

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

FAO No. 3641 of 2013 (O&M)

Date of decision: 18.03.2016

Saudagar Singh

... Appellant

versus

Sukhwinder Singh (Dead) through his LRs and others

.... Respondents

2. FAO No. 3758 of 2012 (O&M)

Parkash Kaur and another

... Appellants

versus

Sukhwinder Singh (Dead) through his LRs and others

.... Respondents

3. FAO No. 3768 of 2012 (O&M)

Kashmir Kaur and another

... Appellants

versus

Sukhwinder Singh (Dead) through his LRs and others

.... Respondents

4.. FAO No. 3640 of 2013 (O&M)

Saudagar Singh

... Appellant

versus

Sukhwinder Singh (Dead) through his LRs and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Deepak Verma, Advocate for the appellant.

Mr. Pardeep Goyal, Advocate for respondent No.2.

Mr. J.S. Cooner, Advocate for respondent Nos. 3 & 4.

K.Kannan, J. (ORAL)

CM Nos. 14831, 14824-CII-2013

For the reasons mentioned in the applications, duly

supported by affidavits, delay of 23 days in refiling both the appeal is condoned.

CMs are disposed of.

CM No. 14832, 15899, 15907 & 14825-CII-2013

For the reasons mentioned in the applications, duly supported by affidavits, delay of 427, 103, 109, 427 days in filing the appeals respectively is condoned.

CMs are disposed of.

Main Cases

All the four appeals are connected and arise out of the same accident involving death of two persons who are 19 years of age. The accident had taken place on 04.12.2009. They were said to be selling sweetmeat and earning a respectable living. The Tribunal determined their income to be Rs. 4,500/- each and assessed the compensation at Rs. 3,93,000/-. Considering the nature of the employment, I make no modification with reference to the income taken at Rs. 4,500/- and retain the same for consideration for determination of the loss of dependancy and make a provision for 50% deduction and provide for Rs. 1,00,000/- as love and affection for both parents, Rs. 25,000/- for funeral expenses and Rs. 5,000/- for loss to estate. The total compensation will be Rs. 6,16,000/-. The amount in excess of what has been already awarded will attract interest @ 9% from the date of petition till the date of payment. The entitlement shall be split between the parties. The various heads of compensation are tabulated as under:

<u>Fatal</u>	Date of accident	04.12.2009	
Age	19		
Occupation	Sweet meat sellers		
Claimants	Parents		
SR. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)

1	Income	4,500/-	4,500/-
2.	Add, % of increase, 30%/50%		
3.	Deduction, 1/2, 1/3, 1/4,		2,250/-
4.	Multiplicand		27,000/-
5.	Multiplier		18
6.	Loss of dependence		4,86,000/-
7.	Medical Expenses		
8.	Loss of Consortium		
9.	Loss of love and affection	5,000/-	1,00,000/-
10.	Loss to estate		5,000/-
11.	Funeral Expenses		25,000/-
	Total		6,16,000/-

FAO No. 3641 and 3640 of 2013 are at the instance of the owner against whom the recoveries have been ordered on the ground that as the registered owner of the vehicle he claimed that he had transferred the vehicle to the driver himself and he was not the owner at the relevant time of the accident. The Tribunal discarded the plea and made the registered owner liable. The driving licence produced before the Court was found to be fake and it was taken to be an additional ground for providing for recoveries.

The driver himself is not in appeal and the finding regarding the fake character of driving licence must be taken to be final. As regards the plea that there was a transfer of the vehicle to the driver, the appellant has filed an additional document before this Court to say that the driver had filed an affidavit before the Magistrate to take the vehicle in *supardari* where he has affirmed that he was the owner at the relevant time of accident. It may not be possible for me to vouch for

the truth of the affidavit of the living person to be received at the Appellate Court for the first time. I will set aside the direction as regards the recovery but in order to avail to the owner production of such evidence as fit to prove the affidavit in the manner known to law and to prove also matters as he thinks relevant for alleged transfer at the relevant time of the accident. The claim for recovery shall stay suspended till the adjudication is made as regards the contentions raised by the owner in appeal.

The claimants' appeals are allowed and the appeals in FAO No. 3640 and 3641 of 2013 are remanded setting aside the finding for recovery and to take an adjudication after giving an additional opportunity to the appellant through the additional documents filed before this Court. The ultimate issue of recovery will abide by the decision taken by the Tribunal in the light of the directions referred to above. The appeals are ordered as above. *Inter se* adjudication between the owner and the insurer does not require the presence of the claimants.

(K.KANNAN)
JUDGE

18.03.2016

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