

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

1. FAO No.6679 of 2015 (O&M)
Dated of Decision:30.10.2018
Mahender Kumar and others
..... Appellant
Versus
Vicky Bajaj and others
.....Respondents
2. FAO No.6528 of 2015 (O&M)
Mahender Kumar
..... Appellant
Versus
Vicky Bajaj and others
.....Respondents
3. FAO No.6529 of 2015 (O&M)
Mahender Kumar
..... Appellant
Versus
Vicky Bajaj and others
.....Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sandeep Kotla, Advocate for the appellants.

Mr. Suvir Dewan, Advocate for respondent No.3/Insurance
Company.

LISA GILL, J.

This order shall dispose of FAOs No.6679, 6528 and 6529 of 2015
as these appeals arise out of common award dated 10.07.2015.

FAO No.6679 of 2015 has been preferred by the claimants seeking
enhancement of the compensation awarded to them by the Motor Accident
Claims Tribunal, Fatehabad (for short, the 'Tribunal') vide impugned award on
account of death of Veena Devi in a motor vehicle accident on 11.05.2014.
Claimants are the husband and minor children of the deceased.

FAO No.6528 of 2015 has been filed by the claimant seeking

enhancement of the compensation awarded to him by the learned Tribunal vide impugned award on account of death of foetus i.e. unborn child, who died in the womb of Veena Devi, in a motor vehicle accident on 11.05.2014. Claimant is the father of the unborn child.

FAO No.6529 of 2015 has been filed by the claimant seeking enhancement of the compensation awarded to him by the learned Tribunal vide impugned award on account of death of Naitik alias Naks in a motor vehicle accident on 11.05.2014. Claimant is the father of the deceased.

Brief facts necessary for adjudication of the case are that petitions under Section 166 of Motor Vehicles Act were preferred by the claimant seeking compensation on account of death of his wife Veena Devi, son Naitik alias Naks (two year old) and foetus i.e. unborn child who died in the womb of Veena Devi in a motor vehicle accident on 11.05.2014. Deceased Veena Devi along with claimant No.1 her husband Mahinder Kumar, minor son namely Naitik alias Naks, aged 2 years, father Om Parkash, brother Pardeep and one Ramesh were returning from Siwani Mandi to Dabwali in Xylo Mahendra bearing registration No.HR-25C-3650 on 11.05.2014. At about 5.30 pm when they reached in the area of Village Suchan on Fatehabad-Sirsa road, Naitik alias Naks desired to answer the call of nature. The said vehicle was accordingly stopped on the side of the road. Deceased Veena Devi was standing with her minor son Naitik alias Naks who wanted to urinate. Meanwhile a Scorpio bearing registration No.HR-70B-2148 being driven rashly and negligently by its driver, at a high speed came from behind and struck against the above said stationary Xylo. As a result thereof Veena Devi, her son Naitik alias Naks, her father Om Parkash and driver Sonu received multiple serious injuries. They were brought to Government Hospital, Sirsa where Veena Devi, her son Naitik alias Naks succumbed to their injuries. It was further pleaded that

deceased Veena Devi was pregnant of 4/5 months at that time and the foetus also died in the womb of Veena Devi due to the injuries suffered by her. FIR No.105 dated 12.05.2014 was registered under Sections 279, 304-A and 337 IPC against respondent No.1. It was pleaded that the deceased Veena Devi at the time of her death was doing the work of tailoring and embroidery, earning Rs.10,000/- per month. She was also a house-wife aged 31-1/2 years old at the time of accident. Compensation was also claimed for the death of the two year old child Naitik alias Naks and the foetus which was lost.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

Learned Tribunal further concluded the deceased Veena Devi to be 32-1/2 years old at the time of her death and assessed her notional income as Rs.3000/- per month. After applying a multiplier of 15, total dependency was assessed at Rs.5,40,000/-. A sum of Rs.50000/- was awarded to the claimant/husband on account of loss of love and affection and consortium besides a sum of Rs.10000/- towards funeral expenses. Thus, claimants were held entitled for total compensation of Rs.6,00,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till realization on account of death of Veena Devi. Claimant Mahender Kumar was also awarded compensation of Rs.1,50,000/- on account of death of foetus which was lost. Claimant Mahender Kumar was awarded compensation of Rs.3,50,000/- on account of death of his two year old son Naitik alias Naks in the accident in question.

