

FAO-3170-2003(O&M);
FAO-2930-2003(O&M);
FAO-1276-2004(O&M);
FAO-3172-2003(O&M);
FAO-3171-2003(O&M);
FAO-3169-2003(O&M); and
FAO-2931-2003(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) FAO-3170-2003(O&M)

Harbhajan Singh (since deceased) through his LRs

...Appellant

Versus

Krishan Singh and others

...Respondents

(2) FAO-2930-2003(O&M)

Dilbagh Singh

...Appellant

Versus

Krishan Singh and others

...Respondents

(3) FAO-1276-2004(O&M)

Surjit Kaur and others

...Appellants

Versus

Krishan Singh and others

...Respondents

(4) FAO-3172-2003(O&M)

Lal Singh

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Versus

...Respondents

FAO-3171-2003(O&M)

...Appellant

Versus

...Respondents

FAO-3169-2003(O&M)

...Appellant

Versus

...Respondents

FAO-2931-2003(O&M)

...Appellant

Versus

...Respondents

FAO-3170-2003(O&M);
FAO-2930-2003(O&M);
FAO-1276-2004(O&M);
FAO-3172-2003(O&M);
FAO-3171-2003(O&M);
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FAO-2931-2003(O&M)

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Date of Decision:-4.10.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Bhag Singh, Advocate
for the appellant(s).

Mr.D.R. Bansal, Advocate
for respondent No.3 in FAO-1276-2004.

Mr.Paul S. Saini, Advocate
for respondent No.3 in FAO-3170-2003, FAO-3171-2003,
FAO-3172-2003, FAO-3169-2003 and FAO-1276-2004.

Mr.Sanjeev Pabbi, Advocate
for respondent No.3 in FAO-2930-2003 and
FAO-2931 of 2003.

H.S. MADAAN, J.

CM-17260-CII-2017 in
FAO-3170-2003

Heard.

For the reasons mentioned in the application, the same is
allowed and legal heirs of deceased as given in para No.2 of the
application are brought on record for the purpose of this appeal only.

Amended memo of parties is taken on record.

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By this order, I shall dispose of seven FAOs i.e. FAO-3170-

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2003(O&M), FAO-2930-2003(O&M), FAO-1276-2004(O&M), FAO-3172-2003(O&M), FAO-3171-2003(O&M), FAO-3169-2003(O&M) and FAO-2931-2003(O&M) filed on behalf of the appellants/claimants, which have arisen out of the same accident.

Briefly stated, facts of the case giving rise to filing of the claim petitions are that on 21.11.1997, Gurnam Singh along with Lal Singh, Sapattar Singh, Harbhajan Singh, Tehal Singh, Dilbagh Singh and Darbara Singh etc. were returning to their village Bibipur (Shahbad) after attending marriage function of Sukhbir Singh son of Gurnam Singh at village Bhoypur, travelling in a canter bearing registration No.HR-46-6440 Tata 407 being driven by Dharambir; the said vehicle was being driven at a moderate speed on left hand side of the road; at about 10:00 p.m., when the canter reached at the bridge of Tangri river, G.T. Road near Shahpur and slowed down for the purpose of crossing bridge, then a truck bearing registration No.HIS-1972 (hereinafter referred to as the offending vehicle) driven at a high speed in a rash and negligent manner by its driver – Geeta Ram – respondent No.2 came from behind i.e. from Rajpura – Ambala side and struck against the canter in which persons aforesaid were travelling; resultantly both the vehicles fell into the river by breaking the railing of the bridge; the occupants of the canter sustained multiple and grievous injuries; Tahal Singh had died at the spot; all the injured were shifted to Civil Hospital, Ambala Cantt., where they

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were medico legally examined; police was informed regarding the mishap and formal FIR No.449 dated 22.11.1997 was registered with Police Station Sadar, Ambala City on the basis of statement of claimant/injured Gurnam Singh; the matter was investigated; postmortem examination on the dead body of Tahal Singh was performed.

