

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

FAO No.5183 of 2002 (O&M)

Smt.Ram Rati and others

...Appellants

Versus

Daljit Singh and others

...Respondents

FAO No.5184 of 2002 (O&M)

Kali Ram

...Appellant

Versus

Daljit Singh and others

...Respondents

FAO No.5185 of 2002 (O&M)

Smt.Sita Devi

...Appellant

Versus

Daljit Singh and others

...Respondents

Date of Decision: September 22, 2017

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Rajinder Singh Rana, Advocate
for the appellants.

Mr.Ravi Gakhar, Advocate for respondent
Nos.1 and 2 (driver and owner of offending vehicle).

Mr.N.K.Manchanda, Advocate
for respondent No.3 – Insurance Company.

HARINDER SINGH SIDHU, J.

This judgment shall dispose of three appeals i.e. FAO Nos.5183,
5184 and 5185 of 2002 arising out of the same accident, filed for

enhancement of compensation.

Briefly, the facts are that on 23.11.1998 at about 8.00 pm, Sat Pal (since deceased), Kali Ram, Sita Devi and one Mohinder Singh were returning to their village Dudhla in three-wheeler bearing No.HNR-4469, driven by Jagmal Singh. When the three-wheeler reached near Pooja Modern Public School on Pipli-Kurukshetra road, a truck bearing No.HR-22/9675 being driven in a rash and negligent manner by Daljit Singh – respondent No.1 came from opposite side and dashed into the three-wheeler, dragging it for some distance. As a result, all the occupants of the three-wheeler sustained multiple injuries and were shifted to Hospitals. However, Sat Pal and Jagmal Singh succumbed to the injuries.

Widow, three minor children and mother of deceased Sat Pal filed claim petition No.6 of 1999, injured Sita Devi and Kali Ram filed separate claim petitions No.7 and 9, respectively, before Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal'), wherein, the Tribunal awarded compensation as under:-

In case of death of Sat Pal	Rs.2,83,000/-
In case of injuries to Kali Ram	Rs.2,00,000/-
In case of injuries to Sita Devi	Rs.50,000/-

Feeling dissatisfied with the quantum of compensation, the claimants have filed the instant appeals.

I have heard Ld. Counsel for the parties and perused the paper-book with their assistance.

The factum of accident, involvement of the vehicle, loss of

income and dependency are not in dispute.

FAO NO.5183 of 2002 (In case of death of Sat Pal)

This appeal has been filed in MACT Case No.6 of 1999 for enhancement of compensation. The claimants are the mother, widow and three minor children of deceased Sat Pal.

On the basis of the evidence led by the parties, the Tribunal assessed the income of the deceased (Sat Pal) at Rs.2400/- per month, deducted 1/3rd as his personal living expenses and assessed the dependency at Rs.1600/- per month. Considering the age of the deceased i.e. 30 years, multiplier of 14 was applied and the total loss of dependency was assessed at Rs.2,68,000/- (1600x12x14). That apart, Rs.5000/- and Rs.10,000/- were also awarded for 'loss of consortium' and 'transportation and funeral expenses', making the total compensation of Rs.2,83,000/-.

On behalf of the appellants, it is argued that since the number of dependents of deceased Sat Pal is five, therefore, deduction from the income towards his personal living expenses could not be more than 1/4th, whereas, the Tribunal has wrongly deducted 1/3rd under this head. It is also contended that deceased was aged about 30 years at the time of accident, therefore, as per the settled law, multiplier of '17' was required to be applied and not '14' as done by the Tribunal. It is further argued that the amount awarded under the other heads to the claimants is also on the lower side and even no amount has been awarded under the head of 'loss of love and affection' to the mother and children, as also no increase in the income towards future prospects granted, as per settled law.

Sat Pal was aged about 30 years at the time of accident and was having five dependants, therefore, to assess the loss of dependency, multiplier of 17 was the correct multiplier. Deduction on account of personal living expenses was to be 1/4th. Increase of 50% in the income was to be granted in view of the decisions of the Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr, 2009(6) SCC 121, Rajesh and others vs. Rajbir Singh and others, 2013 ACJ 1403, Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347,**

Accordingly, the compensation is re-assessed as under:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i> <i>(in rupees)</i>
(i)	<i>Income</i>	2400/-
(ii)	<i>50% of above (i) to be added as future prospects (deceased aged 30 years)</i>	2400+1200 = 3600/-
(iii)	<i>¼ of (ii) deducted as personal expenses of the deceased (5 dependants)</i>	3600-900 = 2700/- per month
(iv)	<i>Loss of dependency after multiplier of 17 is applied</i>	2700x12x17 = 5,50,800/-
(v)	<i>Loss of Love and affection (Rs.50,000/- each for mother and minor children)</i>	2,00,000/-
(vi)	<i>Loss of Consortium (exclusively for the widow of deceased)</i>	1,00,000/-
(vii)	<i>Funeral Expenses</i>	25,000/-
	<i>Total</i>	<i>Rs.8,75,800/-</i>

The amount awarded under heads at Sr.No.(v) and (vi) 'loss of love and affection' and 'loss of consortium' shall be payable to the claimants,

as indicated therein. The remaining enhanced amount shall be payable to the appellants, in the same proportion, as awarded by the Tribunal.

FAO NO.5184 of 2002 (In case of injuries to Kali Ram)

This appeal has been filed in MACT Case No.9 of 1999 for enhancement of compensation by claimant Kali Ram, who was injured in the accident and suffered 30% disability due to the injuries. The Tribunal awarded him a lump-sum compensation of Rs.50,000/-.

