

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **FAO No. 4928 of 2016**

Union of India and anr.		...Appellants
	Versus	
Puhspa and others		...Respondents

2. **FAO No. 4929 of 2016**

Union of India and anr.		...Appellants
	Versus	
Kamlesh and others		...Respondents

3. **FAO No. 4938 of 2016**

Union of India and anr.		...Appellants
	Versus	
Kalawati and others		...Respondents

4. **FAO No. 4939 of 2016**

Union of India and anr.		...Appellants
	Versus	
Sunita and others		...Respondents

5. **FAO No. 4940 of 2016**

Union of India and anr.		...Appellants
	Versus	
Manju and others		...Respondents

6. **FAO No. 5922 of 2016**

Sunita and anr.		...Appellants
	Versus	
Lilu Ram and others		...Respondents

7. **FAO No. 5937 of 2016**

Kamlesh @ Kamla Devi and ors.		...Appellants
	Versus	

Lilu Ram and others ...Respondents

8. FAO No. 6002 of 2016

Kalawati and ors. ...Appellants

Versus

Lilu Ram and others ...Respondents

9. FAO No. 2186 of 2017

Manju and others ...Appellants

Versus

Union of India and others ...Respondents

10. FAO No. 4038 of 2017

Pushpa and others ...Appellants

Versus

Union of India and others ...Respondents

Date of decision:- 24.05.2018

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Amit Kumar, Advocate
for the appellant-Union of India in
FAO No. 4928, 4929, 4938, 4939 and 4940 of 2016
& for respondent No.1 and 2 in FAO No. 2186 and 4038-2017
& for respondent No.3 & 4 in FAO No. 5922, 5937 & 6002-2016

Mr. Gaurav Aggarwal, Advocate
for the appellant in FAO No. 5922, 5937 & 6002-2016
& for respondent No. 1 to 4 in FAO No. 4929 & 4938 of 2016
for respondent No. 1 and 2 in FAO 4939 of 2016

Mr. Dheeraj Narula, Advocate
for the appellants in FAO No. 2186 & 4038 of 2017
& for respondent No. 1 to 3 in FAO No. 4928 of 2016
& for respondent No. 1 to 5 in FAO No. 4940 of 2016

Mr. Paul S. Saini, Advocate for respondent-Insurance Co.

RITU BAHRI J.

C.M. No. 13034-CII-2017 in FAO No. 4038-2017

For the reasons mentioned in the application, delay of 170 days

in filing of the appeal is hereby condoned.

The application stands disposed of accordingly.

C.M. No. 7271-CII-2017 in FAO No. 2186-2017

For the reasons mentioned in the application, delay of 170 days in filing of the appeal is hereby condoned.

The application stands disposed of accordingly.

FAO No. 4928-2016 and connected matters.

1. Ten appeals, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned award dated 11.05.2016 passed by the learned Motor Accident Claims Tribunal, Sirsa (herein after to be referred as 'the Tribunal').

2. Out of the above ten appeal, five appeals (FAO No. 4928, 4929, 4938, 4939 and 4940 of 2016 are being filed by Union of India challenging the award on the ground that the appellants (FAO No. 4928, 4929, 4938, 4939 and 4940 of 2016) have been held wrongly liable to pay the compensation by holding that it was a case of contributory negligence and the appellants are held liable to pay 40% of the awarded amount.

3. The other five appeals (FAO No. 5922, 5937, 6002 of 2016 and FAO No. 2186 and 4038-2017 have been filed for enhancement of the compensation amount awarded by the Tribunal.

Facts not in dispute

4. On 24.02.2014, Prahlad (since deceased) along with Subhash (since deceased), Har Dutt (since deceased), Madan (since deceased), Sudhir (since deceased) and two children namely Aditya (since deceased) and Rajeev were returning to village Arnianwali from Village Joldhkan,

after attending a marriage in a car Ritz bearing temporary No. HR-99-RP-

7784 (now registration No. HR-24-S8234) (hereinafter to be referred as “offending vehicle”), which was being driven by Subhash (since deceased) .

