IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO-1419-1997 (O&M)**
Date of Decision: March 18, 2019

Tonney (minor) ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

2. **FAO-1420-1997 (O&M)**

Shri Niwas Jain and another ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

3. **FAO- 1421-1997 (O&M)**

Tek Chand and others ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

4. **FAO- 1422-1997 (O&M)**

Rajesh Kumar Jain ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

5. **FAO- 1423-1997 (O&M)**

Rajesh Kumar Jain ...... Appellants(s)
Versus

Krishan Singh and others ..... Respondent(s)

6. **FAO- 1424-1997 (O&M)**

Smt. Shakuntla Devi and others ...... Appellants(s)
Versus

Krishan Singh and others ..... Respondent(s)

7. **FAO- 1425-1997 (O&M)**

Smt. Shakuntla Devi ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

8. **FAO- 1426-1997 (O&M)**

Matbar Singh Rana and another ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

9. **FAO- 1427-1997 (O&M)**

Tony (minor) and another ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

10. **FAO- 1428-1997 (O&M)**

Tony (minor) ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

11. **FAO- 1429-1997 (O&M)**

Rajesh Kumar Jain ...... Appellants(s)

Versus

Krishan Singh and others ..... Respondent(s)

12. **CR-3089-1997 (O&M)**

D.K. Singla, Advocate, District Courts, Jind
...... Petitioner(s)

Versus

R.S. Madan and others ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rohit Mittal, Advocate for Mr. R.K. Girdhwal, Advocate
for the appellants in FAO Nos. 1419 to 1429 of 1997 and
for the petitioner in CR No. 3089 of 1997.

Mr. R.K. Hooda, Advocate
for respondents no.1 & 2 in FAO Nos. 1419 to 1429 of 1997 &
for respondents no. 2 & 3 in CR No. 3089 of 1997.

Mr. Akash Sridhar, Advocate for
Mr. Ashwani Talwar, Advocate
for respondent no.1 in CR-3089-1997.

Ms. Neha Bakshi, Advocate for Mr. S.S. Sidhu, Advocate
for respondent – insurance company.

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LISA GILL, J.

This judgment shall dispose of FAO-1419-1997 (Tonney (minor) Vs. Krishan Singh and others), FAO-1420-1997 (Shri Niwas Jain and another Vs. Krishan Singh and others), FAO-1421-1997 (Tek Chand and others Vs. Krishan Singh and others), FAO-1422-1997 (Rajesh Kumar Jain Vs. Krishan Singh and others), FAO-1423-1997 (Rajesh Kumar Jain Vs. Krishan Singh and others), FAO-1424-1997 (Smt. Shakuntla Devi and others Vs. Krishan Singh and others), FAO-1425-1997 (Smt. Shakuntla Devi Vs. Krishan Singh and others), FAO-1426-1997 (Matbar Singh Rana and another Vs. Krishan Singh and others), FAO-1427-1997 (Tony (minor) and another Vs. Krishan Singh and others), FAO-1428-1997 (Tony (minor) Vs. Krishan Singh and others), FAO-1429-1997 (Rajesh Kumar Jain Vs. Krishan Singh and others), as well as CR-3089-1997 (D.K. Singla, Advocate, District Courts, Jind. Vs. Sh. R.S. Madan and others), as all of them arise out of common award dated 17.04.1997, passed by the learned Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal) wherein eleven claim petitions were decided together.

It is relevant to note that present are appeals/revision, in which record of the learned Tribunal is not available as the files along with the record were burnt in the fire, which took place on the premises of this Court in 2001. Some of the record as well as the paper books have been re-constructed with the aid of learned counsel for the parties.

