

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

(1) **FAO No.5684 of 2014 (O&M)**
Date of decision : 18.02.2016

Mewa Singh and another

.....Appellants

Versus

Balwinder Singh and others

...Respondents

(2) **FAO No.1017 of 2015 (O&M)**
Date of decision : 18.02.2016

Smt. Ram Rati

.....Appellant

Versus

Balwinder Singh and others

...Respondents

(3) **FAO No.4842 of 2014 (O&M)**
Date of decision : 18.02.2016

Smt. Amar Kaur

.....Appellant

Versus

Balwinder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Ashok Kumar Sharma, Advocate for
appellants in all the appeals.

Ms. Vandana Malhotra, Advocate for
respondent No.3 in all the appeals.

DARSHAN SINGH, J.

CM-15805-CII-2014 in
FAO-5684 of 2014

This application has been filed by the appellant for
condonation of delay of 132 days in filing the present appeal.

The respondent No.3-Insurance Company has filed the reply
contesting the said application.

I have heard Mr. Ashok Kumar Sharma, Advocate, learned
counsel for the applicants-appellants and Ms. Vandana Malhotra,
Advocate, learned counsel for respondent No.3-Insurance Company.

It is settled principle of law that the approach to condone the
delay should be liberal and valuable rights of the parties should not be
decided simply on technicalities.

Thus, in view of the reasons mentioned in the application, I
found that there is sufficient cause for condonation of delay in filing the
present appeal. Thus, the application is hereby allowed and the delay of
132 days in filing the present appeal is hereby condoned.

MAIN CASES

This judgment of mine shall dispose of all the three appeals
mentioned above, which have arisen out of the same award dated
02.09.2013, vide which Smt. Amar Kaur, appellant of FAO No.4842 of

2014 has been awarded compensation to the extent of 50% of Rs.3,00,000/- on account of the death of Hari Singh; Mewa Singh and another, the appellants of FAO No.5684 of 2014 have been awarded compensation to the extent of 50% of Rs.5,17,000/- on account of death of Balwinder Singh alias Balinder; and Smt. Ram Rati, the appellant of FAO No.1017 of 2015 has been awarded the compensation to the extent of 50% of Rs.5,00,000/- on account of death of Sat Narain, in the motor vehicular accident which took place on 11.11.2012.

2. All the three appeals have been filed for enhancement of the compensation.

3. I have heard Mr. Ashok Kumar Sharma, Advocate, learned counsel for the appellants in all the appeals, Ms. Vandana Malhotra, Advocate, learned counsel for respondent No.3-Insurance Company in all the appeals and gone through the paper-books carefully.

4. Learned counsel for the appellants-claimants contended that the learned Tribunal has wrongly held the deceased to be contributory negligent for causing the accident and has deducted the 50% of the compensation towards their contributory negligence. In fact it was not the case of contributory negligence on the part of the victims, rather it was a case of composite negligence on the part of the drivers of both the vehicles. He further contended that no future prospects have been granted towards the income of the deceased in any case. Less amount has been awarded under the other conventional heads.

5. On the other hand, Ms. Vandana Malhotra, Advocate,

learned counsel for the respondent-Insurance Company has pleaded that there was no question of granting the future prospects as the deceased were not holding any permanent job. She contended that the multiplier has also been rightly applied in all the cases and just and appropriate compensation has been awarded under all the conventional heads.

6. I have duly considered the aforesaid contentions.

7. As per the case of the appellants-claimants, on 11.11.2012 deceased Hari Singh, Sat Narain, Balwinder Singh alias Balinder along with Sukhdev Singh were going from village Jandli Khurd to Bhuna by boarding TATA Ace bearing registration No.PB-13AB-3258. When they reached in the area of Bhuna, then truck bearing registration No.HR-46-8488 being driven by respondent No.1 Balwinder Singh son of Bhag Singh came from the opposite direction and struck against the ill fated vehicle. In the accident Hari Singh, Sat Narain and Balwinder alias Balinder suffered the fatal injuries. It is the admitted case that Sukhdev Singh injured was driving the vehicle No.PB-13AB-3258. Deceased Hari Singh, Sat Narian, Balwinder alias Balinder were only the passengers travelling in that vehicle. The learned Tribunal has held that taking into consideration all the facts, it was evident that occurrence has taken place as a result of head on collision between both the vehicles and both the drivers were responsible for causing the accident and they have been held contributory liable to the extent of 50% each. So, the contributory negligence have been held by the Tribunal for causing this accident on the part of the driver of the vehicles No.PB-13AB-3258 and HR-46-8488.

