

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

FAO No.6046 of 2012 (O&M)

Date of decision: 27.01.2016

Desh Raj and anotherAppellants

Versus

Veeran Bai and othersRespondents

2) FAO No.6047 of 2012 (O&M)

Desh Raj and anotherAppellants

Versus

Karam Chand and othersRespondents

3) FAO No.6048 of 2012 (O&M)

Desh Raj and anotherAppellants

Versus

Subhash and othersRespondents

4) FAO No.6049 of 2012 (O&M)

Desh Raj and anotherAppellants

Versus

Karmo Bai and othersRespondents

5) FAO No.6050 of 2012 (O&M)

Desh Raj and anotherAppellants

Versus

Chhindo Bai @ Chhinder Kaur and othersRespondents

6) FAO No.6051 of 2012 (O&M)

Desh Raj and anotherAppellants

Versus

Sumitra Devi and othersRespondents

7) FAO No.1930 of 2013

Karam ChandAppellant

Versus

Salwant Singh and othersRespondents

8) FAO No.1931 of 2013 (O&M)

Veeran Bai and anotherAppellants

Versus

Salwant Singh and othersRespondents

9) FAO No.1932 of 2013 (O&M)

Chhindo Bai @ Chhinder Kaur and anotherAppellants

Versus

Salwant Singh and othersRespondents

10) FAO No.1933 of 2013 (O&M)

Subhash and anotherAppellants

Versus

Salwant Singh and othersRespondents

11) FAO No.1934 of 2013 (O&M)

Sumitra Devi and othersAppellants

Versus

Salwant Singh and othersRespondents

12) FAO No.1935 of 2013 (O&M)

Karmo Bai and anotherAppellants

Versus

Salwant Singh and others

....Respondents

13) FAO No.670 of 2013 (O&M)

Mathura Rani and another

....Appellants

Versus

Salwant Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Dheeraj Narula, Advocate
for the appellants
in FAO Nos.1930-1935 and 670 of 2013 and
for respondent Nos.1 and 2
in FAO Nos.6046-6051 of 2012

Ms. Anupam Sharma, Advocate
for the appellants
in FAO Nos.6046-6051 of 2012 and
for respondents No.3 and 4
in FAO Nos.1930-1935 and 670 of 2013

JITENDRA CHAUHAN J. (Oral)

CM No.4286-CII of 2013 in FAO No.670 of 2013

Keeping in view the grounds mentioned in the application, the same is allowed and the delay of 03 days in filing the appeal stands condoned.

CM No.9490-CII of 2013 in FAO No.1934 of 2013

Keeping in view the grounds mentioned in the application, the same is allowed and the delay of 03 days in filing the appeal stands condoned.

CM No.9491-CII of 2013 in FAO No.1935 of 2013

Keeping in view the grounds mentioned in the application, the same is allowed and the delay of 03 days in filing the appeal stands condoned.

CM No.9489-CII of 2013 in FAO No.1933 of 2013

Keeping in view the grounds mentioned in the application, the same is allowed and the delay of 03 days in filing the appeal stands condoned.

CM No.9488-CII of 2013 in FAO No.1932 of 2013

Keeping in view the grounds mentioned in the application, the same is allowed and the delay of 03 days in filing the appeal stands condoned.

CM No.9487-CII of 2013 in FAO No.1931 of 2013

Keeping in view the grounds mentioned in the application, the same is allowed and the delay of 03 days in filing the appeal stands condoned.

MAIN APPEALS

1. By this single judgment I intend to dispose of the aforesaid thirteen appeals having arisen out of the same impugned award dated 12.10.2012.

2. Brief facts of the case are that on 09.11.2008, Dharampal @ Kaka son of Waryam Chand, Rita Rani daughter of Karam Chand, Sunita Rani daughter of Channa Ram, Paramjit daughter of Hari Ram, Piari wife of Karam Chand, Khajan Chand

son of Chandi Ram and Soma Rani daughter of Satnam Chand along with other co-villagers were returning to their native village Sangar Sadha, in a tractor-trolley bearing No.HR-20-D-0206, being driven by respondent No.3 and owned by respondent No.4 after attending the Satsang of Radha Swami. At about 01:15 p.m., when they reached in the area of village Moriwala, a truck-tralla bearing No.HR-46-0046, being driven by Gurdeep Singh (since deceased) and owned by respondents No.1 and 2, struck against their tractor-trolley which turned turtle and due to the said impact, eight persons have died, succumbed to their injuries on the spot.

