

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. FAO No. 3779 of 2014 (O&M)
Date of Decision : 21.04.2018**

Jasmeet KaurAppellant

Versus

Sanjay Kumar and anotherRespondents

2. FAO No. 4363 of 2014 (O&M)

Sukhdev Singh and anotherAppellants

Versus

Sanjay Kumar and anotherRespondents

3. FAO No. 6216 of 2014 (O&M)

Sukhdev Singh and anotherAppellants

Versus

Sanjay Kumar and anotherRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Jain, Advocate
for appellants in all the appeals.

Mr. Sandeep Suri, Advocate
for respondent no. 2-Insurance Company in all the appeals.

Surinder Gupta, J.

The above captioned appeals have been taken up together as the same arise out of common award dated 24.09.2013 passed by Motor Accident Claims Tribunal, Ambala (later referred to as 'the Tribunal').

FAO-3779-2014

2. Appellant-Jasmeet Kaur (minor) has sought enhancement of compensation for the injuries and disability suffered by her in a motor vehicle accident with Wagon R car bearing registration no. PB-65-J-6191 (later referred to as 'the offending vehicle'). She has suffered 70% disability due to

amputation of left leg below knee and the Tribunal has awarded her total compensation of ₹3,61,880/-, which was computed as follows:-

(i)	Pecuniary damages (Special damages)	₹159480
(i)	Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.	
(ii)	Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising;	
(a)	Loss of earning during the period of treatment;	₹20000
(b)	Loss of future earning on account of injuries etc.	₹32400
(iii)	Future medical expenses.	Nil
	Non-Pecuniary damages (General damages)	
(iv)	Damages for pain, suffering and trauma as a consequence of the injuries.	₹50000
(v)	Loss of amenities (and/or loss of prospects of marriage)	₹100000
(vi)	Loss of expectation of life (shortening of normal longevity).	Nil
Total		₹361880

FAO-4363-2014

3. Appellants, Sukhdev Singh Jasmeet Kaur (minor) have claimed enhancement of compensation awarded by the Tribunal for death of Kulbir Kaur (later referred to as ‘the deceased’), wife of appellant no. 1 and mother of appellant no. 2, in the same accident. The Tribunal awarded compensation of ₹9,23,346/-, which was computed as follows:-

(i)	Name of the deceased	Kulbir Kaur
(ii)	Age of the deceased	30 years
(iii)	Monthly income of the deceased as assessed by the Tribunal	₹5000
(iv)	1/3 rd of (iii) above deducted towards personal expenses	₹5000- ₹1666) = ₹3334 (rounded off to ₹3340) per month
(v)	Compensation calculated after applying the multiplier of 17	(₹3340X12X17) = ₹681360
(vi)	Expenses relating to medical bills	₹116986

(vii)	Compensation for loss of consortium	₹100000
(viii)	Compensation for funeral expenses	₹25000
Total		₹923346

FAO-6216-2014

4. In this appeal, appellants, Sukhdev Singh and Jasmeet Kaur, have sought enhancement of compensation of ₹1,90,000/- as awarded by the Tribunal for death of Samarpreet Singh, a minor boy aged 10 months, who was also killed in that accident.

5. Firstly I take **FAO No. 6216 of 2014**.

6. The Tribunal has awarded compensation of ₹1,70,000/-, which was computed by taking annual income of the deceased as ₹15000/- per annum. The Tribunal deducted 1/3rd of that income towards his personal expenses and then by applying multiplier of 17, as per age of mother of the deceased, computed amount of ₹1,70,000/- towards loss of dependency to which a sum of ₹20,000/- was added towards loss of estate.

7. Learned counsel for the appellant while relying on observations of Hon'ble Apex Court in case of **Kishan Gopal and another vs. Lala and others, 2013 ACJ 2594** has sought enhancement of compensation for death of Samarpreet Singh to ₹4,50,000/-. He has argued that Hon'ble Apex Court in case of ***Kishan Gopal (supra)*** has assessed income of the deceased, who was 10 years of age, @ ₹ 30000/- per annum. That accident took place in the year 1992 while in this case the accident had taken place on 24.01.2012.

8. Deceased-Samarpreet Singh was an infant. No doubt the loss of life of a lovely child cannot be compensated in terms of money, however, while awarding the compensation, the Tribunal has to look into factor of loss of dependency. In case of ***Kishan Gopal (supra)***, Hon'ble Apex Court has taken note of the fact that the deceased was a young boy of 10 years, who was

infant. Though, the Tribunal has adopted the method of calculating compensation by taking his income as ₹15000/- and then making deduction of 1/3rd from his income towards his personal expenses but I am of the opinion that total amount of compensation as awarded by the Tribunal is reasonable and adequate and calls for no interference.

FAO No. 4363 of 2007

9. Learned counsel for appellants has argued that the Tribunal has taken the deceased as housewife and assessed value of her services rendered to appellants in terms of money as ₹5000/- per month but while computing amount of compensation, the Tribunal made deduction of 1/3rd from value of her services towards her personal expenses, which is not admissible under the law.

