

IOIN-FAO-2413-2001 IN/AND FAO- 2413-2001 (O&M)
IOIN-FAO-2414-2001 IN/AND FAO- 2414-2001 (O&M)

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

**IOIN-FAO-2413-2001 IN/AND
FAO- 2413-2001 (O&M)**
Date of Decision: February 26, 2019

Krishna Devi and others Appellants(s)

Versus

Jaswant Singh and others Respondent(s)

with

**IOIN-FAO-2414-2001 IN/AND
FAO- 2414-2001 (O&M)**

Bhajno and another Appellants(s)

Versus

Jaswant Singh and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kamal Chaudhry, Advocate
for the appellants.

Service of respondents no.1 & 2 already dispensed with
vide order dated 17.10.2018.

Mr. Vinod Gupta, Advocate
for respondent no.3-insurance company.

LISA GILL, J.

**IOIN-FAO-2413-2001 &
IOIN-FAO-2414-2001**

Service of respondents no.1 & 2 has already been dispensed
with vide order dated 17.10.2018

Both the IOIN are disposed of.

With the consent of learned counsel for the parties main appeals are taken up for hearing today itself.

FAO-2413-2001 &
FAO-2414-2001

This order shall dispose of FAO- 2413-2001 (Krishna Devi and others Vs. Jaswant Singh and others) as well as FAO-2414-2001 (Bhajno and another Vs. Jaswant Singh and others) as both the above noted appeals arise out of a common award dated 14.03.2001, passed by the learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal).

Brief facts necessary for the adjudication of the case are that as per the pleadings in the petitions under Section 166 of the Motor Vehicles Act, 1988 filed by the claimants, it is stated that Jarnail Chand (deceased) aged about 48 years at the time of accident was employed as a skilled worker in the piston packing section in Escorts Mahle Limited, Bahadurgarh, Tehsil and District Patiala. He was earning a salary of Rs.7,520/- per month. It was pleaded that on 11.12.1998 Jarnail Chand (deceased), his son Sham Lal besides grand son Darshan Kumar alias Billu (deceased) were coming from Sirhind side towards Patiala on a scooter. When they reached near the T-point at bye-pass Patiala Jarnail Chand's brother, namely Bani Ram who was coming on a moped from Sirhind side joined them as well. Sham Lal, it is stated was driving the scooter at a slow/normal speed on the extreme left side of the road while observing all the traffic rules. Bani Ram was following them on his moped. When the scooter just crossed industrial estate near Gita Petrol Pump at about 6.30 P.M., a maruti car bearing registration No.HR-20-B-0451 (offending

vehicle) came from Patiala side being driven in a rash and negligent manner by its driver Kulwinder Singh – respondent no.2. It was pleaded that the car was driven in a zig-zag manner without observing traffic rules on the wrong side of the road. The car hit against the scooter driven by Sham Lal. Resultantly all the three occupants fell on the road and received injuries. Jarnail Chand died on the spot and Darshan Kumar succumbed to his injuries on 12.12.1998 at Rajindra Hospital, Patiala.

Two claim petitions i.e. MACT-269-T/99 and MACT-270-T/99 were filed by the legal representatives of Jarnail Chand and Darshan Kumar @ Billu claiming compensation for their death. Both the petitions were resisted by the respondents. Issues were framed in both the claim petitions which were decided vide common award dated 14.03.2001.

Learned Tribunal on considering the facts and circumstances besides the evidence on record concluded that the accident in question occurred due to rash and negligent driving of Maruti Car by its driver Kulwinder Singh-respondent no.2. This finding of the learned Tribunal has attained finality and is not under challenge.

Learned Tribunal while holding Jarnail Chand to be 54 years old at the time of the accident, awarded a sum of Rs.1,58,736/- to the appellants-claimants, the detail of which is as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of dependency	21,456/- per annum
2.	Compensation after applying a multiplier of 6	21,456 x 6 = 1,28,736/-
3.	Funeral expenses	5,000/-

4.	Loss of consortium to petitioner no.1 Krishna Devi	25,000/-
	Grand Total	Rs. 1,58,736/-

In the case of Darshan Kumar @ Billu, a 6 year old child learned Tribunal awarded a lump sum compensation of Rs.50,000/- to the claimants i.e. the parents of Darshan Kumar @ Billu.

Present appeals have been filed by the claimants in both the petitions seeking enhancement of the compensation awarded to them by the learned Tribunal.

Learned counsel for the appellants in the case of LR of Jarnail Chand submits that age of Jarnail Chand has been wrongly held to be 54 years at the time of the accident whereas he is proved to be 48 years old. Moreover, increment on account of future prospects should be awarded. Meagre compensation awarded under the conventional heads should also be enhanced.