3. In this regard, an FIR No.124 dated 09.11.2008, under Sections 279, 336, 337, 338 and 304-A IPC, in respect of the accident in question was got registered at Police Station Ding.

4. Consequently, the claimants-appellants filed claim petitions before the Tribunal.

5. **FAO No.1930 of 2013-Karam Chand's case**

Before the Tribunal, PW-4, Karam Chand, appeared and tendered his affidavit Ex.PW-4/A, to prove that his daughter Rita Rani was a lady tailor. Her income was assessed at Rs.3200/- per month. She was 19/20 years of age at the time of accident as per Post-mortem Report Ex.PP.

The claim petition was accepted by the Tribunal and a sum of Rs.163000/- was awarded as compensation on account of death of Rita Rani along with future interest at the rate of 9% per

annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3200/- x 12)	Rs.38,400/-
(ii)	Dependency of the claimant after deducting 50% of (i) towards personal expenses of the deceased	(Rs.38,400/-) - (Rs.19,200/-) = Rs.19,200/-
(iii)	Compensation after multiplier of 8 is applied	(Rs.19,200/- x 8) =Rs.1,53,600/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.10,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.1,63,600/- (rounded off to Rs.1,63,000/-)

However, as per Second Schedule the compensation is assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3,200/- x 12)	Rs.38,400/-
(ii)	Dependency of the claimant after deducting 1/3rd of (i) towards personal expenses of the deceased	(Rs.38,400/-) - (Rs.12,800/-) = Rs.25,600/-
(iii)	Compensation after multiplier of 16 is applied	(Rs.25,600/- x 16) =Rs.4,09,600/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.9,500/-
(v)	TOTAL COMPENSATION AWARDED	Rs.4,19,100/-
(vi)	Enhanced amount of compensation	(Rs.4,19,100/-) – (Rs.1,63,000/-) =Rs.2,56,100/-

FAO No.1931 of 2013-Veeran Bai's case

Before the Tribunal, PW-7, Veeran Bai, appeared and tendered her affidavit Ex.PW-7/A, to prove that her daughter-Sunita Rani was a tailor and was running a tailoring shop at her house. Her income was assessed at Rs.3,300/- per month by the

Tribunal. She was 22 years of age at the time of accident as per Post-mortem Report Ex.PQ.

The claim petition was accepted by the Tribunal and a sum of Rs.2,27,800/- was awarded as compensation on account of death of Sunita Rani along with future interest at the rate of 9% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3300/- x 12)	Rs.39,600/-
(ii)	Dependency of the claimant after deducting 50% of (i) towards personal expenses of the deceased	(Rs.39,600/-) - (Rs.19,800/-) = Rs.19,800/-
(iii)	Compensation after multiplier of 11 is applied	(Rs.19,800/- x 11) =Rs.2,17,800/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.10,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.2,27,800/-

However, as per Second Schedule the compensation is assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3300/- x 12)	Rs.39,600/-
(ii)	Dependency of the claimant after deducting 1/3rd of (i) towards personal expenses of the deceased	(Rs.39,600/-) - (Rs.13,200/-) = Rs.26,400/-
(iii)	Compensation after multiplier of 17 is applied	(Rs.26,400/- x 17) =Rs.4,48,800/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.9,500/-
(v)	TOTAL COMPENSATION AWARDED	Rs.4,58,300/-
(vi)	Enhanced amount of compensation	(Rs.4,58,300/-)-(Rs.2,27,800/-) =RS.,2,30,500/-

FAO No.1932 of 2013-Chhindo Bai's case

Before the Tribunal, PW-5, Chhindo Bai, appeared and tendered her affidavit Ex.PW-5/A, to prove that her daughter-Paramjit was a student and used to help her in household affairs. Her income was assessed at Rs.2,000/- per month by the Tribunal. She was 15 years of age at the time of accident as per Post-mortem Report Ex.PN.

