

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O. No.3835 of 2001(O&M)

Date of Decision: 11.12.2018

Jarnail Singh

.....Appellant.

Versus

Mewa Singh and others

..... Respondents.

AND

F.A.O. No. 3836 of 2001(O&M)

Paramjit Kaur and others

.....Appellants.

Versus

Mewa Singh and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashok Jindal, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for the Insurance Company.

LISA GILL, J.

This judgement shall dispose of FAO No. 3835 of 2001 and FAO No.3836 of 2001 as both the appeals arise from common award dated 18.07.2001, passed by the learned Motor Accident Claims Tribunal, Bathinda (for short 'tribunal').

Appellant-claimant in FAO No. 3835 of 2001, seeks enhancement of compensation awarded by the learned tribunal, Bathinda, vide impugned award dated 18.07.2001, on account of injuries received by him in the motor vehicle accident which took place on 12.02.1997.

Appellant-claimants in FAO No. 3836 of 2001, who are the widow, parents and children of the deceased seek enhancement of the

compensation awarded by the learned tribunal on account of death of Gurjant Singh son of Bahadur Singh in the motor vehicle accident. For the sake of convenience, facts are being extracted from FAO No. 3836 of 2001.

Brief facts which are common to both the appeals as pleaded in the claim petition under Section 166 read with Sections 140/141 of the Motor Vehicles Act, are that Gurjant Singh (deceased) along with his brother Jarnail Singh and Hardev Singh, on 12.02.1997 were going from village Bhagi Bander to Talwandi Sabo on scooter bearing registration no. PB-03-C-4018, driven by Hardev Singh. At about 11.30.a.m., when they were 1 km from village Bagibander, truck bearing registration no. RJ-13-G-1004, driven by respondent no.1-Mewa Singh in a rash and negligent manner came from the opposite side and struck into their scooter. As a result thereof, all three occupants of the scooter fell down and sustained injuries. Injured were taken to Civil Hospital, Talwandi Sabo, from where Gurjant Singh being serious was referred to Civil Hospital, Bathinda, from where he was referred to DMC, Ludhiana. Gurjant Singh succumbed to the injuries received by him on the way to DMC Ludhiana. FIR No. 7 dated 12.02.1997, under Sections 279, 337, 427, 338, 304-A IPC, Police Station Talwandi Sabo, was registered against respondent no.1, in this respect.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Mewa Singh. The said finding of the learned tribunal has attained finality.

Learned tribunal in MACT No. 91 dated 26.07.1997 (claiming compensation on account of death of Gurjant Singh) awarded a total sum of

₹2,00,000/- along with interest @ 9 % per annum from the date of filing of the claim petition till realisation of the amount to the claimants. Income of the deceased was assessed as ₹1500/- per month. Deduction of 1/ 3rd was effected. Multiplier of 16 was applied by the learned tribunal. A sum of ₹5,000/- was awarded towards funeral expenses.

Learned tribunal in MACT No. 90 dated 26.07.1997 awarded a total sum of ₹5,55,540/- along with interest @ 9 % per annum from the date of filing of the claim petition till realisation of the amount to the claimant-Jarnail Singh on account of injuries received by him. Right leg of Jarnail Singh was amputated and he remained admitted in hospital for about two and a half months.

Learned counsel for the appellants in FAO No. 3836 of 2001 submits that increase on account of future prospects has not been afforded in view of the judgements of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R. (Civil) 1009**. It is further submitted that meagre compensation has been awarded under the conventional heads. It is, thus, prayed that compensation awarded to the appellants be enhanced in terms of the abovesaid judgement.

Learned counsel for the appellant in FAO No. 3835 of 2001 submits that compensation of ₹5,55,540/- awarded to the claimant-Jarnail Singh, on account of the injuries received by him is woefully insufficient and prays that the same be enhanced.

Learned counsel for the respondent-Insurance Company in both the appeals, while refuting the above arguments, submits that compensation has been reasonably assessed by the learned tribunal and there is no scope

for any further enhancement. Learned counsel prays for dismissal of both the appeals.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute regarding age of the deceased-Gurjant Singh i.e. 32 years, at the time of the accident. There is further no dispute regarding income of the deceased i.e. ₹1500/- per month as assessed by the learned tribunal. However, increase in income on account of future prospects at the rate of 40% is required to be awarded keeping in view the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009**. Deduction of 1/ 4th is to be applied instead of 1/ 3rd keeping in view the number of dependants i.e. 5. Multiplier of 16 has been correctly applied by the learned tribunal. A sum of ₹15,000/- each is awarded on account of funeral expenses and loss of estate to the claimants. In terms of the judgement of Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, Civil Appeal no. 9581 of 2018, arising out of SLP (Civil) No. 3192 of 2018, decided on 18.09.2018.**, claimants no.2 to 5 are entitled to a total sum of ₹1,60,000/- for loss of consortium (spousal, filial and parental).