Brief facts which are necessary for adjudication of the case are that on 26.08.1995 at about 1:30 PM Smt. Rekha Jain, Tony, Anil Kumar, Ankur Jain, Smt. Raj Rani, Arihant Jain, Rakesh Jain, Shakuntla, Adish Jain and Bhagwati Devi were travelling in a gypsy bearing registration No. DNJ-3932, from Uchana to Jind, which was being driven by Mam Raj at a moderate speed, on the correct side of the road. When the gypsy reached near Junani minor on Jind - Narwana road, a truck bearing registration No. HYN-1061, driven by respondent - Krishan Singh, came from opposite direction on the wrong side, in a rash and negligent manner, without blowing its horn and hit against the gypsy. Due to the impact Smt. Rekha Jain, Anil Kumar, Ankur, Bhagwati Devi, Adish Jain, Rakesh Jain, Arihant Jain and Mam Raj driver of gypsy died at the spot and Tony, Shakuntla and Raj Rani suffered serious injuries. Later on Raj Rani also succumbed to her injuries in Jaipur Golden Hospital, Delhi on 06.09.1995. This accident was witnessed by Satbir son of Om Parkash, resident of Ahirka, who lodged FIR with P.S. Sadar, Jind against respondent - Krishan Singh, claiming him to be responsible for causing the accident, due to rash and negligent driving of the truck.

Eleven claim petitions were filed by the claimants seeking compensation on account of death of some of the persons in the accident in question and injuries received by others.

Petition no. 64 of 1995, which is subject matter of FAO-1428-1997 was filed by the claimant Tonney/Tony (minor) son of deceased Anil Kumar Jain seeking compensation on account of death of his mother Rekha Jain.

Claim petition no. 65 of 1995, which is the subject matter of FAO-1419-1997 was filed by Tonney/Tony (minor) son of deceased Anil Kumar Jain, claiming compensation on account of injuries sustained by him in the above said accident.

Claim petition no. 66, which is the subject matter of FAO-1427-1997 was filed by Tonney/Tony (minor) and Tek Chand seeking compensation on account of death of Anil Kumar Jain i.e. father of Tonney/Tony (minor) and son of Tek Chand.

Claim petitions no. 67 and 69 of 1995, which are the subject matter of FAO-1423-1997 and FAO-1429-1997 were filed by Rajesh Kumar Jain seeking compensation on account of death of his sons Ankur Jain and Papal @ Arihant Jain, respectively.

Claim petition no. 68 of 1995 , which is the subject matter of FAO-1422-1997 was also filed by Rajesh Kumar Jain, on account of death of his wife Raj Rani.

Claim petition no. 70 of 1995, which is the subject matter of FAO-1424-1997 was filed by Shakuntla Devi alongwith her three minor children seeking compensation for death of her husband Rakesh Jain.

Claim petition no. 71 of 1995, which is the subject matter of FAO-1425-1997 was also filed by Shakuntla Devi on account of injuries suffered by her in the said accident.

Claim petition no. 72 of 1995, which is the subject matter of FAO-1420-1997 was filed by Shri Niwas Jain and his wife on account of death of their son Adish Jain.

Claim petition no. 73 of 1995, which is the subject matter of FAO-1421-1997 was filed by by Tek Chand and his sons on account of death of Bhagwanti i.e. widow of Tek Chand and mother of the other claimants .

Claim petition no. 84 of 1995, which is the subject matter of FAO-1426-1997, was filed by the parents of driver Mam Raj seeking compensation on account of death of their son Mam Raj (the driver of the gypsy) in the said accident.

CR-3089-1997 has been filed by the advocate representing the claimants before the learned Tribunal for expunging of certain remarks against him by the learned Tribunal while deciding all the claim petitions.

CR-3089-1997 is taken up at the outset and all the other appeals filed by the claimants seeking enhancement of the compensation awarded by the learned Tribunal are being decided separately on the facts of each case.

