

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

**FAO No.4369 of 2013 (O&M) and
FAO No.1897 of 2014 (O&M)
Date of Decision: 29.02.2016.**

Madhu Bala and others

....Appellants.

VERSUS

Naresh Malik and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. D.R. Bansal, Advocate for the appellants.

Respondents No.1 and 2 exparte vide order dated 29.08.2014.

Mr. Chandandeep Singh, Advocate for respondent No.3.

SNEH PRASHAR, J.

**CM-18190-CII-2013 in
FAO-4369 of 2013**

There being delay of 46 days in filing the appeal an application under Section 5 of the Limitation Act for condonation of delay was filed by the appellant.

Considering the averments made in the application, the delay is condoned and the application is disposed of.

**CM-6658-CII-2014 in
FAO-1897 of 2014**

This is an application under Section 5 of the Limitation Act for

condonation of 40 days delay in filing the appeal.

In view of the averments made in the application, the delay is condoned.

C.M. stands disposed of.

FAO-4369 of 2013 and 1897 of 2014 (O&M)

The above captioned two first appeals had arisen from an award dated 15.02.2013 passed by Motor Accident Claims Tribunal, Karnal (for short, “the Tribunal”) in MACT Case Nos.17 and 62 of 2013/2010 by virtue of which legal heirs (claimants) of deceased Mohinder Lal who lost his life in a vehicular accident, were awarded compensation of Rs.19,000/- for damage to the tractor and Rs.6,08,200/- for death of Mohinder Lal. Both appeals shall be disposed of by this common judgment.

The relevant facts garnered from the record are as under:-

On 03.07.2010 Mohinder Lal (since deceased) alongwith Hatchery supervisor Daya Nand, after loading feed for hatchery in Tractor Mahindra-265 were coming from Karnal to village Bara Goan. Mohinder Lal was driving the tractor and Daya Nand was sitting on its side seat. At about 4:30 p.m., when they reached near village Mainmati, a truck bearing registration No.HR-69C-0109 (hereinafter referred to as “the offending truck”) being driven rashly, negligently and in a high speed, came from Karnal side and hit the tractor-trolley. Because of the impact, the tractor-trolley turned turtle and both Mohinder Lal and Daya Nand fell down and got crushed under the tractor-trolley and died at the spot. The tractor was

badly smashed in the accident.

A First Information Report No.173 dated 03.07.2011 under Section 279/304-A of the Indian Penal Code in respect of the accident was registered against Naresh Malik (respondent No.1) at Police Station Kunjpura.

Two petitions invoking the provisions of Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation on account of damage to the tractor as well as for the death of Mohinder Lal were filed by legal heirs of deceased Mohinder Lal impleading driver, owner and insurer of the offending truck as respondents.

The petitions were contested by the respondents. In the joint written statement filed by respondents No.1 and 2 (driver and owner), the occurrence of accident and other averments of the claimants were denied. In the written statement filed by respondent No.3-insurance company, all preliminary objections available to the insurer under the Act of 1988 were raised.

On the rival contentions of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the petitions and the claimants-appellants were awarded compensation as indicated above. All the respondents were jointly and severally held liable to pay the compensation amount but respondent No.3-insurance company was directed

to indemnify the insured.

Feeling aggrieved by the award passed by the Tribunal, the claimants-appellants preferred these appeals.

The submissions made by Mr. D.R. Bansal, learned counsel for the appellants and Mr. Chandandeep Singh, learned counsel for respondent No.3-insurance company have been heard and record perused.

Learned counsel for the appellants-claimants argued that the amount of Rs.19,000/- awarded by learned Tribunal for damage to the tractor is on lower side as the appellants spent more than Rs.1 lac in getting the tractor repaired. Learned counsel further pointed out that the deceased was an agriculturist and the income of the deceased was wrongly assessed as Rs.5400/- per month by learned Tribunal. No addition to the income was made computing future prospects of the deceased. The deduction of 1/4th of the income towards personal and living expenses of the deceased was wrongly made and the multiplier of '12' was wrongly adopted. The amount awarded under the conventional heads i.e. loss of consortium, funeral expenses and loss of love and affection is also on lower side.

On the other hand, controverting the arguments of learned counsel for the appellants, learned counsel for the respondent-insurance company argued that the amount awarded by learned Tribunal towards damage to the tractor and on account of death of Mohinder Lal is just and adequate.

As regards, damage to the tractor, the appellants averred that

more than Rs.1 lac was spent by them for repair of the tractor. However, as per the statement of PW2 Mahesh Kalra, Surveyor and Loss Assessor the damage to the tractor was assessed as Rs.38,000/- vide report Ex.P1 prepared by Shri B.M. Chopra in his presence. Considering the evidence available on record and keeping in view the Model of the tractor, learned Tribunal deducting 50% depreciation from the loss assessed rightly allowed Rs.19,000/- to the claimants-appellants for the damage caused to the tractor. The said finding of learned Tribunal calls for no intervention and the appeal FAO No.4369 of 2013 being devoid of merit is dismissed.

Coming to appeal No.1897 of 2014 filed by the appellants for enhancement of the compensation, I find that no document worth in its name was produced by the appellants-claimants to prove that the deceased owned agricultural land or was in occupation of any land as a lessee. Considering the deceased as a daily wager the income of the deceased was rightly assessed as Rs.5400/- per month by learned Tribunal. The age of the deceased was 50 years and the multiplier of '13' should have been applied by Tribunal instead of '12' as per the law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77.** The deceased was survived by widow Madhu Bala, two daughters Shakshi and Jyoti and one minor son Keshav. Therefore, as held in **Sarla Verma and others'** case (supra) the 1/4th deduction towards personal and living expenses of the deceased was rightly made by learned Tribunal. Following the ratio of **Rajesh and others vs. Rajbir Singh and**

others, 2013(3) R.C.R. (Civil) 170 there had to be an addition of 30% to the actual income of the deceased on account of future prospects, which the Tribunal failed to allow. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)	Rs.5400/-
2.	Actual age of the deceased	50 years
3.	Increase in future income as per Rajbir Singh and others' case (supra)	Rs.1620/-
4.	Annual dependency	3/4 of Rs.7020 x 12 = Rs.63,180/-
5.	Multiplier	13
6.	Total	Rs.8,21,340/-

In addition to the amount of Rs.8,21,340/- calculated towards dependency, the amount of Rs.5000/- awarded under the funeral expenses is enhanced to Rs.25,000/-, the amount of Rs.10,000/- awarded towards loss of consortium to the widow is enhanced to Rs.1,00,000/- and the amount of Rs.10,000/- awarded under loss of love and affection is enhanced to Rs.1,00,000/-. In the above premise, the appellants-claimants are held entitled to compensation of Rs.10,46,340/-.

Accordingly, the appeal FAO No.1897 of 2014 filed by the appellants-claimants is partly allowed and the award dated 15.02.2013 passed by the Tribunal is modified. The enhanced compensation of Rs.4,38,140/- shall be deposited by respondent No.3-insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of appeal till

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realization. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

29.02.2016.
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