

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

(1)

**FAO No.3992 of 2015 (O&M)
Date of Decision: April 19, 2018.**

Oriental Insurance Company Limited

.....APPELLANT(s).

VERSUS

Kamla Devi and others

.....RESPONDENT(s).

(2)

FAO No.1116 of 2016 (O&M)

Kamla Devi and another

.....APPELLANT(s).

VERSUS

Baljinder and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Sidhu, Advocate
for the appellant in FAO-3992-2015 and
for respondent No.4 in FAO-1116-2016.

Mr. C.P. Tiwana, Advocate
for respondents No.1 and 2 in FAO-3992-2015
and for appellants in FAO-1116-2016.

Mr. V.S. Rana, Advocate
for respondents No.3 to 5 in FAO-3992-2015 and
for respondents No.1 to 3 in FAO-1116-2016.

SURINDER GUPTA, J.

The appeals captioned above have been taken up together for disposal as both arise from the award dated 21.04.2015 passed by Motor Accident Claims Tribunal, Kaithal (later referred to as 'the Tribunal')

whereby the claimants have been allowed compensation of ₹14,54,000/- for death of Sunny (later referred to as 'the deceased') son of claimants, in a motor vehicle accident, which took place on 07.05.2012 due to rash and negligent driving of Truck bearing registration No.HR38Q-3705 (later referred to as 'the offending vehicle') by its driver Baljinder.

The appellants-claimants in appeal bearing FAO No.1116 of 2016 are seeking enhancement of compensation while in the appeal FAO No.3992 of 2015 filed by insurer of the offending vehicle, quantum of compensation awarded by the Tribunal has been challenged.

As the only issue involved in these appeals is quantum of compensation, the detailed facts relating to the accident are being skipped for the sake of brevity.

The compensation awarded by the tribunal was computed as follows:-

(i)	Name of the deceased	Sunny
(ii)	Age of the deceased	21 years
(iii)	Income of the deceased	₹10000 per month i.e. ₹120000 per annum
(iv)	Deduction towards personal expenses 1/2	₹120000-60000=₹60000
(v)	30% addition towards future prospects	₹60000+18000=₹78000
(vi)	Multiplier applied 18	₹78000X18 = ₹1404000/-
(vii)	Loss of love and affection	₹25000/-
(viii)	Funeral expenses	₹25000/-
<i>Total</i>		₹14,54,000/-

Learned counsel for the insurer (appellant in FAO-3992-2015) has argued that the tribunal without any basis, has taken income of the deceased as ₹10,000/-, which is higher than the minimum wages prescribed at the relevant time for unskilled or skilled worker. It was alleged that deceased was a Band and Drum Blower. Though the claimants have

examined PW4 Rishi Ram to prove that monthly income of the deceased was around ₹15,000/- to ₹20,000/- but he could not produce any document to prove this fact. In the absence of any documentary evidence, the tribunal could take income of the deceased as minimum wages prescribed by Labour Commissioner, Haryana.

Learned counsel for the claimants (appellants in FAO-1116-2016), has argued that deceased was 21 years of age. He was a Band and Drum Blower, which is lucrative job. Rishi Ram PW4 with whom he was working, has stated that deceased was earning around ₹15,000/- to ₹20,000/- per month but the tribunal has taken his income as ₹10,000/- per month, which is on lower side. As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***, the claimants are also entitled to 40% addition in the income of the deceased towards future prospects and compensation under the conventional heads.

The tribunal while assessing income of the deceased has looked into the evidence on record and has concluded that he was a Band and Drum Blower. It has also taken note of the statement of PW4 Rishi Ram and has assessed income of the deceased as ₹10,000/- per month with the observation that he was a Band Master, who got the job throughout the year. Band and Drum Blower is a highly skilled job and keeping in view the fact that their service are taken on the occasion of marriages and other functions when the families are celebrating some occasion, they are paid handsome remuneration.

Keeping in view the nature of job of the deceased and the

evidence on record, I find no reason to interfere with the observation of the tribunal assessing income of the deceased as ₹10,000/- per month.

As per the law settled in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***, claimants are also entitled to addition of 40% in the income of the deceased towards future prospects and the compensation under the conventional heads is to be restricted to ₹30,000/- on account of loss of estate and funeral expenses.

In view of my above discussion, the compensation to which the claimants are entitled, is reassessed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹10000 per month
(ii)	40% of above (i) to be added as future prospects	(₹10000+₹4000)= ₹14000 per month
(iii)	Deduction of 1/2 towards personal expenses of the deceased	(₹14000-₹7000)= ₹7000 per month
(iv)	Compensation after multiplier of 18 is applied	(₹7000X12X18)= ₹1512000
(v)	Loss of estate	₹15000
(vi)	Funeral expenses	₹15000
Total		₹15,42,000/-

As a sequel of my above discussion, appeal (FAO-3992-2015) filed by insurance company has no merits and the same is dismissed, whereas appeal (FAO-1116-2016) filed by claimants has merits and is allowed. The award of the tribunal is modified and the compensation allowed to the claimants is enhanced from ₹14,54,000/- to ₹15,42,000/- for death of their son Sunny. 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 the appeal till actual realisation.

The amount of enhanced compensation shall be shared by both the

claimants in equal. Respondent No.4-insurance company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal. In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

April 19, 2018.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No