

**FAO No. 1506 of 2015 (O&M) and
FAO No. 4237 of 2015 (O&M)**

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

**FAO No. 1506 of 2015 (O&M)
Date of Decision: December 09, 2019**

Reliance General Insurance Company Ltd.

..... Appellants(s)

Versus

Smt. Phoolpati and others

..... Respondent(s)

with

FAO No. 4237 of 2015 (O&M)

Phoolpati and others

..... Appellants(s)

Versus

Sonu and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Subhash Goyal, Advocate
for the appellant in FAO-1506-2015 and
for respondent no.3-insurance company in FAO-4237-2015.

Mr. Saurabh Bhardwaj, Advocate
for the appellants in FAO-4237-2015 and
for respondents no.1 to 4 in FAO-1506-2015.

LISA GILL, J.

This judgment shall dispose of FAO-1506-2015 (Reliance
General Insurance Co. Ltd. Vs. Smt. Phoolpati and others) as well as FAO-
4237-2015 (Phoolpati and others Vs. Sonu and others) as both the above

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noted appeals arise out of award dated 29.11.2014, passed by the learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal').

FAO-4237-2015 has been filed seeking enhancement of the compensation awarded to the appellants-claimants vide award dated 29.11.2014, passed by learned Tribunal on account of death of Gaje Singh in the motor vehicle accident, which took place on 30.07.2012. FAO-1506-2015 has been filed by the insurance company seeking reduction of the awarded compensation.

In the motor vehicle accident, which took place on 30.07.2012, a number of persons died and many others suffered serious injuries. 37 claim petitions were filed seeking compensation on account of death of some of the persons and for the injuries suffered by others. Learned Tribunal consolidated all the 37 claim petitions and decided them vide a common award dated 29.11.2014. It is pleaded in all the claim petitions that the deceased/injured, about 60 persons, all together had gone to Amarpura Dham (Rajasthan) for pilgrimage in an Eicher Canter bearing registration No.HR-64-2433. At about 3:00 AM, on 30.07.2012 they started their journey for returning back to Kalayat (Kaithal) in the above said vehicle, which was being driven by Mahipal son of Om Parkash, on a very moderate speed while observing all traffic rules. When they reached in the area of Sainiwas Railway Crossing on Rajgarh, Hissar Road, the offending truck bearing registration No. HR-58-A-5377, being driven by respondent no.1, in

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rash and negligent manner came from opposite side at a very fast speed, without blowing its horn. After coming on to the wrong side of the road, it struck against the Eicher Canter bearing registration No. HR-64-2433. As a result thereof, all occupants of the Eicher Canter received multiple, serious and grievous injuries. Gaje Singh, Jagmal, Balwan, Kajal, Mahipal, Rajinder and many other persons succumbed to their injuries at the spot, whereas some other passengers namely Banarsi, Gaurav, Kuldeep, Dhoop Singh son of Inder Singh etc. received multiple serious injuries on their persons. It is pleaded that the accident in question took place due to rash and negligent driving of respondent no.1, while driving the said offending truck. Case FIR No.142 dated 30.07.2012 under Sections 279, 337, 338 and 304-A IPC was registered against respondents no.1 and respondent no.1-A with regard to the said accident.

After considering the evidence on record, facts and circumstances, learned Tribunal concluded that the accident in question took place due to the rash and negligent driving of the offending truck bearing registration no. HR-58-A-5377 by its driver – respondent no.1 Sonu. It is further concluded by the learned Tribunal that there is an admission on the part of the claimants that there were as many as 70 to 80 passengers travelling in the canter. Wooden rafters were fitted in this canter, thereby converting it into a veritable double decker vehicle. Passengers were sitting on the wooden rafters as well. Due to the impact, the wooden rafters collapsed. Consequently, the passengers who were sitting on the said rafters, fell on the

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passengers sitting below. This in turn increased the number of casualties.

Learned Tribunal held that the act of the passengers in sitting in this fashion amounts to contributory negligence, which was assessed to the extent of 10%.

Compensation in varying amounts was awarded in the separate claim petitions as per the facts of each case.

