

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

Date of decision: 02.12.2019

1.

FAO No.1571 of 2013 (O&M)

Manno and others

....Appellants

Versus

Rameshwar Dass and another

....Respondents

2.

FAO No.3497 of 2013 (O&M)

Neeta and others

....Appellants

Versus

Rameshwar Dass and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mandeep Singh Khillan, Advocate,
for the appellants.

Ms. Alka Joshi, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

CM No.8562-CII of 2013

For the reasons mentioned in the application, same is allowed
and delay of 31 days in filing of the appeal i.e. FAO No.1571 of 2013 is
condoned.

FAO Nos.1571 & 3497 of 2013

This judgment shall dispose of FAO No.1571 of 2013 and FAO

No.3497 of 2013 together as common questions of law and facts are involved in both the appeals being arisen from one and same accident.

FAO No.1571 of 2013 has been filed by the claimant-appellants (Manno etc.) seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide award dated 14.09.2012 on account of death of Krishan in a motor vehicular accident which took place on 22.10.2005. Appellant No.1 is widow, appellant Nos. 2 & 3 are parents and appellant No.4 is son of deceased Krishan.

Similarly, **FAO No.3497 of 2013** has been filed by claimant-appellants (Neeta etc.) seeking enhancement of compensation awarded by the Tribunal vide aforesaid award on account death of Jai Singh in the same accident. In this appeal, appellant No.1 is widow and appellant Nos.2 & 3 are parents of deceased Jai Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 22.10.2005, Krishan and Jai Singh (since deceased) along with several other persons of village Baragaon, loaded their vegetables from village Baragaon on Swaraj Majda No. HR-38-J-2468 for selling the same at *Sabzi Mandi*, New Delhi. When they reached near PGF Farm on G.T. Road, Samalkha, one sharp edged brick came under the tyre of said vehicle, as a result of which, the tyre got burst and the vehicle turned turtle. Due to this, both Krishan and Jai Singh received multiple and grievous injuries. They were shifted to CHC, Samalkha, from where they were taken to Civil Hospital, Panipat. Unfortunately, both of them succumbed to the injuries. With regard to the incident, DDR No.04 dated 23.10.2005 was registered at Police Station,

Samalkha. Consequently, the claimant-appellants filed a claim petition under Section 163-A of the Act before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of use of Swaraj Mazda No.HR-38-J-2468 by its driver, which resulted into the death of Krishan Kumar and Jai Singh. This finding was rightly given on the basis of deposition of Pawan Kumar (PW-3), who was eye witnesses of the accident. Further, the claimants have also proved on record copy of postmortem report of deceased as Ex.P2 and Ex.P3.

In the absence of any documentary proof, income of the deceased-Krishan was assessed as Rs.3300/- per month, out of which, one-third amount was deducted towards his personal expenses. By doing so, the total income of deceased came to Rs.2200/- per month i.e. Rs.26,400/- per annum. The deceased was 22 years of age at the time of death/accident. Multiplier of 17 was applied as per Second Schedule of the Act. After applying the multiplier of 17, dependency of claimants came to Rs.4,48,800/- (26,400/- x 17). Apart from this, Rs.2000/- were awarded on account of funeral expenses and Rs.5000/- to the widow-claimant No.1 as los of consortium. Hence, the claimants (in **FAO No.1571 of 2013**) were found entitled to total compensation of Rs.4,55,800/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

Similarly, in **FAO No.3497 of 2013**, claimants were found entitled to a total compensation of Rs.4,55,800/- along with interest at the

rate of 7.5% per annum from the date of filing of the petition till realization.

Feeling dissatisfied with the impugned awards, claimants-appellants have filed present appeals i.e. FAO Nos.1571 and 3497 of 2013.

Learned counsel for claimants-appellants has referred to the judgment passed by this Court in **Oriental Insurance Company Limited vs. Gurdev Singh and others**, 2012 (4) PLR 531, to contend that in a claim petition under Section 163-A of the Motor Vehicles Act, 1988, Second Schedule is not to be followed strictly.

A perusal of the above judgment shows that a Co-ordinate Bench of this Court was examining the case of injuries, where deviation from the Second Schedule was held to be necessary to advance the cause of justice. However, this judgment cannot be applied in the facts of the present case because here is a case of death. In a death case, compensation has to be assessed taking the income as per formula set out in the Second Schedule. Reference can be made to a judgment passed by Hon'ble the Supreme Court in **Oriental Insurance Co. Ltd. vs. Hansrajbai vs. Kodala**, 2001 (2) RCR (Civil) 629, wherein it was held that method of calculation under the Second Schedule is to be followed being a special provision for payment of compensation as per structured formula.

After hearing learned counsel for the parties and going through the impugned award, this Court is of the view that the compensation has been rightly awarded by the Tribunal as per Second Schedule of the Act and no modification is required therein. The evidence has been appreciated in the right perspective. Hence, no ground is made out to interfere in the impugned awards

Resultantly, finding no merits, present appeals i.e. FAO Nos.1571 & 3497 of 2013 are dismissed.

(RITU BAHRI)
JUDGE

02.12.2019
ajp

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