

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

(1) FAO No. 4 of 2002 (O&M)
 Date of decision: January 6, 2016

Mani Ram and others

...Appellants

Versus

Om Parkash and others

...Respondents

(2) FAO No. 2485 of 2002 (O&M)

Smt. Sukhdev Kaur and another

...Appellants

Versus

Om Parkash and others

...Respondents

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?**

Present: Mr. PK Ganga, Advocate,
 for the appellants.

Mr. RK Bashamboo, Advocate,
 for the insurance company.

K. KANNAN, J. (Oral)

1. This order shall dispose of the above mentioned two appeals as they arise out of the same accident.

2. In FAO No. 2485 of 2002, the deceased was 23 years of age, who was a driver. The claimants were parents. The accident took place on 28.12.1997. The Tribunal took the income at ₹2,000/-, and provided for

loss of dependency and awarded compensation at ₹2,69,200/-.

3. In FAO No. 4 of 2002, the deceased was 26 years of age. He was said to have been employed in a jewelry shop earning ₹5,000/-. The claimants were wife, minor son and the parents. The tribunal took the income at ₹4,000/- and considering the fact that the deceased was under treatment in the hospital incurring expenses that have been brought on record, which proved ₹6,50,000/- as having been incurred till he died on 3.2.1998, the Tribunal provided for the entire expenses and determined the compensation at ₹12,53,200/-.

4. In both the cases, the grievance is that the Tribunal has not provided for prospect of increase in income and that further the Tribunal has not provided for loss of love and affection and loss of consortium in adequate measure. The learned Counsel appearing for the insurance company Mr. R.K. Bashamboo submits that the deceased driver was in private employment with no prospect of increase in income and similarly, the deceased in FAO No. 4 of 2002 was in private employment and issue of whether provision should be made for prospects of increase is still pending consideration before the Supreme Court and there is no warrant for making an assumption that any increase in salary would have been obtained by him in the course of time.

5. In a growing economy such as India, the standard of living is bound to increase and most predictably, the incomes are also bound to increase. It is invariably the private player in the market, who sets even trend for the government to follow for scales of salaries to increase and there is no reason to restrict a prospect of increase only to government

employment and deny the same persons who are self-employed or in private employment. A casual employee in Haryana gets in the present condition not less than ₹8,500/- and the minimum salary that any Central government servant gets for the lowest menial job is ₹16,000/- as per the latest Pay Commission report. A provision of ₹2,000/- made in the year 1997 may have been proper but there is no reason to suppose that a young person of 23 years would have lived through his entire life with the same income. So is the case for the person who was 26 years of age, who was employed in the jewellery shop. His income also ought to have gradually increased. Their own respective employment was not so fragile as not to indicative a prospect of increase in future. I will, therefore, discard the argument made by the insurance company and provide a prospect of increase at the rate of 50% of what they were earning at the time of death. Non pecuniary heads of claim have also undergone increase through the decisions of the Supreme Court in Rajesh and others Versus Rajbir and others 2013 (9) SCC 54 and all the subsequent decisions. If a case is brought up for hearing after these decisions, we need to take note of how the judicial wind is blowing and if the insurance company itself did not propose a meaningful settlement during the pendency of the cases during all these 10 years or more, there is no reason to deny the increased scales of compensation that are now brought through the decisions of the Supreme Court. I, therefore, take the income as assessed by the Tribunal in the respective cases, make a provision of 50% increase and also add towards the component of love and affection for each parent at ₹50,000/- in FAO 2485 of 2002. In FAO 4 of 2002, although the wife and son have not preferred the appeal but only the parents have

preferred the appeal, I make assessment of ₹1 lakhs for loss of consortium for the wife. I will not provide a aggregate amount of ₹1.50 lakhs for parents and son in FAO No. 2 of 2002 for the loss of love and affection. The several heads of claims are tabulated in both the cases are as under:-

The table of FAO No. 2485 of 2002.

<i>Fatal Accident</i>		<i>Date of accident</i>	
Age	23	28.12.1997	
Occupation	Driver		
Claimants:	Parents		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (₹)	Amount (₹)
1	Income	2,000	2000
2	Add, % of increase		3000
3	Deduction	1400	1500
4	Multiplicand	16,800	
5	Multiplier	16	18
6	Loss of dependence	2,69,000	3,24,000
7	Medical expenses		
8	Loss of Consortium		
9.	Loss of love and affection for children	}	1,00,000
10	Loss to estate		5000
11	Funeral Expenses		10,000
	Total	2,69,200	4,39,000

Table of FAO No. 4 of 2002.

<i>Fatal Accident</i>		<i>Date of accident</i>	
Age	26	28.12.1997	
Occupation	Working in a jewellery shop		
Claimants:	Parents.		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (₹)	Amount (₹)
1	Income	4000	4000
2	Add, % of increase		2000
3	Deduction 1/3 rd	2700	1500
4	Multiplicand	32400	54000

<i>Fatal Accident</i>		<i>Date of accident</i>	
5	Multiplier	18	17
6	Loss of dependence	5,83,200	9,18,000
7	Medical expenses	6,55,000	6,55,000
8	Loss of Consortium	15000	1,00,000
9.	Loss of love and affection for parents and son		1,50,000
10	Loss to estate		5000
11	Funeral Expenses		10,000
	Total	12,53,200	18,38,000

6. The compensation in FAO 2485 of 2002 shall be, therefore, ₹4,39,000/- and the compensation in FAO No. 4 of 2002 shall be ₹18,38,000/-. Considering the fact that the increase have been made as per the present trend, I restrict the rate of interest for the additional compensation at 6% from the date of the petition till the date of payment. The amount shall be distributed equally amongst the parents in FAO 2485 of 2002 and the additional compensation shall be distributed amongst the wife, son and the parents respectively in the ratio of 2:2:1:1: in FAO No. 4 of 2002. The liability shall be on the insurance company.

7. The awards are modified and the appeals are allowed to the above extent.

January 6, 2016
prem

(K.KANNAN)
JUDGE