CR-3089-1997

As mentioned above, 11 claim petitions were filed seeking compensation by the claimants, who were either injured in the motor vehicle accident in question or by the legal representatives of those who had lost their lives therein. It is observed by the learned Tribunal that the amount of compensation claimed, was altered to a higher amount in the claim petitions by the counsel without seeking any amendment in the petition/permission thereof. In Column No. 7 of petitions No. 64, 66, 68, 70, 71 and 73, it was first mentioned that the deceased were not income-tax payees but after making a cutting, the word 'no', was substituted with word 'yes'. It is further observed by the learned Tribunal that these alterations were made by the learned counsel for the claimants in almost all the claim petitions, the details of which were culled out in para 7 of the award. It is further observed that the accident in question took place on 26.08.1995. Claim petitions No.64 to 73 were filed on 10.10.1995 and claim petition no.84 was filed on 05.12.1995. It was in the month of September 1995 that income-tax returns on behalf of some of the deceased were filed for the assessment year 1995-1996 which were disposed of vide order dated 26.12.1995 of the competent authority. Therefore, necessary alterations were observed to have been made by the learned counsel for the claimants without moving an application for amendment of the claim petitions. Learned Tribunal deprecated the conduct of the counsel. Aggrieved of the said remarks, the present revision petition has been filed.

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

The exact observations made by the learned Tribunal read as under:-

> '*The alterations made by the learned counsel Shri D.K. Singla, Advocate in the claim petitions without seeking amendment in the petitions is an act of irresponsible counsel which needs to be deprecated. This court is not initiating any action against the counsel because it would amount to denial of justice to the victims of the accident which are 11 in number.*'

It is submitted by learned counsel for the petitioners that there was no question of the counsel making these alterations as there would be no gain to the claimants as the Court is, in any case empowered to award compensation even beyond that which is claimed. It is further submitted that no such alterations as mentioned were ever carried out by the counsel.

Moreover, all the typographical errors which had occurred in the claim petitions, had been duly corrected by hand, by the advocate's clerk and they were duly initialed by the counsel. In some of the petitions, registration number of the truck was also corrected besides other factual corrections. It is mentioned in the revision petition that no opportunity was even afforded to the counsel to explain the situation neither was any notice ever issued in this respect to him besides the fact that no such objection was ever raised by any of the respondents but learned counsel for the petitioner at this stage submits that as on today, the petitioner is not even in active practice. He left practice since a number of years and is over 80 years of age. Furthermore, the Tribunal has not placed any reliance on the said income-tax returns, therefore, these remarks be expunged.

Learned counsel for the respondents do not raise any serious objection thereto and do not deny that the petitioner is now over 80 years of age and is not in active practice anymore.

Keeping in view the peculiar facts and circumstances of this case, besides the stand of the respondents and without commenting on the merits of the controversy, it is directed that observations against the petitioner in CR No.3089 of 1997 in para 8 of the award be expunged.

Civil Revision is accordingly disposed of.

FAO-1427-1997

Claim petition no. 66, which is the subject matter of FAO-1427-1997 was filed by Tonney/Tony (minor) and Tek Chand seeking compensation on account of death of Anil Kumar Jain i.e. father of Tonney/Tony (minor) and son of Tek Chand.

The deceased in this case, Anil Kumar, is stated to be 25 years old. Learned Tribunal while assessing income of the deceased as Rs.3,000/- per month, applied deduction of $1/3^{rd}$ and applied a multiplier of 16 and awarded a sum of Rs.1,92,000/- to the claimants. Learned Tribunal did not place any reliance on the income tax returns of Anil Kumar filed after his death.

Learned counsel for the appellant submits that income of the deceased has been wrongly assessed as Rs.3,000/- per month whereas he was earning much more being a Manager of the firm M/s. Bhagwati Traders. Furthermore, increment on account of future prospects should be awarded and appropriate compensation under the conventional heads be also afforded.

Learned counsel for respondents do not refute the averments made by learned counsel for the appellant(s) in respect to the percentage of increment on account of future prospects but submits that otherwise just and reasonable compensation has been afforded by the learned Tribunal. Deduction has been correctly effected and no ground is made out for any enhancement in the compensation.

I have heard learned counsel for the parties.