10. Learned counsel for respondent no. 2-Insurance Company while not disputing the submission of learned counsel for the appellant has argued that the Tribunal has awarded compensation of ₹1 lakh towards loss of consortium and ₹25,000/- towards funeral expenses. The compensation under conventional heads is to be restricted to ₹70,000/- as per law settled by Hon’ble Apex Court in case of **National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.**

11. As the issue regarding assessment of income of the deceased has not been disputed, the same is taken as ₹5000/- per month and the compensation awarded under the conventional heads is restricted to ₹70,000/- as per law settled in case of ***Pranay Sethi (supra)***. The compensation to which claimants are entitled is reassessed as follows:-

(i)	Value of services rendered by the deceased as assessed by the Tribunal	₹5000 per month
(ii)	Compensation calculated after applying the multiplier of 17	(₹5000X12X17) = ₹1020000
(iii)	Compensation towards loss of consortium	₹40000

(iv)	Compensation towards loss of estate	₹15000
(v)	Compensation towards funeral expenses	₹15000
Total		₹1090000

FAO No. 3779 of 2014

12. Appellant-Jasmeet Kaur (minor) aged 9 years had suffered serious grievous injuries in the accident. She was initially taken to Government Hospital, Ambala from where she was referred to PGI, Chandigarh. Due to injuries her left leg below knee was amputated. As per disability certificate issued by board of doctors, she has suffered 70% permanent disability. The Tribunal took her disability as 18% qua whole body; assessed her annual income as ₹15,000/- and after deducting 1/3rd of that income towards her personal expenses, calculated her annual income as ₹10,000/-. On applying the multiplier of 18, she was allowed compensation of ₹32,400/- on account of loss of future earning due to disability suffered by her. She was allowed total compensation of ₹3,61,880/-.

13. Learned counsel for the appellant has argued that appellant-Jasmeet Kaur was 9 years of age at the time of accident. Due to amputation of her leg, she has lost her future prospects. This injury has disabled her for many prestigious jobs and it has also affected her matrimonial prospects. During the treatment at PGI, her father and other relatives have spent a lot on transportation, attendant charges etc. She was prescribed special diet by the doctor and requires future medical care and treatment throughout her life. The Tribunal has not allowed any compensation on this score. The Tribunal has committed grave mistake while computing her annual income as ₹15000/- and then making deduction from that income towards her personal expenses. The appellant has to live with this disability through her life, as such, the Tribunal was required to apply wages prescribed for skilled worker in the year 2012 as

income of the deceased and had to allow future prospects @ 40% per annum. As per provisions of Workmen's Compensation Act, amputation of leg below knee amounts to 50% physical disability of whole body. The Tribunal has committed grave error while taking this disability as 18%.

14. Learned counsel for respondent no. 2-Insurance Company has argued that the appellant is a minor child and the Tribunal has rightly taken her income as ₹15000/- per annum. Though, amputation of leg is disability but it cannot be taken as 50% disability of whole body. The compensation awarded by the Tribunal is just, adequate and reasonable.

15. Dr. Mohit Gupta, Ortho Surgeon, Government Hospital, Naraingrah, District Ambala was member of medical board, which examined appellant-Jasmeet Kaur and found it to be a case of multiple fractures with amputation of left leg below knee. As per disability certificate issued by medical board, appellant has suffered 70% disability. PW-3 Dr. Ashok Sarwal had examined the appellant on 31.10.2012, when she was admitted in his "Sarwal Hospital, Ambala City". At that time she was suffering from fracture left femur with severe osteoporosis and amputation of left leg before coming to his hospital. He operated her on 31.10.2012 and discharged her on 03.11.2012. After her discharge, the appellant had been visiting him for follow up treatment. Sukhdev Singh, father of appellant while appearing as PW-5 has stated that the appellant has suffered fracture injuries of her left leg and left arm. Due to her serious condition, she was referred to PGI, Chandigarh where on 03.01.2012 operation for amputation of her left leg was conducted. After discharge from PGI on 04.01.2012, she had been visiting there on various dates upto May, 2012. The appellant was then admitted in Sarwal Hospital, Amabla City in October, 2012 i.e. about more than nine months after accident, where she was operated. The accident has affected studies of appellant. Amputation of

matrimonial prospects. Now she cannot take part in sports, games etc. and has to face difficulties for whole of her life.

