

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

Date of decision: 19.2.2018

1.

FAO No.4583 of 2005(O&M)

& XOBJC-57-CII of 2010

Jogindero Devi and others

.....Appellants

VERSUS

Jagbir and another

.....Respondents

2.

FAO No.4584 of 2005(O&M)

XOBJC-58-CII of 2010

Jai Ram

.....Appellant

VERSUS

Sh. Jagbir @ Bajrang and another

.....Respondents

3.

FAO No.4585 of 2005(O&M)

XOBJC-59-CII of 2010

Piare Lal

.....Appellant

VERSUS

Sh. Jagbir @ Bajrang and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Mamli, Advocate for the appellants.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate for respondent-Insurance
Company/cross objector.

REKHA MITTAL, J. (Oral)

This order shall dispose of FAO Nos.4583 to 4585 and cross objections Nos.57 to 59-CII of 2010 as these have emerged out of the same award dated 17.03.2005 passed by the Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal') whereby compensation has been awarded on account of death of Ram Saran and injuries sustained by Piare Lal and Jai Ram in a motor vehicular accident that took place on 03.07.2002.

**FAO No.4583 of 2005 &
XOBJC-57-CII of 2010**

Smt. Jogindero Devi and others (claimants) are in appeal seeking enhancement of compensation on account of death of Ram Saran.

The Tribunal has awarded compensation of Rs.3,67,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.3000/-
Deduction for personal expenses	1/3 rd
Multiplier	15
Loss of dependency	Rs.3,60,000/-
Funeral expenses	Rs.2,000/-
Loss of consortium	Rs.5,000/-

Counsel for the appellants would contend that income of the deceased assessed by the Tribunal is on lower side and needs enhancement. The Tribunal has not allowed benefit of increase in income for future prospects. The application for compensation was filed by the widow, daughter and two minor sons and mother of the deceased, therefore, admissible deduction for personal expenses should be 1/4th. Adequate compensation may be allowed under conventional heads.

Counsel for the insurance company has supported assessment of compensation with the plea that adequate compensation has been awarded. However, to substantiate his plea raised by way of cross objections, it is argued that as the deceased was a gratuitous passenger travelling in canter bearing No.DL-1LD-0120, insurance company is not liable to pay compensation or in the alternative may be given recovery right against insured after indemnifying the insured.

Counsel for the claimants, in reply, has refuted contention raised by counsel for the insurance company by referring to findings of the Tribunal in para 54 of the award.

The plea of the claimants is that the deceased was cultivating 7-8 acres of land on lease. It was also pleaded that the deceased was running a milk dairy. However, the claimants failed to produce on record any cogent evidence to establish their plea in this regard. Nevertheless, claimants produced on record bills Ex.P5 to P44 as evidence that Ram Saran had been sending vegetables at New Anaj Mandi, Ladwa and Radaur and New Sabs Mandi Azadpur, Delhi. The Tribunal has assessed income of the deceased at Rs.3,000/- per month. The minimum wage of a highly skilled worker in State of Haryana at the relevant time was Rs.2,700/- per month. Under the circumstances, findings recoded by the Tribunal assessing income of the deceased at Rs.3,000/- per month do not justify intervention. However, claimants shall be entitled to increase in income for future prospects at the rate of 40%.

The Tribunal has rightly applied multiplier of 15 and the same is affirmed. The application for compensation was filed by five persons namely widow, two minor sons, daughter and mother of the deceased Ram

Saran. In the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77,** admissible deduction would be 1/4th. In this manner, loss of dependency comes to Rs.5,67,000/- [Rs.5,40,000/- (Rs.3000 x 12 x 15) + Rs.2,16,000/- (40% future prospects) – Rs.1,89,000/- (1/4th deduction towards personal expenses).

The claimants shall be entitled to following compensation under conventional heads in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270:-**

Loss of consortium to the widow	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.6,37,000/- and the additional amount is Rs.2,70,000/- (Rs.6,37,000/- - Rs.3,67,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow of the deceased.