It is an admitted case that none of the deceased was the driver of the vehicle No.PB-13AB-3258, rather injured Sukhdev Singh was driving that vehicle. Qua deceased Hari Singh, Sat Narain and Balwinder alias Balinder, it was a case of composite negligence and not that of contributory negligence. But the learned Tribunal has deducted 50% of the amount of compensation awarded on account of death of Hari Singh, Sat Narain and Balwinder alias Balinder towards their contributory negligence, who were just the passengers in the vehicle No.PB-13AB-3258, which is totally against the settled proposition of law.

8. The Division Bench of this Court in case ***Oriental Insurance Company Ltd. Vs. Smt. Parveen Juneja 2002(1) RCR (Civil) 18*** has laid down that where the victims were admittedly not driving the car even if there was negligence of the driver of the vehicle, it will be a case of composite negligence and not the contributory negligence and claimant can choose to sue any of the tort-feasors. Again in case ***Oriental Insurance Company Ltd. Vs. Monika Verma and others 2008(3) RCR (Civil) 693***, the accident has occurred due to negligence of both the truck driver and the car driver. This Court held that it is a case of composite negligence and not of the contributory negligence. There was no illegality in the claimant's claim of compensation from the owner, driver of the truck and the Insurance Company of the truck without impleading the driver, owner or Insurance Company of the second vehicle. The same principle of law has been laid down in case ***A.P.S.R.T.C. & Anr. Vs. K. Hemalatha & Ors. 2008(3) RCR (Civil)***

589.

9. Again in a recent judgment delivered by three Judges Bench of Hon'ble Apex Court in case ***Khenyei Vs. New India Assurance Company Ltd. 2015(2) RCR (Civil) 1019***, in case of composite negligence the claimant is entitled to sue both or any of the joint tort-feasures to recover the entire compensation as the liability of joint tort-feasures is joint and several. In view of the consistent ratio of law laid down in the cases referred above, as the deceased were simply the passengers in vehicle bearing registration No.PB-13AB-3258 and they had nothing to contribute to the causing of the accident, rather even the learned Tribunal had held the drivers of both the vehicles contributory negligent for causing the accident, so it is a case of composite negligence qua the deceased and the appellants-claimants were entitled to sue any of the tort-feasures. Consequently, the learned Tribunal has wrongly deducted 50% of the amount of the compensation towards contributory negligence from the amount of compensation payable to the appellants. So, they will be entitled to the whole amount of the compensation.

10. Now I take up the assessment of the compensation.

11. Firstly, I take up the case of appellant Amar Kaur in FAO No.4842 of 2014. The learned Tribunal has assessed the amount of the compensation to the extent of 50% of Rs.3,00,000/- payable to the appellant-claimant on account of death of Hari Singh in this accident. The age of the deceased was 67 years. The learned Tribunal has returned to the findings that he will be presumed to be a casual labourer and his

income was taken to be Rs.5000/- per month *i.e.* Rs.60,000/- per annum. Only Smt. Amar Kaur appellant, the widow of the deceased, was dependent upon deceased Hari Singh. So, there were only two members of the family including the deceased. As the deceased had only one dependent, so 50% of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.30,000/- per annum. The deceased was 67 years of age, so as per the law laid down by Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121***, the multiplier of 5 shall be applicable. The multiplicand comes to Rs.1,50,000/-. The learned Tribunal has awarded the funeral expenses only to the extent of Rs.10,000/-, which are enhanced to Rs.25,000/-. Only Rs.10,000/- have been awarded to the appellant towards loss of consortium, which is enhanced to Rs.1,00,000/-. So, the total amount of compensation comes to Rs.2,75,000/-. So, appellant Amar Kaur in FAO No.4842 of 2014 shall be entitled to Rs.2,75,000/- as compensation instead of Rs.1,50,000/- as awarded by the learned Tribunal.