16. The Tribunal has taken disability of appellant qua whole body as 18%. As per Schedule II under the Workmen's Compensation Act, amputation of leg below knee with stump exceeding 3.5 inches but not exceeding 5 inches is to be taken as 50% loss of earning capacity. Though, disability certificate does not give details but describes 70% disability because of multiple fractures with amputation of left leg below knee, as such, the loss of earning capacity of appellant can be taken as 50% instead of 18% as assessed by the Tribunal. The minimum wages prescribed for a semi skilled person in Haryana as on January, 2012 was ₹4977.17 ps. The appellant belongs to reasonably a good family and was a student. She is studying in a school at Barnala and could at least attain the level of semi skilled worker, if not of highly skilled. She has to survive with injuries suffered by her throughout her life, as such, her income can be compared to a semi-skilled worker instead of taking her income as a child, as such, monthly income of the appellant is assessed as ₹5000/-. She is also entitled to get **40% addition** in her income towards future prospects. The medical evidence proved on file shows that the appellant had been suffering due to injuries even in October, 2012, when she was operated by Dr. Ashok Sarwal. This shows that she required services of attendant during the period she remained admitted in hospital, after amputation and till she was operated by Dr. Ashok Sarwal. The Tribunal has not awarded any compensation towards attendant charges. The appellant also required special diet to cope with injuries suffered by her but the Tribunal has not awarded any compensation on this score as well. Though, in column (i) as reproduced in para 2 above, it is mentioned that compensation of ₹1,59,480 has been allowed under the head of treatment, hospitalization, medicines, transportation, nourishing food and

miscellaneous expenses, but this amount is of medical bills only. I have no doubt that the family and well-wishers have given all strengths and support to the appellant after amputation of her leg and prepared her to face challenges in life but disability suffered by her due to amputation of her left leg has certainly affected her matrimonial prospects. The appellant was admitted in PGI and thereafter she had been visiting PGI till May, 2012 and again the hospital of Dr. Sarwal. Towards transportation charges, she is awarded a sum of **₹20,000/-**. For attendant for one year after the accident, she is awarded a lump sum amount of **₹30,000/-**. A person, whose leg was amputated, requires constant medical attention, future medical care, leg transplant etc. On this score, she is awarded a compensation of **₹1 lakh**. For special diet, she is awarded **₹10,000/-** and for loss of studies a compensation of **₹50,000/-**.

17. In view of my above discussion, compensation to which appellant-Jasmeet Kaur is entitled, is computed as follows:-

(i)	Monthly income of the appellant	₹5000 per month
(ii)	40% of (i) above added towards future prospects	(₹5000+ ₹2000)= ₹7000/- per month
(iii)	50% of (ii) deducted towards loss of earning capacity	(₹7000- ₹3500) = ₹3500 per month
(iv)	Compensation calculated after applying the multiplier of 18	(₹3500X12X18) = ₹756000
(v)	Damages for pain and suffering and injuries as awarded by the Tribunal	₹50000
(vi)	Compensation for loss of amenities of life and loss of marriage prospects as awarded by the Tribunal	₹100000
(vii)	Compensation for constant medical attention, future medical care, leg transplant etc.	₹100000
(viii)	Compensation for transportation charges	₹20000
(ix)	Compensation for attendant charges	₹30000
(x)	Compensation for special diet	₹10000
(xi)	Compensation for loss of studies	₹50000
Total		₹1116000

18. As a sequel of my above discussion, the appeal (**FAO No. 6216 of 2014**) filed by appellants seeking enhancement of compensation as awarded by the Tribunal for death of **Samarpreet Singh** is dismissed.

19. The appeal (**FAO No. 4363 of 2014**) filed by appellants seeking enhancement of compensation for death of **Kulbir Kaur** has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants is enhanced from **₹9,23,346/-** to **₹10,90,000/-**. Appellants shall share the enhanced amount of compensation as follows:-

- (i) Appellant no. 1 (husband) : 40%
- (ii) Appellant no. 2 (daughter) : 60%

20. The appeal (**FAO No. 3779 of 2014**) filed by **appellant-Jasmeet Kaur** seeking enhancement of compensation for the injuries suffered by her is also accepted and award of the Tribunal is modified. The compensation allowed to her is enhanced from **₹3,61,880/-** to **₹11,16,000/-**.

21. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of instant appeals till actual realization.

22. Respondent no. 2-National Insurance Company Ltd. being insurer of the offending vehicle will deposit the share of appellant no. **1-Sukhdev Singh** in **FAO No. 4363 of 2014** in his bank account or pay the same through demand draft.

23. **Appellant-Jasmeet Kaur**, in **FAOs No. 3779 and 4363 of 2014**, was 9 years of age at the time of accident in 2012, which means she is still 15 years of age. Presently she is living and studying at Barnala. Respondent no. 2-National Insurance Company will deposit the share of appellant-Jasmeet Kaur in enhanced amount of compensation as allowed in aforesaid appeals in some nationalized bank as fixed deposit till the period she attains majority. It

is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and she shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in her name after the date of her attaining majority. The above direction has been issued to save claimant from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after minor claimant has attained age of majority. Appellant no. 1-Sukhdev Singh, being father and natural guardian of minor Jasmeet Kaur shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of her brought up.

24. In the event of demise of any of the claimants before or after disposal of these appeals, compensation of his/her share shall be paid to surviving claimants.

April 21, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No