

**FAO-2129-1999 &
FAO-3622-1999**

-1-

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

(1)

FAO-2129-1999

Sudesh Ahuja and others

...Appellants

Versus

M/s Modern Trade Links Ltd. and others

..Respondents

(2)

FAO-3622-1999

Sahib Chand etc.

...Appellants

Versus

Sudesh Ahuja and others

..Respondents

Date of decision: - 01.08.2017

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Hari Om Sharma, Advocate, for the appellants.

**Mr. M.S. Rana, Advocate
for respondent Nos.2 and 3 in FAO-2129-1999 and
for respondent Nos.5 and 6 in FAO-3622-1999**

**Mr. Suman Jain, Advocate
for the Insurance Company in FAO-3622-1999.**

**Mr. Lalit Garg, Advocate
for the Insurance Company in FAO-2129-1999.**

RITU BAHRI, J. (Oral)

Both the appeals, as noticed above, are being decided by this

common judgment, having arisen out of the impugned Award dated 08.01.1999, passed by the learned Motor Accident Claims Tribunal, Ambala.

Appellants in 1st case have filed the appeal for enhancement of compensation whereas appellants in 2nd case have filed the appeal for modification of the impugned award.

On 16.06.1996, deceased Jagdish Lal Ahuja and Lal Chand and Lekh Raj were travelling in a maruti van No.DL-3CE-5498 and were going for their personal work to Sonapat. Lal Chand was friendly basis. Rajbir was driving the van at a moderate speed. When Rajbir crossed Kharkhoda and reached at the scene of occurrence one truck bearing No.HR-22-9602 came from the opposite counsel. The truck was being driven rashly and negligently and in a zig-zag manner. The driver of the van also did not take care of the negligent driving of the truck. The truck driver struck his truck in the front portion of the van due to which the van was turned to the other side of the road. Jagdish Lal Ahuja died because of the injuries suffered by him in the accident after 14 days in the hospital.

Before the Tribunal, on the basis of the evidence led by the parties, the Tribunal has come to a conclusion that the accident took place on account of negligence of both the drivers. Consequently, the claimant was found entitled to total compensation of ₹3,02,000/- and 50% of that compensation was to be paid by respondent Nos.1, 2 and 3 and the remaining 50% was to be paid by respondent Nos.4 and 5 along with

interest at the rate of 12% per annum from the date of filing of the petition till its realization.

Feeling dis-satisfied with the aforesaid Award, the appellants in both the cases have preferred the instant appeals.

Learned counsel for the appellants in 1st case contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced, in view of the judgment "Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77'; Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54; 'Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459'; Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520 and Kalpanaraj and others vs. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193. Moreover, deceased-Jagdish Lal Ahuja was a professional man and was working as an Engineer and his income was decided as ₹10,300/- per month but due to the fact that he was to retire in due course, his income has been wrongly taken as ₹5,000/- per month. Further, nothing has been awarded towards love and affection to the children.

Appellants in 2nd appeal have filed the appeal mainly on the ground that the finding has been wrongly recorded by the Tribunal that the accident took place on account of rash and negligent driving of both the vehicles. The finding recorded by the Tribunal on issue No.1 that as per deposition of PW2 Lal Chand, Rajbir Singh was also driving the

Maruti van at a very high speed. He categorically deposed that he and other persons asked Rajbir Singh to stop the van but he assured that he will be able to carry his vehicle. However, there was a head on collision. The van being driven by Rajbir Singh was on the left side of the road but due to the impact of the accident with the loaded truck it was driven to the other side. He deposed in unambiguous terms that the accident took place on account of negligent driving of both the drivers i.e. the driver of the Maruti van and driver of the truck. Moreover, the police after registration of the FIR even did not record his statement.

After hearing the learned counsel for the parties, going through the record, this Court is of the considered view that the Tribunal had rightly come to the conclusion that it was a case of contributory negligence on the part of drivers of van and canter. 'The Tribunal' had recorded the finding that Rajbir Singh as well as Prem Chand were equally responsible for causing the accident. Had little care and caution been exercised by them, this accident could have been easily averted. Since there are no grounds to interfere in the findings of 'The Tribunal', therefore, the FAO-3622-1999 is hereby dismissed.

FAO-2129-1999

As regards to the income of the deceased is concerned, the findings required to be modified as on the date of accident, he was getting the salary of ₹10,300/- per month. Therefore, following the ratio of law

laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	₹10,300/- per month
(ii)	After taking dependency of ₹5,000/- per month	₹10,300 - ₹5,000 = ₹5,300/-
(iii)	Compensation after multiplier of 8 is applied	₹5,300 x 8 x 12 = ₹5,08,800/-
(iv)	Funeral expenses	₹25000/-
(iv)	Loss of love and affection to two children	₹1,00,000 (₹50,000/- each)
(v)	Loss of consortium	₹1,00,000/-
(ix)	Total Compensation awarded	₹7,33,800/-
(x)	Enhanced amount of compensation	₹7,33,800/- – ₹3,02,000/- = ₹4,31,800/-

Resultantly, the enhanced amount of compensation of ₹4,31,800/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others**, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

August 01, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No