a result, the occupants of car No. PB-11H-300 received multiple injuries. Harpreet Kaur and Harpal Tiwana died on the spot and Manjit Kaur was shifted to CMC, Ludhiana wherefrom she was brought to Rajendra Hospital, Patiala where she succumbed to her injuries on 21.05.2002. Jitender Singh died in CMC hospital, Ludhiana. The driver of the offending truck being an influential person got a false case registered against Harpal

Tiwana. Consequently, three claim applications were filed under Section 163-A of the Motor Vehicles Act claiming compensation on account of death of Jitender Singh, Manjit Kaur and Harpreet Kaur.

The learned Tribunal vide impugned award assessed the income of deceased Jitender Singh at Rs. 2400-2500/- per month. Deduction of 1/3rd was made because the deceased was unmarried. The loss of monthly dependency was assessed at Rs. 1500/-. Keeping in view the age of the claimants/appellants, multiplier of 10 was applied and the compensation was assessed at Rs. 1,80,000/- in respect of death of Jitender Singh.

The income of deceased Manjit Kaur was assessed at Rs. 2500/-. Deduction of 1/3rd was made as she was unmarried. Multiplier of 9 was applied keeping in view the age of the claimants-parents and the compensation of Rs. 1,62,000/- was awarded.

The income of deceased Harpreet Kaur was assessed at Rs. 2500/- per month. Deduction of 1/3rd was made and the multiplier of 9 was applied and the loss of dependency was assessed at Rs. 1,62,000/-.

**FAO Nos. 263-65 of 2005**

Firstly, FAO Nos. 263-65 of 2005 filed by the Insurance Company are taken up.

It is contended on behalf of the appellants that the owner of the truck has not been impleaded as a party. In the absence of any finding that the insured is liable to pay the amount of compensation, the insurer cannot be held liable. It is further contended that the driver of car was not holding a driving licence and since the vehicle was being driven in violation to the Motor Vehicles Act, it was wrong to have held that the Insurance Company is liable to indemnify the loss.

As regards, non-holding of licence by the driver of the car, this court is of the opinion that since the claim petition was filed under Section 163-A of the Motor Vehicles Act, the question of holding licence becomes redundant inasmuch as no negligence is to be attributed to any person. The provision states that if during the use of motor vehicle, any accident or loss is occasioned, the owner of the vehicle is liable to compensate the loss. The question of negligence is alien to the provision. Therefore, the argument of non-holding the driving licence by the driver of the car is rejected.

The record of the Tribunal reveals that Sri Jagar Nath, the owner of the truck no. HP-36-1907 was impleaded as respondent No. 4. However, he did not choose to appear, and he was proceeded against ex parte. Faced with this situation, the second argument falls to the grounds. Consequently, there is no merit in the appeals filed by the Insurance Company and the same are dismissed.

**FAO No. 5373 of 2004**

FAO No. 5373 of 2004 has been preferred by the parents of deceased, Jitender Singh, claiming enhancement of the compensation. The deceased, Jitender Singh was aged 22 years at the time of his death. He was working as Production Manager with Harpal Tiwana. The learned Tribunal has assessed the income of the deceased at Rs.

2400-2500/- per month. The deceased was unmarried, so deduction of 1/3rd was made towards his personal expenses. The monthly loss of dependency was assessed at Rs. 1500/-. Keeping in view the age of the claimants, multiplier of 10 was applied and the loss of dependency was assessed at Rs. 1,80,000/-.

**FAO No. 5374 of 2004**

In FAO No. 5374 of 2004, the claimants are the parents of deceased Manjit Kaur. She was 19 years of age at the time of accident. She was a stage actor. Her income was claimed to be Rs. 2500/- per month. The learned Tribunal accepted the income of the deceased as projected by the claimants. Deduction of 1/3rd was made and the monthly loss of dependency was assessed at Rs. 1500/-. Multiplier of 9 was applied keeping in view the age of the claimants and loss of dependency was assessed at Rs. 1,62,000/-.

Whereas, the XOBJC-35-CII of 2011 has been filed by the parents of deceased Harpreet Kaur claiming enhancement of the compensation. The age of deceased, at the time of death, was 22 years. The income of the deceased was assessed at Rs. 2500/- per month as claimed by the claimants. The deduction of 1/3rd was made and the multiplier of 9 was applied keeping in view the age of the parents. Consequently, compensation of Rs. 1,62,000/- was awarded on account of death of Harpreet Kaur. This Court is of the opinion that the amount of compensation in all appeals has been awarded keeping in view the structured formula as provided under Schedule-II of the Act. The learned counsel has not referred to any fact or circumstance contrary to the structured formula. Therefore, there is no scope of enhancement. Consequently, all the appeals filed by the claimants as well as the Insurance Company are dismissed.

**02.03.2016** **( JITENDRA CHAUHAN)**
**SN** **JUDGE**