In the case of the LR of the deceased Darshan Kumar @ Billu, learned counsel for the appellants prays that compensation in terms of the judgment of Hon'ble Supreme Court in *Krishan Gopal and another Versus Lala and others, 2013(4) RCR (Civil) 276* be afforded to the appellants.

Per contra, learned counsel for the respondent-insurance company submits that just and reasonable compensation has been afforded by the learned Tribunal. There is no ground for any enhancement, therefore, both the appeals should be dismissed.

I have heard learned counsel for the parties and have gone through the record.

FAO- 2413-2001

In this case Jarnail Chand (deceased) is claimed to be 48 years old on the basis of the postmortem report. Learned Tribunal has, however, rightly discarded the same in view of the evidence on record. It is not in dispute that the claimants did not produce any categorical proof about the exact age of the deceased Jarnail Chand and chose to rely totally upon the postmortem report. Learned Tribunal has rightly observed that date of appointment/employment of Jarnail Chand is mentioned to be 17.12.1962 in the document Ex. P-1. Therefore, even if it is presumed that he was 18 years of age at that time, his age necessarily has to be assessed as 54 years at the time of the accident. I do not find any irregularity in the assessment of the age of Jarnail Chand to be 54 years at the time of accident. The same is upheld.

However, in respect to the income as assessed by the learned Tribunal as Rs.1,788/- per month, the same is not borne out by the evidence on record. Admittedly, Ex. P-1 is the salary certificate of the deceased Jarnail Chand, which is duly proved on record by PW-3 R.K. Dhiman, Manager Personnel of Escorts Mahle, Bahadurgarh. Total salary of the deceased Jarnail Chand is mentioned to be Rs. 8049.76/- per month. A perusal of the document reveals that at best it is a sum of Rs.610/-, which is to be deducted from the sum of Rs.8049.76/- i.e. the amount towards leave travel allowance etc. Salary of the deceased is thus assessed as Rs.7,450/-

per month. Deduction of 1/3rd has been correctly applied by the learned Tribunal. Multiplier of 11 instead of 6 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**. The claimants/appellants in this appeal are entitled to 15% increment on account of future prospect as it is not in dispute that the appellant was a regular employee of the concerned company. He was admittedly working with this company since December 1962 continuously till the occurrence of the unfortunate accident on 11th December, 1998. Appellant no.1, widow of Jarnail Chand is entitled to Rs.40,000/- on account of loss of consortium. Minor children of Jarnail Chand are entitled to a consolidated sum of Rs.1 lakh on account of loss of parental consortium. Reference can gainfully be made in this respect to the judgments of Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333** and **Vimla Devi and others Vs. National Insurance Company Ltd. and another, 2019(1) RCR (Civil) 86**. Appellants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate (instead of Rs.5,000/- awarded on account of last rites by the learned Tribunal).

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

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income # 7,450 – 1/3 rd = 4,967/- per month	59,604/- per annum

2.	Total income after addition at the rate of 15% on account of future prospects	59,604+8,941 (59,604 x 15%) = 68,545/-
3.	Total dependency after applying a multiplier of 11	68,545 x 11 = 7,53,995/-
4.	Funeral expenses and loss of estate 15,000 x 2	30,000/-
5.	Loss of consortium to appellant no.1	40,000/-
6.	Loss of parental consortium to appellants no. 2 to 4	1,00,000/-
	Grand Total	Rs.9,23,995/-

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 on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

FAO- 2414-2001

The deceased in this case was Darshan Kumar @ Billu i.e. the 6 year old son of the claimants.

Learned counsel for the appellants submits that compensation in terms of the judgment of the Hon'ble Supreme Court in *Krishan Gopal and another Vs. Lala and others, 2013(4) RCR (Civil) 276* be afforded to the claimants in this case as the lump sum amount of Rs.80,000/- as awarded by the learned Tribunal is not justified.

Learned counsel for the respondent-insurance company is unable to point out any reason or ground on which the compensation as prayed for should be denied to the claimants. The Hon'ble Supreme Court in the case of *Krishan Gopal's* case (supra) had taken the notional income of a child aged 10 years to be Rs.30,000/- per annum and applied a multiplier of 15. The same was in respect to an accident which had taken place in the year 1992. In the present case the accident took place in the year 1998. Accordingly, in the given facts and circumstances of the case it is considered just and expedient to award a sum of Rs.5,00,000/- as awarded by the Hon'ble Supreme Court in *Krishan Gopal's* case (supra).

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

Both the appeals are accordingly disposed of.

February 26, 2019.

Sunil

(LISA GILL)
JUDGE

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