At about 11.15 P.M, when Subhash (since deceased) was trying to cross an unmanned railway crossing No. C-135 in between Railway Station Suchan Kotli-Dingh Km No. 208/10 without watching the train in a negligent manner, suddenly a train came from Sirsa side and the car struck into the train resulting into the impugned accident. All the occupants of the car received multiple and grievous injuries and succumbed to their injuries.

F.I.R No. 05 dated 24.02.2014 was registered at P.S. GRP, Sirsa.

COMPENSATION ASSESSED BY THE TRIBUNAL

Prahlad

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.9000/- per month
(ii)	1/3 rd of (ii) deducted as personal expenses of the deceased=	Rs.9000-Rs.3000=Rs.6000/- per month
(iii)	Compensation after multiplier of 18 is applied	Rs.6000 X 12 X 18= Rs.12,96,000/-
(iv)	Love and affection, loss of consortium etc.	Rs.25,000/-
(v)	Funeral expenses	Rs.10,000/-
(vi)	Total Compensation awarded	Rs.13,31,000/-

Sudhir

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.8100/- per month
(ii)	1/4 th of (ii) deducted as personal expenses of the deceased=	Rs.8100-Rs.2025=Rs.6075/- per month
(iii)	Compensation after multiplier of 17 is applied	Rs.6075 X 12 X 17= Rs.12,39,300/-
(iv)	Love and affection, loss of consortium etc.	Rs.25,000/-
(v)	Funeral expenses	Rs.10,000/-
(vi)	Total Compensation awarded	Rs.12,74,300/-

Madan Lal

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.8100/- per month
(ii)	1/3 rd of (ii) deducted as personal expenses of the deceased=	Rs.8100-Rs.2700=Rs.5400/- per month
(iii)	Compensation after multiplier of 14 is applied	Rs.5400 X 12 X 14= Rs.09,07,200/-
(iv)	Love and affection, loss of consortium etc.	Rs.25,000/-
(v)	Funeral expenses	Rs.10,000/-
(vi)	Total Compensation awarded	Rs.09,42,200/-

Har Dutt

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.8100/- per month
(ii)	1/3 rd of (ii) deducted as personal expenses of the deceased=	Rs.8100-Rs.2700=Rs.5400/- per month
(iii)	Compensation after multiplier of 13 is applied	Rs.5400 X 12 X 13= Rs.08,42,400/-
(iv)	Love and affection, loss of consortium etc.	Rs.25,000/-
(v)	Funeral expenses	Rs.10,000/-
(vi)	Total Compensation awarded	Rs.08,77,400/-

Aditya

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Notional Income	Rs.30000/- per year
(ii)	Compensation after multiplier of 15 is applied	Rs.30000 X 15= Rs.04,50,000/-
(iii)	Love and affection, loss of estate etc.	Rs.50,000/-
(iv)	Total Compensation awarded	Rs.05,00,000/-

3. Feeling dissatisfied with the impugned award, the claimant as well as Union of India have preferred their separate appeals.

Arguments Advanced

4. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and

deserves to be enhanced, as no future prospects have been granted and the income has been taken on the lower side.

5. On the other hand, the learned counsel for the appellant-Union of India is challenging the award on the ground that the accident has occurred only due to the negligence of the driver of the car and thus, the appellants have wrongly been held liable to pay the compensation to the tune of 40% of the amount of the compensation. The Insurance Company of the car should have been held responsible to pay the entire compensation. Learned counsel submits that in case of an unmanned railway crossing, the railway department have taken sufficient due care and caution and erected indicators before and after the railway track showing signs of railway track there. The person crossing the railway track has to stop, look and thereafter to cross the railway track. An enquiry was also conducted by the Railway Department and found the driver of the car in question to be negligent. The photographs placed on file also show that the indicators were installed near the railway track.

6. To give force to its contention, learned counsel has relied upon a judgment of this Court in a case of ***National Insurance Co. Ltd vs. Mameen Kaur and others, 2012 (1) PLR 203*** wherein the question was whether Union of India would be responsible to some extent to pay compensation only for the reason that the railway level crossing at the sight of the accident was unmanned. In para 12, it has been observed as under:-

“12. In such situation, the question would be as to whether Union of India would be responsible to some extent to pay compensation only for the reason that the railway level crossing at the sight of the accident was unmanned. In my opinion no such finding can be given against Union of India for

the reason that the railway level crossing was unmanned. There is no evidence coming on the record to show that no sign board was placed by the side of the crossing to inform the driver of the vehicle trying to cross the railway crossing that it was an unmanned railway level crossing. There is nothing on the record to show that the driver of the train did not take the precautions required while passing through an unmanned railway level crossing. So in these circumstances, the unshaken and un rebutted testimony of Ramesh Kumar would prove that the accident has been an outcome of rash and negligent driving of three wheeler by Ashwani Kumar alone.”