The claim petition was accepted by the Tribunal and a sum of Rs.1,66,000/- was awarded as compensation on account of death of Paramjit along with future interest at the rate of 9% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.2000/- x 12)	Rs.24,000/-
(ii)	Dependency of the claimant after deducting 50% of (i) towards personal expenses of the deceased	(Rs.24,000/-) - (Rs.12,000/-) = Rs.12,000/-
(iii)	Compensation after multiplier of 13 is applied	(Rs.12,000/- x 13) =Rs.1,56,000/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.10,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.1,66,000/-

However, as per Second Schedule the compensation is assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.2,000/- x 12)	Rs.24,000/-
(ii)	Dependency of the claimant after deducting 1/3rd of (i) towards personal expenses of the deceased	(Rs.24,000/-) - (Rs.8,000/-) = Rs.16,000/-

(iii)	Compensation after multiplier of 15 is applied	(Rs.16,000/- x 15) =Rs.2,40,000/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.9,500/-
(v)	TOTAL COMPENSATION AWARDED	Rs.2,49,500/-
(vi)	Enhanced amount of compensation	(Rs.2,49,500/-) – (Rs.1,66,000/-) =Rs.83,500/-

FAO No.1933 of 2013-Subhash's case

Before the Tribunal, PW-6, Subhash, appeared and tendered his affidavit Ex.PW-6, to prove that his mother Ram Piari, used to look after the family members as well as animals in the house. Her income was assessed at Rs.3,000/- per month. She was 55 years of age at the time of accident as per Post-mortem Report Ex.PK.

The claim petition was accepted by the Tribunal and a sum of Rs.2,20,000/- was awarded as compensation on account of death of Ram Piari along with future interest at the rate of 9% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3000/- x 12)	Rs.36,000/-
(ii)	Dependency of the claimant after deducting 1/3 rd of (i) towards personal expenses of the deceased	(Rs.36,000/-) - (Rs.12,000/-) = Rs.24,000/-
(iii)	Compensation after multiplier of 8 is applied	(Rs.24,000/- x 8) =Rs.1,92,000/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.10,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.2,02,000/-)

However, as per Second Schedule the compensation is

assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3,000/- x 12)	Rs.36,000/-
(ii)	Dependency of the claimant after deducting 1/3rd of (i) towards personal expenses of the deceased	(Rs.36,000/-) - (Rs.12,000/-) = Rs.24,000/-
(iii)	Compensation after multiplier of 11 is applied	(Rs.24,000/- x 11) =Rs.2,64,000/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.9,500/-
(v)	TOTAL COMPENSATION AWARDED	Rs.2,73,500/-
(vi)	Enhanced amount of compensation	(Rs.2,73,500/-) – (Rs.2,02,000/-) =Rs.71,500/-

FAO No.1934 of 2013 - Sumitra Devi's case

Before the Tribunal, PW-3, Sumitra Devi, appeared and tendered her affidavit Ex.PW-3/A, to prove that her husband was a labourer. His income was assessed at Rs.3,300/- per month. He was 50 years of age at the time of accident as per Post-mortem Report Ex.PM.

The claim petition was accepted by the Tribunal and a sum of Rs.3,20,400/- was awarded as compensation on account of death of Khajan Chand along with future interest at the rate of 9% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3300/- x 12)	Rs.39,600/-
(ii)	Dependency of the claimant after deducting 1/3 rd of (i) towards personal expenses of the deceased	(Rs.39,600/-) - (Rs.13,200/-) = Rs.26,400/-

(iii)	Compensation after multiplier of 11 is applied	(Rs.26,400/- x 11) =Rs.2,90,400/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.10,000/-
(v)	Loss of consortium	Rs.20,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.3,20,400/-

However, as per Second Schedule the compensation is assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3,300/- x 12)	Rs.39,600/-
(ii)	Dependency of the claimant after deducting 1/3rd of (i) towards personal expenses of the deceased	(Rs.39,600/-) - (Rs.13,200/-) = Rs.26,400/-
(iii)	Compensation after multiplier of 13 is applied	(Rs.26,400/- x 13) =Rs.3,43,200/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.9,500/-
(v)	TOTAL COMPENSATION AWARDED	Rs.3,52,700/-
(vi)	Enhanced amount of compensation	(Rs.3,52,700/-) – (Rs.3,20,400/-) =Rs.32,300/-

FAO NO.1935 of 2013 - Karmo Bai's case

Before the Tribunal, PW-2, Karmo Bai, appeared and tendered her affidavit Ex.PW-2/A, to prove that her daughter Soma Rani was a skilled tailor. Her income was assessed at Rs.3200/- per month. She was 18 years of age at the time of accident as per Post-mortem Report Ex.PO.