Compensation towards the claimants on account of death of Gurjant Singh in FAO No.3836 of 2001, is thus re-worked as under:-

1.	Total income of deceased	₹1500/- p.m
2.	Deduction of 1/ 4 th on account of personal expenses	₹1500/- (₹1500*1/4=₹375/-) = ₹1125/-

3.	Total income after addition of future prospects at the rate of 40%	₹1125/- (₹1125+ ₹450/-) i.e. ₹1575/-
4.	Annual dependency after applying multiplier of 16	₹1575/- x 12 x 16= ₹3,02,400/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Spousal, filial and parental consortium to claimants no.2 to 5 @ ₹40,000/- each	₹1,60,000/-
	Total Compensation =	₹4,92,400/-

Claimants in FAO No. 3836 of 2001 shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimants shall stand deducted.

Apportionment of amount of compensation amongst claimants in FAO No. 3836 of 2001 shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

FAO No.3835 of 2001

It is proved on record that the claimant-Jarnail Singh received injuries in the motor vehicle accident which took place on 12.02.1997 and remained admitted at Christian Medical College and Hospital, Ludhiana for about two and a half (2 ½) months. Thereafter he was treated by Dr. Amrit Gupta-PW-7, at Bathinda from 22.04.1997 to 09.06.1997. His right leg was amputated above the knee on 07.05.1997 by Dr. Amrit Gupta. AW-7-Dr.Amrit Gupta, specifically denied the suggestion that infection was caused due to any negligence on the part of the claimant. AW-6-Dr.Levimark, CMC, Ludhiana, clearly stated that right leg of the claimant-

Jarnail Singh was crushed having multiple fractures. Photocopy of the admission record is proved as Ex.AW6/A. AW-6 specifically stated that at the time of discharge, right leg of the injured was not cured and the patient was advised plastic surgery. It is stated that there was no necessity of amputation of the leg at that time as the wound was not fully cured but required further treatment. Thus, it is a matter of record that the claimant when discharged from CMC, Ludhiana was not fully cured. AW-7-Dr. Amrit Gupta, Bone Specialist, Power House Road, Bathinda, proved that the claimant was admitted in his hospital from 22.04.1997 to 15.06.1997. It was necessary to amputate his right leg on 07.05.1997 to save his life. Medical bills have been proved on record. No disability certificate has been produced but in the facts and circumstances of the case it can reasonably be inferred that amputation of the right leg necessarily affects the earning capacity of the claimant and he would suffer for the rest of his life. Claimant was admittedly 20-22 years old at the time of accident. He is claimed to be an agriculturist. Income of the claimant has been rightly assessed by the learned tribunal as ₹1500/- per month. Functional disability of the appellant in this case can easily be assessed as 50%.

Compensation to the appellant-Jarnail Singh is thus required to be worked out in view of the judgement of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Loss of income is ₹1500 x 50/100 i.e., ₹750/- per month.

While affording an increase of 40% in the income of the appellant on account of loss of future income, the amount comes to [(750/- +

(750 x 50%)] = ₹1125/- per month i.e., ₹13,500/- per annum. Age of the injured/claimant-Jarnail Singh was 22 years as on the date of the accident, therefore, multiplier of 18 is to be applied in terms of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77**. Loss of earnings is, thus, assessed as ₹2,43,000/- [13,500 x 18].

Appellant would not have been able to work for at last six months in the given circumstances, thus entitled to ₹9000/- (1500 x 6) for loss of income for six months. A sum of ₹1,55,540/- awarded on account of medical expenses by the learned tribunal is maintained. ₹1 lakh instead of ₹50,000/- is awarded on account of pain and suffering/mental agony while maintaining ₹50,000/- on account of loss of marital prospects. ₹50,000/- each is awarded towards loss of amenities, future medical expenses. The appellant instead of the consolidated amount of ₹10,000/- for transportation and extra nourishment, is entitled to a sum of ₹10,000/- for transportation, ₹15,000/- for special diet and ₹15,000/- for attendant charges. Appellant is also entitled to a sum of ₹80,000/- for prosthetics, as admittedly his right leg above the knee was amputated.

Compensation towards the claimant-Jarnail Singh on account of the injuries received by him is thus re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of earnings	₹2,43,000/-
2.	Loss of income for six months	₹9000/-
3.	Medical expenses	₹1,55,540/-
4.	Pain and suffering/mental agony	₹1,00,000/-

5.	Marital prospects	₹50,000/-
6.	Loss of amenities	₹50,000/-
7.	Future medical expenses	₹50,000/-
8.	Transportation charges	₹10,000/-
9.	Special diet	₹15,000/-
10.	Attendant charges	₹15,000/-
11.	Prosthetics	₹80,000/-
	Grand Total	₹7,77,540/-

Amount already awarded by the Tribunal to claimant-Jarnail Singh under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, FAO No. 3835 of 2001 and FAO No. 3836 of 2001 are disposed of.

11.12.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.