

**FAO-1857-2015 and
FAO-1977-2015 (O&M)**

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

FAO-1857-2015

Date of Decision: September 02, 2019

Ramdhan

..... Appellants(s)

Versus

Balwan Singh and others

..... Respondent(s)

with

FAO- 1977-2015

Kamlesh Devi and others

..... Appellants(s)

Versus

Balwan Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arun Luthra, Advocate
for the appellants in both cases.

None for respondents no.1 to 3.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for respondent no.4 – insurance company.

LISA GILL, J.

This judgment shall dispose of FAO-1857-2015 (Ramdhan Vs. Balwan Singh and others) as well as FAO-1977-2015 (Kamlesh Devi and others Vs. Balwan Singh and others) as both the above noted appeals arise out of award dated 22.05.2014, passed by the learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal).

MACT No. RBT 103 of 2013 (subject matter of FAO-1977-2015) was filed by the LRs of deceased Shyam Lal seeking compensation for his death and MACT No. RBT 104 of 2013 (subject matter of FAO-1857-2015) was filed by Ramdhan seeking compensation on account of injuries received by him in the motor vehicle accident, which took place on 15.04.2012.

Brief facts as pleaded in the claim petitions necessary for the adjudication of the cases are that Shyam Lal (since deceased) and Ramdhan (injured) were returning from village Durana to village Kasan on a motorcycle after finalizing the engagement of two daughters of deceased Shyam Lal. Shyam Lal was driving the motorcycle and Ramdhan was the pillion rider. Satish Kumar (son-in-law of Shyam Lal), who had also accompanied them for the talks, was following them on his separate motorcycle. It is pleaded that the deceased Shyam Lal was driving on the correct left hand side of the road on a moderate speed while observing all traffic rules. At about 7:30 P.M. when they reached near bus stand village of village Saran, a Tata 207 bearing registration No. PB-11-W-4586 being driven in a rash and negligent manner at a fast speed by respondent no.1- Balwan Singh, came towards the wrong side of the road and hit against the motorcycle of Shyam Lal, due to which both Shyam Lal and Ramdhan fell down. Shyam Lal succumbed to his injuries at the spot. Injured Ramdhan and the dead body of Shyam Lal was taken to Civil Hospital, Kaithal in a police ambulance. Driver of the offending vehicle after halting his vehicle stepped down, stayed at the spot for some time but when people gathered, he

fled therefrom, leaving the offending vehicle at the spot. FIR No. 39 dated 16.04.2012, P.S. Titram, District Kaithal was registered on the statement of Satish Kumar (son-in-law of Shyam Lal), who was following the deceased and Ramdhan. Deceased Shyam Lal was stated to be a mason, earning a sum of Rs.10,000/- per month. Ramdhan suffered amputation of the right leg from the thigh and suffered disability of 85%. Compensation was thus claimed.

Learned Tribunal on considering the evidence on record concluded that the accident in question took place due to the rash and negligent driving of the offending Tata 207 bearing registration No. PB-11-W-4586, by its driver Balwan Singh-respondent no.1. Shyam Lal died due to the injuries suffered by him in the said accident and Ramdhan received the injuries leading to 85% disability. Finding of the learned Tribunal on this issue is upheld as the same is based upon sound appreciation of the evidence on record neither is the same subject to any challenge by insurance company.

Learned Tribunal awarded a sum of Rs. 2,41,880/- as compensation to Ramdhan on account of the injuries suffered by him, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Medical expenses	41,880/-
2.	Disability	1,70,000/-
3.	Pain and suffering	30,000/-
	Total	2,41,880/-

After assessing income of the deceased Shyam Lal to be Rs.5,400/- per month, legal representatives of Shyam Lal i.e. widow, children and aged mother of the deceased, were held entitled to a sum of Rs. 7,05,776/- (rounded off to Rs.7,05,780/-), the detail of which is as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	5,400/- per month
2.	Income after 1/5 th deduction on account of personal expenses	5,400 - 1080 (5,400 x 1/5 th) = 4,320/-
3.	Total income after addition at the rate of 15% on account of future prospects	4,320 + 648 (4,320 x 15%) = 4,968/-
4.	Total dependency after applying a multiplier of 11	4,968 x 12 x 11 = 6,55,776/- (rounded off to Rs.6,55,780/-)
5.	Funeral expenses	20,000/-
6.	Loss of consortium to claimant no.1	20,000/-
7.	Loss of love and affection	10,000/-
	Grand Total	Rs.7,05,780/-

Present appeals have been filed seeking enhancement of the aforesaid compensation.