6. Reference has further been made to a judgment of Rajasthan High Court in a case of ***Amrit Lal and others v. Union of India and others, 2003(2) PLW 779*** wherein appeal of the owner of the truck was dismissed against the Railway Administration. In para 23 to 27, it has been observed as under:-

23. Apart from the above, in the case of railway level crossing, the following principles have to be kept in mind :-

(i) That to make the Railways liable, mere allegation or proof that the driver of the Railway engine was guilty of negligence in such cases is altogether irrelevant; the plaintiff must allege and prove, not merely that the Railway Administration was negligent, but its negligence caused or materially contributed to the injury.

(ii) That there is an obligation on the part of the Railway Company or Administration to ensure that whenever a railway line passes over a thoroughfare adequate warning should be given to the public of the passing of the trains at the time they pass so that accidents may be avoided. This duty need not necessarily be a statutory duty. It is implied and inherent in the functions to be discharged by the railway administration in the matter of running their railways. The railway administration must, therefore, when the road

crossed is busy and the visibility of incoming train is obstructed take the precaution of either putting up a railway gate and keeping it closed at the time the train is due to pass or put up some other obstruction which would prevent the public from passing over the level crossing giving them information and notice of the approaching train.

(iii) That but, there is no general duty to man all level crossings e.g. when the road crossed is not busy and the visibility is not obstructed.

24. Keeping the above principles and law laid down by the Hon'ble Supreme Court in mind, if the findings of the learned Claims Tribunal on issue No. 6 are examined, it is very much clear that at the time of alleged accident, there was no negligence on the part of the Railway engine driver and not only this, before the alleged accident, truck driver was informed by the passengers travelling in that truck that Railway engine was coming forward and, therefore, he should stop the truck, but the truck driver did not pay any heed and instead of stopping the truck, he pushed the truck ahead and struck the truck with the Railway engine.

25. The Hon'ble Supreme Court in the case of [Union of India v. United India Insurance Co. Ltd.](#) (supra) has clearly observed that award could be passed against the Railways if its negligence was also proved. Since in the present case, no negligence on the part of the Railway Administration is proved, therefore, the Railway Administration cannot be held liable.

26. Apart from this, [Section 131](#) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988") prescribes certain duties for a driver approaching unmanned and unguarded railway level crossings to ensure safe crossing of the vehicle in the interest of public safety. Such duties were not observed in the present case by the driver of the truck in question and thus, the learned Claims Tribunal has rightly observed that the truck driver was responsible for causing the accident and not the Railway engine driver and in these circumstances, the Railway Administration cannot be held liable.

27. No doubt in the case of [Union of India v. United India Insurance Co. Ltd.](#) (supra), the Railway Administration was held liable, but the facts of that case were different in nature to some extent from the facts of the present case, as in that case, negligence on the part of the Railway

Administration was found proved as in that case the bus driver was from Tamil Nadu, he was not familiar with this place in Kerala State where the accident occurred, there was no caution board or other indication to show that the road was cutting across a railway line and there were no gates or handrails to alert the passers-by and if the Railway Administration had taken adequate precautionary measures such as erecting hand rails or gates, a severe accident like this would not have taken place, but such type of facts are missing in the present case and there was no negligence on the part of the railway engine driver and in such circumstances, the Railway Administration cannot be held as joint tort-feasors.

On the other hand, learned counsel for the claimants has referred to a judgment of Hon'ble the Supreme Court of India in a case of ***Consumer Education and Research Centre v. Union of India, 2003 (12) SCC 350*** wherein Solicitor General stated that by June, 2003 circular meter gauge and narrow gauge have been brought within the purview of the policy regarding unmanned level crossings. Survey has been initiated by the Railway authorities in connection with the June 2003 circular, it is stated that such will take about three months time. Once the report is produced before the Court then there will be no difficult to implement the policy or decision already taken by the Railway Authorities in the area where it has not yet been implemented.