Learned Tribunal awarded a sum of Rs.7,63,000/- as compensation to the claimants, on account of death of Gaje Singh, aged 54 years, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income i.e. 5,000 p.m.	5,000 x 12 = 60,000 per annum
2.	Income after deducting 1/3 rd on account of personal expenses	40,000/-
3.	Dependency after applying multiplier of 11	40,000 x 11 = 4,40,000/-
4.	Income after addition of 30% on account of future prospects	4,40,000 + 1,32,000 = 5,72,000/-
5.	Loss of consortium to claimant no.1	1,00,000/-
6.	Loss of love and affection to claimants no.2 to 4	50,000 x 3 = 1,50,000/-
7.	Funeral expenses	25,000/-
	Total	Rs.8,47,000 /-
	Grand total after deducting 10% on account of contributory negligence	8,47,000 – 84,700 = 7,62,300/- (rounded off to Rs.7,63,000/-)

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Learned counsel for the appellants-claimants contends that the learned Tribunal has erred in assessing the income of the deceased to be Rs.5,000/- per month. It is, however, fairly stated that compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680** and **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333**. It is thus prayed that the compensation be enhanced accordingly.

Learned counsel for the insurance company vehemently opposes any enhancement of the compensation awarded by the learned Tribunal and submits that there is no ground for any enhancement of the compensation and the same is in fact excessive. It is thus prayed that the appeal filed by the insurance company be allowed and the compensation awarded be reduced. Dismissal of the appeal filed by the claimants is prayed for.

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

There is no dispute regarding death of Gaje Singh in the motor vehicle accident, which took place on 30.07.2012, due to the rash and negligent driving of the offending truck bearing registration No. HR-58-A-5377, by its driver. There is no challenge by the insurance company to the percentage of negligence i.e. 90% qua the offending vehicle and 10% contributory negligence towards the deceased. Challenge in the appeal filed by the insurance company is limited to the quantum of compensation

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awarded to the claimants i.e. legal representatives of Gaje Singh. Learned counsel for the claimants has also not raised any serious challenge in respect to contributory negligence as assessed by the learned Tribunal. The same is thus upheld and maintained.

Learned counsel for the appellants-claimants is unable to point out any evidence on record to indicate the deceased to be earning more than Rs.5,000/- per month as assessed by the learned Tribunal. It is a matter of record that Gaje Singh was 54 years old at the time of the accident. Learned Tribunal has undoubtedly afforded increment towards future prospects at the rate of 30%, though, as per the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**, it is an increment of 10%, which is to be applied in this case.

At the same time, deduction of $\frac{1}{3}$ rd has been wrongly effected. Keeping in view the number of claimants, it is a deduction of $\frac{1}{4}$ th, which has to be effected as Gaje Singh was survived by a widow and three children. Though, one of the sons of Gaje Singh is major, he was admittedly unmarried and living together with his parents. There is no evidence on record to rebut the claim of the appellants that all of them were dependent upon the deceased. Thus, deduction of $\frac{1}{4}$ th instead of $\frac{1}{3}$ rd is to be applied in this case. As the deceased was admittedly 54 years old at the time of the accident, multiplier of 11 was correctly applied by learned Tribunal.

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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*, claimant-widow is entitled to a sum of Rs.40,000/- towards loss of consortium. Appellants-claimants no.2 to 4 are not entitled for a sum of Rs.50,000/- each towards loss of love and affection. They are entitled to a consolidated sum of Rs.40,000/- towards loss of parental consortium. Instead of Rs.25,000/- awarded by the learned Tribunal towards funeral expenses, claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate.

At this juncture, in case, the compensation is reworked in terms of above noted judgments, the appellants-claimants are entitled to the compensation, which is detailed as under:-

Sr.No.	Heads of Claim	Amount
1.	Income @ 5,000 per month	5000 x 12 = 60,000/- per annum
	Income after addition at the rate of 10% on account of future prospects	60,000+ 6,000 (60,000 x 10%) = 66,000/-
2.	Total income after deducting 1/4 th on account of personal expenses	66,000 - 16,500 (66,000 x 1/4) = 49,500/-
3.	Total dependency after applying a multiplier of 11	49,500 x 11 = 5,44,500/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Loss of consortium to appellant-widow	40,000/-
7.	Loss of consortium (parental) to children	40,000/-
	Total	6,54,500/-

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Compensation available to the claimants would stand reduced by a sum of Rs.1,08,500/- (7,63,000/- minus 6,54,500/-), as per the calculation as above, however, learned counsel for the insurance company is unable to deny that the insurance company has filed an appeal in only two of the claim petitions. There is no reason forthcoming, either in the grounds of appeal or at the time of arguments for filing of the appeals in two of the cases only whereas the calculations have admittedly been made by the learned Tribunal on similar lines in all the similar claim petitions, which arose from the accident in question.

In this view of the matter and to balance equities, it is considered just and expedient not to reduce the total compensation awarded to the claimants. However, it is directed that the claimants shall not be entitled to any interest on the amount over and above the sum of Rs.6,54,000/-. Rate of interest, ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

In view of the discussion as above, both the appeals are disposed of accordingly. Needless to say this decision shall not form a precedent.

December 09, 2019.

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No