The injured Gurnam Singh, Lal Singh, Sapattar Singh, Harbhajan Singh, Dilbagh Singh, Darbara Singh and legal heirs of Tahal Singh, namely, his widow – Smt.Surjit Kaur, son – Buta Singh, minor daughter – Binder Kaur, aged about 17 years and minor sons – Kulwinder Singh, aged about 15 years and Mohan Singh, aged about 13 years had brought separate claim petitions against respondents i.e. Krishan Singh – owner, Geeta Ram – driver and the National Insurance Company - insurer of the offending vehicle, claiming compensation.

Since all the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as the Tribunal).

On getting notice all the respondents had appeared. Respondents No.1 and 2 filed joint written statements, whereas respondent No.3 filed separate written statements. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petitions were allowed by

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the Tribunal vide award dated 22.3.2002. Petitioners Surjit Kaur and others, who are legal heirs of Tahal Singh were awarded compensation of Rs.1,65,000/- on account of death of Tahal Singh in the motor vehicular accident, to be shared by them equally, petitioner/claimant Gurnam Singh was awarded a sum of Rs.10,000/-, petitioner Lal Singh was awarded a sum of Rs.5,000/-, petitioner Sapattar Singh Rs.95,000/-, Harbhajan Singh Rs.10,000, petitioner Dilbagh Singh Rs.80,000/- and Rs.20,000/- was awarded to petitioner Darbara Singh along with interest at the rate of 9% per annum from the date of filing of the petitions till final realization, on account of suffering injuries in the accident payable by all the respondents jointly and severally. Further directions with regard to mode of payment to the injured/claimants and apportionment/mode of payment to LRs of Tahal Singh, namely, Surjit Kaur and others were also given in the award.

All the claimants were dissatisfied with the compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

Notice of the appeals was issued to the respondents and respondent No.3 insurance company appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on the basis of evidence adduced by the parties has rightly returned a finding that respondent No.2 Geeta Ram was

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responsible for the accident by his rash and negligent driving of the offending truck. This finding is correct and appropriate and does not call for any interference.

First coming to FAO-1276-2004 filed by appellants Surjit Kaur and others seeking enhancement of compensation.

The claim petition was filed by his widow – Smt.Surjit Kaur, son – Buta Singh, minor daughter – Binder Kaur, aged about 17 years and minor sons – Kulwinder Singh, aged about 15 years and Mohan Singh, aged about 13 years stating that they were dependent upon the earnings of the deceased. On the basis of the evidence available on the record, the age of the deceased was taken to be 50 years. Though according to the claimants, he was earning Rs.12,000 – 13,000/- per month from his business of dairy farming but for want of cogent and convincing evidence, such contention was not believed. He was taken to be a labourer and his monthly income was assessed to be Rs.1,500/-.

Learned counsel for the appellants/claimants has contended that the income was taken by the Tribunal on lower side since at the relevant time, the minimum wages payable to an unskilled worker in State of Haryana were Rs.1,598.46. He has placed on file supporting document in that behalf downloaded from the website.

Learned counsel for the insurance company could not controvert that assertion or referred to any document where the minimum

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wages were taken to be on lower side.

Therefore, I take the monthly income of the deceased Tahal Singh to be Rs.1,600/- by making round figure of Rs.1,598.46.

The Tribunal has not made any addition towards future prospects. in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,** when the deceased was in the age group of 50 to 60, 10% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.1600} + 160 = \text{Rs.1,760/-}$.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77,** deduction towards self-expenses is to be taken as $1/4^{\text{th}}$. Doing that the dependency of claimant comes out to Rs.1,320/- per month, annual dependency comes out to $\text{Rs.1,320} \times 12 = \text{Rs.15,840/-}$.

The Tribunal has used multiplier of 13, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to $\text{Rs. 15,840} \times 13 = 2,05,920/-$.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation

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comes out to Rs. 2,05,920 + 70,000 = 2,75,920/-.

The Tribunal has awarded compensation of Rs.1,65,000/-.