There is no dispute regarding the deceased Anil Kumar being 25 years old at the time of his death in the motor vehicle accident. Learned Tribunal has rightly ignored Ex. P-24 i.e. the income-tax return filed after the death of Anil Kumar. Learned counsel for the appellant is unable to deny that there is no evidence on record to prove that Anil Kumar was working as a Manager with the firm M/s. Bhagwati Traders. Income-tax returns Ex.P-64 and Ex.P-65, which pertain to the year 1984-1985 and 1985-1986 were rightly ignored as they had been filed for the period when the deceased had not even attained majority. Income of the deceased as assessed by the learned Tribunal as Rs.3,000/- per month is thus upheld. Deduction of 1/3rd has been correctly applied. In terms of judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others,** ***2017(16) SCC 680,*** 40% increment on account of future prospects is afforded. In terms of the guidelines of Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77**, multiplier of 18 (instead of 16) is to be applied. Appellant is entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate. Appellant no.1 and appellant no.2 are entitled to a sum of Rs.40,000/- each towards loss of consortium (parental and filial) in terms of the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** **2018(4) RCR Civil 333**, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, titled as ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others***.

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income # 3,000 – 1/3rd = 2,000/-	24,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	24,000+9,600 (24,000 **x** 40%) = 33,600/-
3.	Total dependency after applying a multiplier of 18	33,600 **x** 18 = 6,04,800/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Loss of parental consortium to appellant no.1	40,000/-
7.	Loss of filial consortium to appellant no.2	40,000/-
	Grand Total	**Rs. 7,14,800/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the claim petition till realization.

FAO-1427-1997 is accordingly disposed of.

FAO-1428-1997

This appeal has been filed by the claimant-appellant on account of death of his mother Rekha Jain. Learned Tribunal while holding the deceased to be 22 years old, awarded a sum of Rs.1,73,000/-, which is detailed as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Dependency Rs.500/- per month	Rs.6,000/- per annum
2	Total dependency after applying a multiplier of 16	Rs.96,000/-
3.	Treatment expenses	77,000/-
	Grand Total	**Rs.1,73,000/-**

Learned counsel for the appellant prays for enhancement of the compensation, though not much stress has been laid by him on the approximate assessment of the income by the learned Tribunal i.e. Rs.1,500/-per month. Dependency of the appellant was assessed as Rs.500/- per month. It is submitted that no deduction should be applied as the deceased was a housewife. Learned counsel for the appellant further prays for enhancement of the compensation awarded under the other heads.

I have heard learned counsel for the parties.

It is a matter of record that the deceased Rekha Jain was 22 years old at the time of the accident. Learned Tribunal has rightly ignored the income-tax return, which was filed after the death of Rekha Jain. As noticed earlier, no serious argument has been raised regarding assessment of income of the deceased Rekha Jain as Rs.1,500/- per month. Moreover, keeping in view income of the deceased's husband, which has been assessed as Rs.3,000/- per month, I deem it appropriate to assess income of the deceased to be Rs.1,500/- per month in the peculiar facts and circumstances of the case. Rekha Jain suffered injuries in the accident which took place on 26.08.1995 and she succumbed to the injuries on 08.09.1995 at Jaipur Golden Hospital, Delhi. Keeping in view the Division Bench judgment of this Court in ***Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others***, ***2014(4) RCR (Civil) 895***, no deduction is to be effected in the case of death of a housewife. Keeping in view the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680,*** 40% increment is afforded on account of future prospects. Multiplier 18 instead of 16 has to be applied. Appellant is entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate. Appellant is further entitled to a sum of Rs.40,000/- towards loss of parental consortium in terms of the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** *2018(4) RCR Civil 333*, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, title ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others***.

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income # 1,500	18,000/- per annum

2.	Total income after addition at the rate of 40% on account of future prospects	18,000 + 7,200 (18,000 **x** 40%) = 25,200/-
3.	Total dependency after applying a multiplier of 18	25,200 **x** 18 = 4,53,600/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Loss of parental consortium	40,000/-
	Grand Total	**Rs.5,23,600/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the claim petition till realization.