Learned counsel for the appellants relies upon the judgment of this

Court in the case of United India Insurance Co. Ltd. Vs. Sube Singh and others passed in FAO No.218 of 2014 decided on 15.01.2014 to submit that notional income of the deceased, who was a house wife, be assessed at Rs.9000/- per month. It is further submitted that compensation under conventional heads be awarded to the claimants in terms of the judgments of Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009 and Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018. It is thus prayed that these appeals be allowed and compensation awarded therein be enhanced.

Learned counsel for the Insurance Company has refuted the above said arguments while submitting that the impugned award has been passed correctly and no ground for any enhancement in compensation is made out.

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

FAO No.6679 of 2015

There is no dispute regarding Veena Devi having lost her life in the accident which took place on 11.05.2014 due to the rash and negligent driving of the offending vehicle by its driver. It is a settled proposition that income of a housewife cannot be assessed as that of a daily wager. It is considered just and expedient to assess the notional income of the deceased to be Rs.9000/-per month. No deduction is to be applied keeping in view the Division Bench judgment of this Court in Paramjit Singh and another Vs. Dilbagh Singh alias Bagga and others, 2014 (4) RCR (Civil) 895. Multiplier of 16 instead of 15 has to be applied keeping in view the age of the deceased i.e. 32-1/2 years. Appellant No.1 is entitled to a sum of Rs.40,000/- instead of Rs.50,000/- on account of loss of consortium. Appellant No.2 and 3 are also entitled to

Rs.40,000/- each on account of loss of parental consortium. An amount of Rs.15,000/- each (instead of Rs.10,000/-) is awarded towards loss of funeral expenses and loss of estate.

Appellants-claimants in FAO No.6679 of 2015, are, thus, entitled to compensation, which is re-worked as under:-

Sr.No.	Heads of Claim	
1.	Income	9000 p.m. i.e., 1,08,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	1,08,000+43,200 (1,08,000x40%) = 1,51,200/-
3	Total dependency after applying a multiplier of 16	(1,51,200 x16) =24,19,200/-
4.	Loss of estate	15,000/-
5.	Funeral expenses	15,000/-
6.	Loss of consortium to the appellants No.1 to 3 @ s.40,000/- each	1,20,000/-
Grand Total		25,69,200/-

FAO No.6528 of 2015

This appeal has been filed by the appellant seeking enhancement of the compensation awarded to him by the learned Tribunal vide impugned award on account of loss of a foetus i.e. unborn child, who died in the womb of Veena Devi, in a motor vehicle accident on 11.05.2014. Smt. Veena wife of the appellant lost her life in the said motor vehicle accident. She was pregnant of about 4/5 months. Due to the injuries, foetus was also lost.

Learned Tribunal has awarded a sum of Rs.1,50,000/- to the appellant vide impugned award.

Heard learned counsel for the appellant.

Learned counsel for the appellant is unable to point out any ground for further enhancement of the compensation awarded to the appellant.

FAO No.6529 of 2015

This appeal has been filed by the appellant seeking enhancement of the compensation awarded to him on account of death of his two years old son Naitik alias Naks in the motor vehicle accident on 11.05.2014.

Learned Tribunal awarded a sum of Rs.3,50,000/- to the appellant on account of death of his son Naitik alias Naks in the accident in question.

Learned counsel for the Insurance Company is unable to deny that in terms of the judgment of Hon'ble Supreme Court passed in Krishan Gopal and another Vs. Lala and others, 2013 (4) RCR (Civil) 276, the appellant is entitled to Rs.5,00,000/- instead of Rs.3,50,000/-.

Therefore, the compensation of Rs.3,50,000/- is enhanced to Rs.5,00,000/-.

The amount of compensation already awarded to the claimant(s) in FAOs No.6679 and 6529 of 2015, needless to say, shall stand deducted from the amount calculated as above. Appellant(s) shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimant(s) 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.

With the abovesaid modification in the award dated 10.07.2015, FAOs No.6679 and 6529 of 2015 are disposed of. FAO No.6528 of 2015 is dismissed.

October 30, 2018.
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(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No