Reference has further been made to a judgment of Hon'ble the Supreme Court of India in a case of ***Consumer Education and Research Centre v. Union of India and another, 2010(2) Scale 23*** wherein also learned counsel appearing for railway authorities stated that a comprehensive policy is proposed to be evolved but it would be difficult for the railways to have signals at all the level crossings. Hon'ble the Supreme Court has held that the railways can think of engaging some local people as

part time workers in thickly populated places or the accident prone areas/zones near the railway crossings for the purpose of avoiding accident.

Heard learned counsel for the parties and have gone through the records of the case.

Reference at the very outset can be made to Section 131 of the Motor Vehicle Act, which reads as under:-

131. Duty of the driver to take certain precautions at unguarded railway level crossings.—Every driver of a motor vehicle at the approach of any unguarded railway level crossing shall cause the vehicle to stop and the driver of the vehicle shall cause the conductor or cleaner or attendant or any other person in the vehicle to walk up to the level crossing and ensure that no train or trolley is approaching from either side and then pilot the motor vehicle across such level crossing, and where no conductor or cleaner or attendant or any other person is available in the vehicle, the driver of the vehicle shall get down from the vehicle himself to ensure that no train or trolley is approaching from either side before the railway track is crossed.

It is not in dispute that the accident had taken place on the railway track. It was an unmanned railway crossing. The said railway crossing had no gate or stiles. Thus, the accident occurred due to rash and negligent driver of the car and also on the ground that it was unmanned railway crossing and it had no gates or stiles. The department enquiry conducted by the Railway department has rightly been rejected by the Tribunal as it was departmental enquiry just to assess the liability of their officials and it was done without involving other persons in the inquiry. Even though there were speed breakers, sign C-34 and C-35, but it was an unmanned railway crossing and the driver of the car and the driver of the train were both found negligent rightly.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Union of India v. United India Insurance Company Ltd AIR 1998 SC 640*** wherein it has been specifically held that the award could be passed against the Railways if its negligence was proved

This judgment is directly applicable to the facts of the present case, as in the present case, the negligence of the Railway has been proved, as per Railway Act, 1890 as it was an unmanned railway crossing and there was no gate as well. If there was lapse on one point, the Railway Department could have been absolved of the liability to pay compensation, but there was no gate and it was an unmanned railway crossing. As per site plan, the sign board has not been installed within the stipulated limit of 200 meters from the railway track. It has been shown at a distance of 113 meters from the railway track.

The judgment cited by learned counsel for the appellant-Union of India is not applicable to the facts of the present case as in ***Mameen Kaur's case (supra)***, as in that case, the evidence came in the shape of statement of Ramesh Kumar, a witness of the accident, who deposed that the accident is on account of rash and negligent driving of Ashwani Kumar whereas in the present case, nothing has come on record regarding the negligence driving of the deceased except the bald statement of the Railway officials.

The judgment cited by learned counsel for the appellant-Union of India is not applicable to the facts of the present case as in ***Amrit Lal's case (supra)***, as in that case before the alleged accident, truck driver was

informed by the passengers travelling in that truck that Railway Engine was coming forward therefore, he should stop the truck but the truck driver did not pay any heed and instead of stopping the truck, he pushed the truck and struck the truck with the Railway Engine.

In the present case, even though as per Section 161 of the Motor Vehicle Act, the person crossing the railway track has to stop, look and thereafter to cross the railway track, but it is the duty of the Railway department as well to install the gate at the railway cross and it should not have been unarmned railway crossing. So, the Tribunal has rightly held negligent the railway department to pay 40% of the compensation.

Now coming to the appeal filed by the claimants for enhancement of the compensation amount, reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** wherein the issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and

traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”.