This brings the Court to plea of the insurance company that Ram Saran deceased was gratuitous passenger travelling in the canter in question. The Tribunal has noticed in para 54 of the award that in the FIR itself, it is categorically mentioned that the deceased and injured were going to Delhi to sell tomato crop wherein it has also been mentioned that after the accident goods were lying scattered on the road. This fact also finds reference in the site plan Ex.P3 prepared by the Investigating Officer of the criminal case. Piare Lal PW-2 and Jai Ram PW-3 have deposed in

their testimony that they were going to Delhi for selling their tomato crop. Jogindero PW-1 also mentioned this fact in her affidavit Ex.P1 that her husband was going to Delhi to sell tomato crop. Counsel for the insurance company has failed to point out any material elicited in the cross examination of the witnesses to prove that their testimonies are not worthy of credence and reliance. He has also failed to invite attention of the Court to any other material on record to rebut the submissions of injured victim as well as widow of the deceased. Under the circumstances, as the travelers in the canter were carrying their goods/vegetables in the vehicle in question, insurance company cannot escape its liability to pay compensation nor can press for right of recovery by raising a plea that they were gratuitous passengers travelling in a goods vehicle.

No other point has been raised.

For the foregoing reasons, the appeal filed by the claimants is partly allowed in the aforesaid terms. However, the cross objections preferred by the insurance company is ordered to be dismissed. No order as to costs.

FAO No.4584 of 2005 &
XOBJC-58-CII of 2010

With regard to injuries sustained by Jai Ram, the Tribunal has awarded a sum of Rs.30,000/-, detailed hereunder:-

Expenses on treatment, medicines, special diet and transportation	Rs.22,000/-
Pain and sufferings	Rs.5000/-
Loss of income	Rs.3000/-

Counsel for the appellant has submitted that compensation awarded by the Tribunal under the aforesaid heads is inadequate and liable to be enhanced.

Counsel representing the insurance company on the other hand has supported assessment made by the Tribunal.

Dr. Himanshu Nanda PW5 was examined and deposed that Jai Ram was admitted in his hospital on 03.07.2002 with fracture pelvis (central fracture dislocation right hip). He was operated upon on 03.07.2002 and discharged from hospital on 06.08.2002. He charged a sum of Rs.10,950/- exclusive of medicines. Vide bills Exs.P64 to 78 medicines were purchased of his prescriptions. He also proved the X-ray receipts for X-ray charges Exs.P84 and 85 and the receipt Ex.P86. The total amount of bills Exs.P64 to 78 and Exs.P84 to 86 plus Rs.10,950/- charged by Dr. Himanshu comes to Rs.15,121/-. The injured victim remained hospitalised for a period of more than one month. Under the circumstances, it is expedient in the interest of justice that compensation of Rs.22,000/- awarded by the Tribunal qua treatment, medicines, special diet and transportation is modified by increase to the extent of Rs.8000/- i.e. Rs.30,000/- in all under these heads.

As has been noticed hereinabove, the injured remained hospitalised for a period of one month and three days because of fracture pelvis and was operated upon on 03.07.2002. He is allowed an amount of Rs.10,000/- for pain and sufferings and additional amount of Rs.5000/- under this head. The injured was involved in the business of growing and selling vegetables. He remained hospitalised for a period of more than one

month. He needed sometime for recovery in order to pursue his business. He shall be entitled to loss of income during the period of treatment and recovery to the tune of Rs.9000/- for a period of three months. The total compensation is Rs.49,000/- and the additional amount is Rs.19,000/- (49,000 – 30,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

The cross-objections filed by the insurance company are dismissed in terms of the judgment passed in FAO No.4583 of 2005.

FAO No.4585 of 2005 &

XOBJC-59-CII of 2010

Pyare Lal another injured victim suffered fracture of left calcaneum. He was admitted in the hospital on 03.07.2002 and discharged on the same day. He produced on record bills Exs.P46 to 52 of the value of Rs.1,368.90 in regard to expenses on his medical treatment. The Tribunal has awarded compensation of Rs.8000/- i.e. Rs.5000/- on treatment, transportation, medicines, special diet etc. and Rs.3000/- on account of pain and sufferings. Dr. Himanshu PW5 has not deposed that the deceased needed confinement to bed because of fracture left calcaneum. Though indisputably he was discharged from the hospital on the day of admission. Under the circumstances, the claimant is awarded another sum of Rs.2000/- towards compensation payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms. The cross-objections filed by the insurance company are dismissed in terms of judgment passed in FAO No.4583 of 2005.

FEBRUARY 19, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no