In this way, the enhanced amount comes out to Rs.1,10,920/- (2,75,920 - 1,65,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.1,10,920 /-. The children of the deceased must have attained the age of majority by now. Therefore, the share in the enhanced compensation be released to them in cash. The amount deposited by the insurance company in their bank accounts can be withdrawn by them without any rider being put. The other terms and conditions shall remain the same as given in the original award.

With the above modification, FAO-1276-2004 filed by appellants Surjit Kaur and others stands allowed partly with costs.

Now taking up FAO-2930-2003 filed on behalf of appellant/claimant Dilbagh Singh.

The Tribunal has awarded compensation of Rs.80,000/- in all to him. However, I find that keeping in view the nature and extent of injuries suffered by him including injury on head and his disability being assessed to be 100% with regard to his whole body, the compensation is on lower side. He was aged about 40 years at the time of suffering injuries in the accident. Even if, we take the minimum wages as Rs.1,600/- as monthly income, making addition towards future prospects keeping in

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view his age as 40 years, adopting multiplier of 15, the compensation is worked out to Rs.4,03,200/-(2240 x 12 x 15). Considering his period of hospitalization and the fact that he had submitted medical bills, it is clear that a considerable amount must have been spent on medical treatment. In addition of that he is to be compensated under the head pain and suffering, attendant charges, special diet, transportation, loss of work, loss of amenities, loss of expectation of life. I find that the amount of Rs.80,000/- is too low and the same is enhanced to Rs.1,50,000/-.

The Tribunal has awarded compensation of Rs.80,000/-.

In this way, the enhanced amount comes out to Rs.4,73,200/- (5,53,200 - 80,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.4,73,200/-. The other terms and conditions shall remain the same as given in the original award.

With the above modification, FAO-2930-2003 filed by appellant Dilbagh Singh stands allowed partly with costs.

Now taking up FAO-2931-2003 filed on behalf of appellant/claimant Gurnam Singh.

The Tribunal has awarded compensation of Rs.10,000/- in all to him. However, I find that keeping in view the nature and extent of injuries suffered by him, the compensation is on lower side. He was aged about 55 years at the time of suffering injuries in the accident and is

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stated to be engaged in avocation of agriculture work, earning Rs.15,000-16,000/- therefrom. He had sustained multiple injuries including fracture of six ribs left side and left leg fracture. He had produced bills of Rs.13,000/- to show the amount spent on his medical treatment. The Tribunal had granted compensation of Rs.10,000/- to him observing that fracture in ribs and legs was not proved through medical evidence but considering the fact that he had produced medical bills of Rs.13,000/-. The Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation is enhanced to Rs.50,000/-.

The Tribunal has awarded compensation of Rs.10,000/-.

In this way, the enhanced amount comes out to Rs.40,000/- (50,000 - 10,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.40,000/-. The other terms and conditions shall remain the same as given in the original award.

With the above modification, FAO-2931-2003 filed by appellant Gurnam Singh stands allowed partly with costs.

Now taking up FAO-3172-2003 filed on behalf of appellant/claimant Lal Singh, who is stated to have sustained injuries on

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his head, ear, jaw - left side fully injured, remaining confined to bed for 2-3 months, compensation of Rs.5,000/- awarded to him is meagre amount.

He has not been given any amount towards loss of income.

I find that the amount of Rs.5,000/- is too low and the same is enhanced to Rs.40,000/-.

The Tribunal has awarded compensation of Rs.5,000/-.

In this way, the enhanced amount comes out to Rs.35,000/- (40,000 - 5,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.35,000/-. The other terms and conditions shall remain the same as given in the original award.

With the above modification, FAO-3172-2003 filed by appellant Lal Singh stands allowed partly with costs.