10. As far as appeal preferred by the appellants-claimants, for enhancement of the amount of compensation, is concerned, the

compensation is to be re-assessed as under:-

Re-assessed compensation

Prahalad

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.9000/- per month
(ii)	50% of (i) above to be added as future prospects=	Rs.9000+Rs.4500=Rs.13500/- per month
(iii)	1/3 rd of (ii) deducted as personal expenses of the deceased=	Rs.13500-Rs.4500=Rs.9000/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.9000X 12 X 18= Rs.19,44,000/-
(v)	Conventional heads (Loss of estate, loss of consortium and funeral expenses)	Rs.70,000/-
(vi)	Total Compensation awarded	Rs.20,14,000/-
	Enhanced amount of compensation	Rs.20,14,000-Rs.13,31,000=Rs.6,83,000/-)

Sudhir

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.8500/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.8500+Rs.3400=Rs.11900/- per month
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased=	Rs.11900-Rs.2975=Rs.8925/- per month
(iv)	Compensation after multiplier of 17 is applied	Rs.8925X 12 X 17= Rs.18,20,700/-
(v)	Conventional heads (Loss of estate, loss of consortium and funeral expenses)	Rs.70,000/-
(vi)	Total Compensation awarded	Rs.18,90,700/-
	Enhanced amount of compensation	Rs.18,90,700-Rs.12,74,300=Rs.6,16,400/-) rounded off to Rs.6,16,000/-

Madan Lal

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.8500/- per month
(ii)	25% of (i) above to be added as future prospects=	Rs.8500+Rs.2125=Rs.10625/- per month

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased=	Rs.10625-Rs.2656=Rs.7969/- per month
(iv)	Compensation after multiplier of 14 is applied	Rs.7969X 12 X 14= Rs.13,38,792/-
(v)	Conventional heads (Loss of estate, loss of consortium and funeral expenses)	Rs.70,000/-
(vi)	Total Compensation awarded	Rs.14,08,792/-
	Enhanced amount of compensation	Rs.14,08,792-Rs.09,42,200=Rs.4,66,592/-) rounded off to Rs.4,66,000/-

Har Dutt

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.8500/- per month
(ii)	25% of (i) above to be added as future prospects=	Rs.8500+Rs.2125=Rs.10625/- per month
(iii)	1/3 rd of (ii) deducted as personal expenses of the deceased=	Rs.10625-Rs.3541=Rs.7084/- per month
(iv)	Compensation after multiplier of 13 is applied	Rs.7084X 12 X 13= Rs.11,05,104/-
(v)	Conventional heads (Loss of estate, loss of consortium and funeral expenses)	Rs.70,000/-
(vi)	Total Compensation awarded	Rs.11,75,104/-
	Enhanced amount of compensation	Rs.11,75,104-Rs.08,77,400=Rs.2,97,704/-) rounded off to Rs.2,98,000/-

Aditya

With regard to the appeal filed by claimant Sunita and another, reference a this stage can be made to a judgment passed by this Court in ***FAO No. 7139-2017 titled as Gajender Singh and anr v. Gautam Ray and others, decided on 26.04.2018*** wherein this Court took the notional income of the child at Rs.50,000/-. The accident in that case was of the year 2016 and the age of the child was 8 years old. In the present case, the accident is of the year 2014 and the age of the child was 12 years, so the notional income of Rs.50,000 can be taken for re-assessing the compensation.

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Notional Income	Rs.50000/-
(ii)	Compensation after multiplier of 18 is applied	Rs.50000 X 18= Rs.9,00,000/-
(iii)	Conventional heads	Rs.15,000/-
(iv)	Total Compensation awarded	Rs.09,15,000/-
	Enhanced amount of compensation	Rs.09,15,000-Rs.05,00,000=Rs.4,15,000/-)

11. Resultantly, the appeals i.e FAO No. 4928, 4929, 4938, 4939 and 4940 of 2016 filed by Union of India and another, are dismissed and the appeals i.e FAO No. 5922, 5937 & 6002-2016 and FAO No. 2186 & 4038 of 2017 filed by the claimants-appellants are allowed to the above extent. The enhanced amount of compensation of Rs.06,83,000/- (in FAO No. 4038 of 2017), Rs.06,16,000/- (in FAO No. 2186 of 2017), Rs.04,66,000/- (in FAO No. 6002 of 2016), Rs.02,98,000/- (in FAO No. 5937 of 2016) and Rs.04,15,000/- (in FAO No. 5922 of 2016) 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 @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of *Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018*. The remaining conditions of disbursal of amount shall remain unaltered.

24.05.2018
G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No`