The compensation awarded to injured Kali Ram is also stated to be inadequate and it is argued that the Tribunal has not awarded the amount under various heads as settled by the Hon'ble Supreme Court in various decisions, rather, lump-sum compensation has been awarded, which is not commensurate with the injuries and consequential sufferings.

Dr.C.R.Khatri (PW9), one of the members of Board of Doctors of L.N.J.P. Hospital, Kurukshetra deposed that Kali Ram, aged 27 years was examined by the Board and his total physical disability was assessed at 30% attributed to Aesthetic look and difficulty in mastication and cutting. The disability certificate (Ex.P46) was also proved on record. Kali Ram – injured while examined as PW6, deposed that he remained admitted for about a week at Civil Hospital, Kurukshetra and thereafter, referred to PGI, Chandigarh, where he remained admitted for about a fortnight. He suffered injuries on wrist of right hand and his lower jaw was broken. He was operated upon and a splinter is still embedded in the wrist of his right hand and another operation for its removal was required.

Hon'ble the Supreme Court, including **Subulaxmi vs. M.D.,Tamil Nadu State Transport Corporation and another, 2012(10) SCC 177** and **Manickam vs. Metropolitan Transport Corp. Ltd., 2013 AIR (SC) 2629** etc., this Court re-assesses the compensation as under :-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i> <i>(in rupees)</i>
<i>(i)</i>	<i>Medical Expenses (according to bills)</i>	<i>1,250/-</i>
<i>(ii)</i>	<i>Transportation charges</i>	<i>1,200/-</i>
<i>(iii)</i>	<i>Special diet</i>	<i>2,000/-</i>
<i>(iv)</i>	<i>Pain and suffering</i>	<i>10,000/-</i>
<i>(v)</i>	<i>Loss of amenities of life</i>	<i>20,000/-</i>
<i>(vi)</i>	<i>For permanent disability (30%)</i>	<i>60,000/-</i>
	<i>Total</i>	<i>94,450/-</i>

FAO NO.5185 of 2002 (In case of injuries to Sita Devi)

This appeal has been filed in MACT Case No.7 of 1999 for enhancement of compensation by claimant – injured Sita Devi, who suffered 92% disability due to the injuries suffered in the accident. The Tribunal awarded her a lump-sum compensation of Rs.2,00,000/-, which is stated to be on the lower side in view of the injuries.

With regard to Sita Devi – injured/appellant, it has come in evidence that she suffered seven injuries,, including amputation right arm with fracture both bone left forearm and Pott's fracture right side with other soft tissue injuries. She was medico legally examined at L.N.J.P. Hospital,

Kurukshetra after the accident on 23.11.1998 and on the next day i.e. 24.11.1998, she was referred to PGI, Chandigarh where she was operated upon on 15.12.1998 and remained admitted till 19.12.1998 i.e. for about a month. She also attended the PGI for follow-up treatment. She also suffered injuries on her stomach and forehead and her face has disfigured. She cannot attend to her usual work and even cannot sit without the help of an attendant. She has been declared 92% physically disabled. The disability certificate, medico-legal report and the discharge and follow-up card were placed on record as Ex.P1, P6 and P7, respectively.

The Ld. Tribunal has held that the appellant was a lady at the prime of her life, doing household work and the accident has rendered her almost invalid for the rest of her life, where what to talk of carrying out the household activities she cannot even sit or stand on her own.

Smt. Sita Devi had deposed that she used to do stitching work and maintained a dairy with two cows. She used to earn Rs. 4,000/- per month. She had stated that her husband usually remained ill and her mother-in-law had weak eye sight and was hard of hearing. She stated that the responsibility to maintain the entire family rested on her. During her cross-examination, she stated that she learnt stitching work from her elder sister and used to maintain regular account of her stitching work as also the earnings from the sale of milk but had not brought the account books.

It is true that the appellant did not produce any account books or other record to prove her income, but that of itself should be no reason to disbelieve her claim. Dealing with compensation claims of self employed persons in the un-organized sector, in **Ramachandrappa v. Royal**

Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236, the Hon'ble Supreme Court has held that persons from the un-organized sector doing their own business cannot be expected to produce documents to prove their income. In such cases, if the claim with regard to income is not exorbitant or excessive, but, is in consonance with the ground realities, then it can be accepted even without documentary evidence in support thereof. This view was followed by the Hon'ble Supreme Court in **Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735**.

Even after discounting for any element of exaggeration in the claim of the petitioner and also taking into account the uncertainties of the availability of work it can safely be assumed that the petitioner was on an average earning Rs. 2500/- per month. As a householder also, the contribution of the appellant to the household would not be less than that amount.

As the appellant-claimant was self-employed and was 32 years of age, she would be entitled to 50% increase thereon on account of future prospects as laid down in **Santosh Devi Vs. National Insurance company Ltd. & others, 2012(6) SCC 421** and **Rajesh and Others Vs. Rajbir Singh and Others 2013(9) SCC 54**. The appellant was 32 years at the time of the accident, hence as per **Smt. Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121**, multiplier of 16 needs to be applied.

Accordingly, this Court re-assesses the compensation as under:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation (in rupees)</i>
<i>(i)</i>	<i>Medical Treatment (according to bills)</i>	<i>3100/-</i>
<i>(ii)</i>	<i>Transportation</i>	<i>5,000/-</i>