Now taking up FAO-3171-2003 filed on behalf of appellant/claimant Sapattar Singh, who had statedly suffered multiple and grievous injuries on his shoulder, neck and back bone having 20% disability. He had suffered 15% physical disability. He was granted Rs.30,000/- as general damages for injuries and disability, Rs.15,000/- for medical treatment, Rs.15,000/- for pain and sufferings, Rs.20,000/- for loss of income and for availing services of the attendant and Rs.15,000/- for transportation, balanced diet etc.. However, I find that the amount of Rs.30,000/-awarded for general damages for injuries and disability is on

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low side. The same is enhanced to Rs.70,000/-.

No amount has been awarded to the claimant Sapattar Singh on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.25,000/- each (total **Rs.50,000/-**) is awarded to him under that heads.

Thus the total compensation comes out to Rs.1,85,000/-

The Tribunal has awarded compensation of Rs.95,000/-.

In this way, the enhanced amount comes out to Rs.90,000/- (1,85,000 - 95,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.90,000/-. The other terms and conditions shall remain the same as given in the original award.

With the above modification, FAO-3171-2003 filed by appellant Sapattar Singh stands allowed partly with costs.

Now taking up FAO-3169-2003 filed on behalf of appellant/claimant Darbara Singh, who had suffered a fracture and was operated upon, remained hospitalized, compensation of Rs.20,000/- only was awarded to him. However, under different heads i.e. pain and suffering, attendant charges, special diet, transportation, loss of work, loss of amenities, he has not been awarded any compensation. Therefore, the compensation is enhanced to Rs.50,000/-.

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The Tribunal has awarded compensation of Rs.20,000/-.

In this way, the enhanced amount comes out to Rs.30,000/- (50,000 - 20,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.30,000/-. The other terms and conditions shall remain the same as given in the original award.

With the above modification, FAO-3169-2003 filed by appellant Darbara Singh stands allowed partly with costs.

Now taking up FAO-3170-2003 filed on behalf of appellant/claimant Harbhajan Singh (since deceased). It is relevant to mention here that Harbhajan Singh has died during the pendency of the appeal and his LRs are brought on record.

Learned counsel for the insurance company has submitted that with death of the appellant, the appeal is to be taken as abated. In support of his contention, he has referred to Full Bench judgment by Karnataka High Court i.e. **Kannamma Versus Deputy General Manager, Karnataka State Road Trans.Corporation, 1991 ACJ 707** wherein it was observed that a claim for compensation for personal injuries and also towards expenses, loss of income, loss to the estate abates in toto if the injured-claimant dies not as a result of injuries sustained in the accident. It was further observed in this authority that where the injured-claimant dies as a consequence of the bodily injuries sustained in the motor accident

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then his legal representatives can prosecute the claim in so far as it relates to loss to the estate of the deceased.

Learned counsel for the insurance company submitted that the appellant in this case had suffered a natural death and had not died as a result of injuries suffered by him in the accident. Therefore, his legal representatives are not entitled to get any compensation on account of loss of estate even. He has further placed reliance upon authority **Smt.Ram Ashari and others Versus H.R.T.C. and another, 2005(3) RCR(Civil) 128** by Himachal Pradesh High Court wherein dealing with a similar situation where appellant was injured in an accident, however he died during pendency of his appeal for enhancement of compensation. The appeal was found to have abated observing that since it was filed for personal injuries, it cannot be continued by his legal representatives and an action in torts for claim of compensation for damages on account of injuries suffered by an injured is a right personal to the injured, which cannot be continued by the legal heirs.

Learned counsel for the insurance company has further placed reliance upon Full Bench judgment of Madhya Pradesh High Court in that regard i.e. **Bhagwati Bai and Anr. Versus Bablu @ Mukund and Ors., 2007(1) RCR(Civil) 723.**

After hearing learned counsel and going through the authorities referred to by them, I find that on death of appellant Harbhajan

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Singh, which does not come out to have any nexus with the injuries suffered by him in the accident, the appeal is bound to abate.

Therefore, FAO-3170-2003 stands dismissed accordingly.

Since the main appeals stands disposed of, the miscellaneous application, if any, stands disposed of accordingly.

4.10.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No