FAO-1428-1997 is accordingly disposed of.

FAO-1419-1997

This appeal has been filed challenging dismissal of the claim petition filed by the appellant seeking compensation on account of the injuries suffered by him in the accident in question.

Learned Tribunal observed that as per opinion of the Special Medical Board, no permanent disability was suffered by the appellant, therefore, mere filing of the bills Ex. P-26 to P-31 in respect to the expenditure on medical treatment is not sufficient to hold that the appellant suffered grievous injuries. Thus, compensation was totally denied to the appellant.

I have heard learned counsel for the parties.

PW-4 Shakuntala, one of the injured-claimants has specifically deposed that she, alongwith Tonney/Tony (minor) had suffered injuries in the accident. PW-5 Siri Niwas Jain, paternal uncle of the claimant deposed that the minor claimant suffered grievous injuries in the accident, including a fracture of the right leg and right arm which had to be put in cast twice.

It is apparent that even if there was no permanent disability, the minor child would necessarily have suffered immense mental trauma apart from the physical distress in the said accident. Learned counsel for the respondents are unable to deny that the claimant who was a minor child, was accompanying his parents at the time of the accident. There is no evidence on record to rebut this stand of the claimant. Medical bills reflecting the treatment received by the appellant on account of the injuries suffered by him were duly produced on record as Ex.P-26 to Ex.P-31, for a total amount of Rs. 8,480/-.

In the facts and circumstances of the case, it is considered just and expedient to award a sum of Rs.15,000/- on account of pain and sufferings, Rs.5,000/- each for special diet, attendant charges and transportation. A sum of Rs.8,500/- is awarded on account of the expenses on medical treatment. A total sum of Rs.38,500/- is awarded as compensation. Appellant-claimant shall be entitled to interest at the rate of 7.5% per annum on the entire amount from the date of filing of the claim petition till realization.

FAO-1419-1997 is accordingly disposed of.

FAO Nos. 1423 and 1429 of 1997

Both these appeals have been filed by the appellant-claimant Rajesh Kumar Jain, who is the father of the deceased Ankur Jain and Papal @ Arihant Jain, aged 6 years and 8 months, respectively. Learned Tribunal awarded a sum of Rs.70,000/- as compensation on account of death of Ankur Jain, aged 6 years and Rs.65,000/- for the death of Arihant Jain, aged 8 months.

Learned counsel for the appellant submits that meagre and inadequate compensation has been granted by the learned Tribunal, which should be enhanced. Reliance is placed on the judgment of Hon'ble Supreme Court in ***Krishan Gopal and another Versus Lala and others, 2013(4) RCR (Civil) 276***. It is thus prayed that compensation be enhanced.

Learned counsel for the respondents is unable to deny to that Krishan Gopal's case pertained to compensation on account of death of a child in an accident, which took place in the year 1992. Though the child in Krishan Gopal's case was 10 year old, I do not find any ground to deny compensation in the present case to the tune of Rs.5 lakh as awarded in Krishan Gopal's case. The appellant is thus entitled to Rs.5,00,000/- in each case instead of Rs.70,000/- and Rs.65,000/- for the death of Ankur Jain and Arihand Jain, respectively.

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellant-claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount in each case from the date of filing of the claim petitions till realization.

FAO Nos. 1423 and 1429 of 1997 are accordingly disposed of.

<u>FAO-1422-1997</u>

This appeal has been filed by the appellant on account of death of his wife Raj Rani, aged 28 years. While treating the deceased to be a housewife, her income was assessed as Rs.1,000/- per month by the learned Tribunal. While taking dependency to be Rs.500/- per month, multiplier of 16 was adopted and a sum of Rs.96,000/- (500 x 12 x 16) was awarded to the appellant.

I have heard learned counsel for the parties.