The claim petition was accepted by the Tribunal and a sum of Rs.2,21,200/- was awarded as compensation on account of death of Soma Rani along with future interest at the rate of 9% per annum from the date of filing of the petition till its realization. The

compensation assessed by the Tribunal is reproduced as below:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3200/- x 12)	Rs.38,400/-
(ii)	Dependency of the claimant after deducting 50% of (i) towards personal expenses of the deceased	(Rs.38,400/-) - (Rs.19,200/-) = Rs.19,200/-
(iii)	Compensation after multiplier of 11 is applied	(Rs.19,200/- x 11) =Rs.2,11,200/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.10,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.2,21,200/-

However, as per Second Schedule the compensation is assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.3,200/- x 12)	Rs.38,400/-
(ii)	Dependency of the claimant after deducting 1/3rd of (i) towards personal expenses of the deceased	(Rs.38,400/-) - (Rs.12,800/-) = Rs.25,600/-
(iii)	Compensation after multiplier of 16 is applied	(Rs.25,600/- x 16) =Rs.4,09,600/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.9,500/-
(v)	TOTAL COMPENSATION AWARDED	Rs.4,19,100/-
(vi)	Enhanced amount of compensation	(Rs.4,19,100/-) – (Rs.2,21,200/-) =Rs.1,97,900/-

FAO NO.670 of 2013-Mathura Rani's case

Before the Tribunal, PW-1, Mathura Rani, appeared and tendered her affidavit Ex.PW-1/A, wherein she stated that her son Dharampal @ Kaka was studying in 9th class and used to help his father in agricultural pursuits and was earning Rs.3,000/- per month. He was 10 years of age at the time of accident as per Post-mortem Report Ex.PL.

The Tribunal, however, held that a child aged about 10 years would not be liable to help his family members through financial constraints. Hence, the claim petition in Mathura Rani's case was dismissed.

However, as per Second Schedule the compensation is assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Notional Income	Rs.15,000/-
(ii)	Dependency of the claimant after deducting 1/3rd of (i) towards personal expenses of the deceased	(Rs.15,000/-) - (Rs.5,000/-) = Rs.10,000/-
(iii)	Compensation after multiplier of 15 is applied	(Rs.10,000/- x 15) =Rs.1,50,000/-
(iv)	Funeral expenses, last rites, love and affection, mental shock and agony	Rs.9,500/-
(v)	TOTAL COMPENSATION TO BE AWARDED	Rs.1,59,500/-

6. Feeling dissatisfied with the impugned award, FAO Nos.6046 to 6051 of 2012 have been preferred by the appellants-owner and driver of Tractor Trolley Mohindra DI NoHR-20D-0206, whereas FAO Nos.1930 to 1935 of 2013 and FAO No.670 of 2013 have been filed by the claimants-appellants.

7. The learned counsel for the appellants-owner and driver has submitted that the FIR Ex.PA and the award of the Tribunal shows that the truck was driven on the wrong side. He has further submitted that an amount of Rs.1,00,000/- has already been granted and this fact is admitted in the written statement, but no deduction in the awarded compensation has been done by the

Tribunal. He has further submitted that the learned Tribunal has wrongly held that the tractor-trolla was overloaded with 40-50 passengers, while as per FIR, there were 30-35 passengers. However, as per the statement of Smt. Veeran Bai, one of the claimant/eye-witness, there were 20-25 persons who were traveling in the tractor-trolla. Thus, the learned Tribunal has wrongly assessed the compensation.

8. On the other hand, the learned counsel for the appellants-claimants has submitted that the claim petition has been filed under Section 163-A of the Motor Vehicles Act, and thus, the deduction to the extent of 1/3rd as prescribed in the Second Schedule ought to have been applied.

9. I have heard learned counsel for the parties and perused the case file.

10. From the perusal of statements of PW1-Mathura, PW2-Karmo Bai, PW3-Sumitra Devi, PW4-Karam Chand, PW5-Chhindo Bai, PW6-Subhash, PW7-Veeran Bai and FIR Ex.PA, it reveals that the tractor-trolla-offending vehicle was involved in the alleged accident which was being driven by appellant-driver. Further, the learned Tribunal has observed that the same was overloaded with 40-50 passengers, which might have turned turtle resulting into accident. Once it is proved on record that the offending vehicle was involved in the alleged accident, no fault can be found with the finding recorded by the learned Tribunal.

11. In view of the above, the claimant-appellants are held entitled to enhanced compensation as indicated above, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, the claimants-appellants shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal till its realization.

12. Accordingly, the award stands modified to the above extent and the present appeals of the claimants are partly allowed and the appeals of the driver and owner is dismissed.

(JITENDRA CHAUHAN)
JUDGE

27.01.2016
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