12. Now, I take up the case of appellants Mewa Singh and another in FAO No.5684 of 2014. Appellants Mewa Singh and Rajbala Devi have filed the claim petition for grant of compensation on account of death of their son Balwinder Singh alias Balinder, who was 25 years of age. The learned Tribunal has presumed the deceased to be a casual labourer and his income was taken to be Rs.5000/- per month. The learned Tribunal has not added anything to the income of the deceased

towards future prospects. The deceased was a young man of 25 years of age. There was every possibility of increase of the income of the deceased with the passage of time. So, the learned Tribunal was not justified in not adding any future prospects to the income of the deceased. The plea raised by learned counsel for the respondent-Insurance Company that as the deceased was not holding any permanent job, so the future prospects should not be added to his income carries no substance. In a latest judgment rendered by three-Judges Bench of the Hon'ble Apex Court in case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, the future prospects were allowed in case of the self-employed person following the observations in ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54***, wherein it was laid down as under :-

*“11. As far as future prospects are concerned, in ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54***, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:*

“8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in

*case the deceased was in the age group of 40 to 50 years.”
The deceased being of the age of 30 years, 50% is the required
addition.”*

13. Thus, in view of the aforesaid ratio of law, the future prospects were required to be added to the income of deceased Balwinder Singh alias Balinder. In view of his age, 50% of his income is required to be added towards future prospects. The total comes to Rs.7500/- per month i.e. Rs.90,000/- per annum. As the deceased was bachelor and claimants are his parents, so 50% of his income is to be deducted towards his living and personal expenses. The remainder comes to Rs.45,000/-.

14. The learned Tribunal has also wrongly applied the multiplier as per the age of the parents. In view of the law laid down by Hon'ble Apex Court in case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others*** (supra) the multiplier should have been applied as per the age of the deceased. As per the age of the deceased, the multiplier of 18 shall be applicable. The multiplicand comes to Rs.8,10,000/-. In addition to the aforesaid amount, the claimant shall be entitled to Rs.25,000/- towards funereal and transportation expenses. The claimants shall also be entitled to a sum of Rs.50,000/- towards loss of love and affection of their son. So, the total amount of compensation payable to appellants of FAO No.5684 of 2014 comes to Rs.8,85,000/-. So, the amount of compensation is enhanced from 50% of Rs.5,17,000/- to full amount of Rs.8,85,000/-.

15. Smt. Ram Rati the appellant of FAO No.1017 of 2015

has sought the compensation on account of death of her husband Sat Narain. He has also been considered by the learned Tribunal as a casual labourer and his income has also been taken to be Rs.5000/- per month. The learned Tribunal has not added anything towards future prospects of the income of the deceased. In view of the legal position discussion above, the future prospects should have been added to the income of deceased Sat Narain in order to compute the compensation.

16. No definite evidence has been adduced with respect to the age of the deceased. In the postmortem report his age has been mentioned as 50 years. So, 30% of his income is to be added as the future prospects. The total comes to Rs.6500/- per month i.e. Rs.78,000/- per annum. Only appellant Ram Rati was the dependent upon the income of the deceased. So, 50% of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.39,000/-. As the age of the deceased was in the age group of 47 to 50 the multiplier of 13 shall be applicable. The multiplicand comes to Rs.5,07,000/-. In addition to the aforesaid amount, the claimant shall be entitled to Rs.25,000/- towards funereal and transportation expenses. The claimant shall also be entitled to a sum of Rs.1,00,000/- towards loss of consortium. So, the total amount of compensation payable to appellant of FAO No.1017 of 2015 comes to Rs.6,32,000/-. So, the amount of compensation is enhanced from 50% of Rs.5,00,000/- to full amount of Rs.6,32,000/-.

17. Thus, keeping in view my aforesaid discussion, all the

appeals mentioned above are partly allowed. The award of compensation to appellant-claimant Amar Kaur in FAO No.4842 of 2014 is enhanced to Rs.2,75,000/- from 50% of Rs.3,00,000/-; the award of compensation to appellants-claimants Mewa Singh and Rajbala Devi in FAO No.5684 of 2014 is enhanced to Rs.8,85,000/- from 50% of Rs.5,17,000/-; and the award of compensation to appellant-claimant Ram Rati in FAO No.1017 of 2015 is enhanced to Rs.6,32,000/- from 50% of Rs.5,00,000/-, as awarded by the learned Tribunal. The appellants-claimants shall be entitled to interest at the rate determined by the Tribunal on the enhanced amount from the date of filing the petition till realisation. The mode of disbursement of the awarded amount and the liability shall remain as determined by the learned Tribunal.

18.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**