Learned Tribunal has again rightly discarded the income-tax returns, which were filed subsequent to the death of Raj Rani. There is no evidence on record to indicate that the deceased was engaged in any kind of business as averred. She has rightly been treated as a home-maker. However, keeping in view the fact that this Court in the connected appeal (FAO-1428-1997) has accepted income of the deceased Rekha Jain (sister-in-law of Raj Rani) to be Rs.1,500/- per month, income of the deceased Raj Rani is also assessed as Rs.1,500/- per month. Keeping in view the Division Bench judgment of this Court in ***<u>Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others</u>*,*<u>2014(4) RCR (Civil) 895</u>***, no deduction is to be effected in the case of death of a housewife. In terms of the judgment of Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others*, *2017(16) SCC 680***, 40% increment towards future prospects has to be afforded. In view of the guidelines of Hon'ble Supreme Court in **Smt.**

Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77, multiplier of 17 (instead of 16) has to be applied. Appellant is entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate. Appellant is further entitled to a sum of Rs. 40,000/- towards loss of consortium (spousal).

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income # 1,500	18,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	18,000 + 7,200 (18,000 **x** 40%) = 25,200/-
3.	Total dependency after applying a multiplier of 17	25,200 **x** 17 = 4,28,400/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Loss of consortium to appellant no.1	40,000/-
	Grand Total	**Rs.4,98,400/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the claim petition till realization.

FAO-1422-1997 is accordingly disposed of.

FAO-1424-1997

This appeal has been filed by the appellants seeking compensation on account of death of Rakesh Kumar Jain i.e. husband of appellant no.1 and father of appellants no.2 to 4, aged 28 years. Learned Tribunal while ignoring the income-tax returns filed after the death of Rakesh Kumar Jain, assessed income of the deceased to be Rs.4,000/- per month, after applying a deduction of 1/3rd and multiplier of 16, awarded a sum of Rs. 4,80,000/- (2500 x 12 x 16).

I have heard learned counsel for the parties.

No serious argument has been raised regarding income of the deceased as assessed by the learned Tribunal to be Rs.4,000/- per month. In terms of the judgment of Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680***, 40% increment towards future prospects has to be afforded. As the deceased has left behind his widow and three minor children, deduction of 1/3rd was correctly effected by learned Tribunal. The deceased was admittedly 28 years old at the time of the accident, therefore, multiplier of 17 instead of 16 has to be applied. Appellants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate. Appellant no.1 is entitled to a sum of Rs.40,000/- towards loss of consortium (spousal). Appellants no.2 to 4 are also entitled to a consolidated sum of Rs.40,000/- towards loss of parental consortium.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income # 4,000 – 1/3rd = 2,667/-	32,004/- per annum

2.	Total income after addition at the rate of 40% on account of future prospects	32,004+12,802 (32,004 **x** 40%) = 44,806/-
3.	Total dependency after applying a multiplier of 17	44,806 **x** 17 = 7,61,702/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Loss of consortium (spousal) to appellant no.1	40,000/-
7.	Loss of consortium (parental) to appellant nos.2 to 4	40,000/-
	Grand Total	**Rs. 8,71,702/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

FAO-1424-1997 is accordingly disposed of.

FAO-1425-1997

Present appeal has been filed by the appellant Shakuntla Devi seeking compensation on account of injuries suffered by her in the accident in question. Learned Tribunal awarded a consolidated amount of Rs.65,000/- while observing that she did not suffer any kind of disability on account of injuries suffered by her.

I have heard learned counsel for the parties.

Appellant while testifying as PW-5 deposed that she suffered serious injuries in the accident and remained admitted at Jaipur Golden Hospital, Delhi from 26.08.1995 to 04.09.1995 and she incurred an expense of Rs.40,000/- as hospital charges. PW-5 further stated that she suffered a fracture on her right thigh, which was operated upon in Jaipur Golden Hospital, Delhi and a rod had to be fixed. Medical bills Ex.P-1 to Ex.P-14 to the tune of Rs.36,000/- were produced. There is nothing on record to indicate that the claimant did not suffer a fracture of her right thigh as claimed. Though the appellant did not suffer any permanent disability and neither the same has been proved on record, it cannot be said that she is not entitled to compensation, separately for pain and suffering, special diet and that the consolidated sum of Rs.15,000/- on this count is justified. Claimant admittedly remained hospitalized from 26.08.1995 to 04.09.1995 and underwent surgery as well. Medical bills of Rs.36,000/- were produced. It is a matter of common knowledge that all the bills pertaining to medical treatment may not be retained by a claimant. Thus, the appellant is entitled to Rs.40,000/- on account of medical expenses besides Rs.5,000/- each for special diet and attendant charges and Rs.2,500/- for transportation. Claimant is entitled to Rs.25,000/- for pain and suffering including loss of income (notional) for four months. Claimant is thus entitled to Rs. 77,500/- (25,000 + 40,000 + 5,000 + 5,000+2,500).

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above.

Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the claim petition till realization.

FAO-1425-1997 is accordingly disposed of.

<u>FAO-1420-1997</u>

This appeal has been filed seeking compensation by the appellants on account of death of their minor son Adish Jain, aged 7 years. Learned Tribunal awarded a sum of Rs.70,000/- to the claimants. It is prayed that just and reasonable compensation be awarded.

I have heard learned counsel for the parties.

Deceased Adish Jain was a minor child of 7 years and a student of 3rd standard in Modern Child Public School, Nangloi. Learned counsel for the insurance company is unable to deny that sum of Rs.5,00,000/- was awarded by the Hon'ble Supreme Court in ***Krishan Gopal and another Versus Lala and others, 2013(4) RCR (Civil) 276***. Therefore, the appellants are held entitled to a sum of Rs. 4,30,000/-, over and above the amount of Rs. 70,000/- already awarded by the learned Tribunal i.e. a total sum of Rs.5 lakhs.

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellant-claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the claim petitions till realization.

FAO-1420-1997 is accordingly disposed of.

<u>FAO-1421-1997</u>

Present appeal has been filed by Tek Chand Jain and his sons on account of death of Bhagwanti, aged 65 years at the time of the accident i.e. widow of Tek Chand and mother of other appellants in this appeal. Learned Tribunal held only the husband of the deceased, entitled to a consolidated sum of Rs.75,000/- as compensation.

Learned counsel for the appellant does not raise any serious dispute regarding the age of Bhagwanti to be 65. It is, however, submitted that even while treating her to be a housewife, adequate compensation should be awarded after assessing her notional income though, learned counsel for the appellant fairly states that the income-tax returns filed after death of Bhagwanti be ignored.

Keeping in view the facts and circumstances of the case and the dispensation in the connected cases, it is considered just and appropriate to assess notional income of the deceased to be Rs.1,500/- per month. Keeping in view the Division Bench judgment of this Court in ***Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others***,***2014(4) RCR (Civil) 895***, no deduction is to be effected in the compensation to be awarded in the case of death of a housewife. In terms of the judgment of Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others***, ***2017(16) SCC 680***, 40% increment towards future prospects has to be afforded. Multiplier of 7 has to be applied in view of the guidelines of Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi**

Transport Corporation and another, 2009(3) RCR (Civil) 77. Appellant no.1 is entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate. Appellant no.1 is further entitled to a sum of ₹40,000/- towards loss of consortium (spousal)**.**

Appellants no.2 to 4 are entitled to a sum of Rs.40,000/- for loss of parental consortium. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*. 2018(4) RCR Civil 333**, as well as decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016 ***Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others***.

Compensation is thus re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income # 1,500	18,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	18,000 + 7,200 (18,000 **x** 40%) = 25,200/-
3.	Total dependency after applying a multiplier of 7	25,200 **x** 7 = 1,76,400/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Loss of consortium (spousal) to appellant no.1	40,000/-
7.	Loss of consortium (parental) to appellant no.1	40,000/-
	Grand Total	**Rs. 2,86,400/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the claim petition till realization.

FAO-1421-1997 is accordingly disposed of.

FAO-1426-1997

This appeal has been filed by the parents of the deceased Mam Raj, who was the driver of the gypsy in which all the deceased/injured were travelling. Learned Tribunal on considering the facts and circumstances of the case concluded that the accident in question took place solely due to the rash and negligent driving of the driver of the gypsy in question. It is specifically observed that it was the driver of the gypsy who had taken the gypsy towards its extreme right side. The truck in question was on its extreme left side on the unmettled portion of the road. Therefore, it was not at fault in any manner. Petition filed by the claimants was accordingly dismissed by the learned Tribunal.

Learned counsel for the appellants has made a valiant attempt to argue that this finding of learned Tribunal is not as per the record. Therefore, this appeal should be allowed and just compensation awarded.

I have heard learned counsel for the parties at length.

It is a matter of record that FIR in this case was registered against the driver of the truck bearing registration No. HYN-1061 on the statement of PW-3 Satbir Singh. PW-3 testified that he was sitting on the road near Junani minor on Jind – Narwana road on the date of the accident. He saw a gypsy and a truck coming at a fast speed from opposite directions. A head on collision took place between the two vehicles on account of which several passengers sitting in the gypsy sustained injuries. Five out of the said passengers succumbed to their injuries at the spot and others suffered serious injuries. It is stated that the accident in question took place due to negligence of both the drivers i.e. of the gypsy as well as the truck. FIR Ex.PA was lodged on the statement of PW-3.

It is relevant to note at this stage, that PW-3 Satbir in his cross-examination was confronted with the photographs Ex.R-1 to Ex.R-4 of the site of the accident. The said photographs especially Ex.R-3 and Ex.R-4 show that the accident took place on the unmettled portion of the road on the extreme left side of the truck. PW-3 in this situation admitted that at the time of the accident, the truck was on the extreme left side of the road and it was on its correct side. Rather it was the gypsy which severed towards its right. PW-3 Satbir, on being confronted with the photographs, stated that driver of the truck had in fact tried to avert the accident. When confronted with his statement Ex.PA, PW-3 Satbir stated that he had mentioned the gypsy to be on the correct side of the road and fault of the truck driver was mentioned merely because the truck was a heavier vehicle.

RW-3 Balbir Singh, owner of the truck has stepped in the witness box and denied that the accident in question took place due to the rash and negligent driving of the truck. RW-3 stated that he was travelling on the truck on the fateful day and the truck which was loaded with sand, was being driven by RW-4 Krishan with all due care and caution. It is further stated that on 26.08.1995, it was raining. When they had covered about one and a half kilometer from Jind towards Uchana, they saw a truck coming from the opposite side, followed by a gypsy. The gypsy driver was trying to overtake the truck in a rash manner and in this process he dashed head on, against their truck, which was being driven on its correct side. The truck driver made all efforts to avert the accident and went to his extreme left but the gypsy still dashed into their truck.

RW-4 Krishan, the driver of the offending truck reiterated the version as above and stated that the accident took place due to the rash and negligent act of the gypsy driver. It is informed that the driver of the offending truck has since been acquitted. Though acquittal in the criminal proceedings by itself, may not be sufficient to absolve an offending vehicle/its driver of the liability, in the present case finding of the learned Tribunal that the accident took place due to the rash and negligent driving of the gypsy in question is well founded, on the basis of positive evidence on record and calls for no interference.

Learned counsel for the appellant is unable to point out any evidence on record to indicate any illegality or perversity in the impugned award in this respect. In the given facts and circumstances of the case, claim of the appellants has been rightly denied. Appellants-claimants are, however, entitled to a sum of Rs.50,000/- on account of no fault liability. Appellants shall also be entitled to interest on this amount at the rate of 7.5% per annum from the date of filing of the claim petition till realization.

FAO-1426-1997 is accordingly disposed of.

All the appeals and civil revision are accordingly disposed of.

March 18, 2019. **(LISA GILL)**
JUDGE

Sunil

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No