FAO-1857-2015

Learned counsel for the appellant submits that meagre compensation has been afforded to the appellant who has admittedly suffered amputation of his right leg from the thigh. It is prayed that compensation be enhanced.

Learned counsel for the insurance company, however, submits

that reasonable compensation has been awarded though it is not denied that the claimant a carpenter, suffered amputation of his leg from the thigh.

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

It is a matter of record that the claimant has examined Dr. Anoop Mehta PW-4, who has proved that the claimant suffered 85% permanent disability on account of amputation of right leg from the thigh. PW-4 has deposed that the injured was medically examined by the Board and it was found that the injuries were received by him in a road side accident on 15.04.2012 with a crush injury on the right thigh. Disability certificate Ex.PA was proved by him. PW-5 Jasdev Singh, Medical Officer/Ward Incharge, Virk Hospital testified that the appellant Ramdhan was admitted at Virk Hospital from 12.05.2012 to 15.05.2012. He had earlier been operated upon at PGI, Chandigarh and remained admitted at PGI from 16.04.2012 to 22.04.2012. He suffered injuries on various parts of the body. The details of the medical expenses incurred, were given by him. The appellant remained admitted at Virk Hospital again from 02.06.2012 to 04.06.2012. The claimant/appellant admittedly suffered a disability of 85%. The appellant Ramdhan has himself testified as PW-3. There is no evidence on record to falsify the stand of claimant Ramdhan. He was working as a carpenter at the time of the accident. Ramdhan was aged about 75 years at the time of the accident. Learned Tribunal has erred in not awarding loss of income to the appellant. It is considered just and expedient to assess functional disability of Ramdhan to be 80% in the factual matrix of this

case. Minimum wages available to a skilled labourer in the State of Haryana at the time of the accident were Rs.5,367/- per month.

Loss of income is to be worked out in terms of the guidelines of Hon'ble Supreme Court in Sayed Sadiq etc. Vs. Divisional Manager, United India Insurance Company, 2014(1) RCR (Civil) 765. Functional disability suffered by the appellant is 80% in this case. Therefore, loss of income is assessed as Rs.4,294/- per month (5,367/- x 80%) i.e. Rs.51,528/- per annum. Age of the appellant was admittedly 75 years at the relevant time, therefore, multiplier of 5 is to be applied. Loss of earnings is, thus, assessed as Rs.2,57,640/- [51,528 x 5].

Amount of Rs.41,880/- awarded by the learned Tribunal on account of medical treatment is maintained. Instead of a consolidated sum of Rs.30,000/- awarded by the learned Tribunal towards pain and suffering, transportation and special diet, the appellant is held entitled to a sum of Rs.50,000/- each for pain and suffering and loss of amenities, Rs.10,000/- for special diet and Rs.5,000/- for transportation. Appellant is also entitled to a sum of Rs.15,000/- towards attendant charges and a sum of Rs.80,000/- for artificial limb.

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

Sr. No.	Heads	Calculations
1.	Medicines/Medical treatment	41,880/-
2.	Loss of earnings	2,57,640/-
3.	Pain and suffering	50,000/-
4.	Loss of amenities	50,000/-
5.	Special diet	10,000/-

6.	Transportation	5,000/-
7.	Attendant charges	15,000/-
8.	Artificial limb	80,000/-
	Total	5,09,520/-

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 instead of 7% on the entire amount from the date of filing of the petition till realization.

FAO-1977-2015

Learned counsel for the appellants submits that income of the deceased has been assessed at a lower rate. Compensation under the conventional heads, it is submitted, should be enhanced, though it is fairly stated that increment on account of future prospects has to be 10% in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680.**

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

The deceased Shyam Lal is claimed to be a mason. There is no evidence on record to indicate the exact income earned by Shyam Lal, however, in view of the minimum wages, which were available to a skilled labourer in the State of Haryana at the time of the accident, I do not find any irregularity in assessment of the income of the deceased to be Rs.5,400/- per month.

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**, 10% increment has to be afforded on account of future

prospects. Deduction of 1/5th was correctly effected by learned Tribunal. As the deceased was admittedly 55 years old at the time of the accident, multiplier of 11 was correctly applied by learned Tribunal. Instead of a sum of Rs.20,000/- towards funeral expenses, the appellants are entitled to a sum of Rs.15,000/- each towards funeral expenses and loss of estate. Instead of a sum of Rs.20,000/- awarded by the learned Tribunal on account of loss of spousal consortium, appellant-widow is entitled to a sum of Rs.40,000/-. Children of the deceased are entitled to a sum of Rs.40,000/- towards loss of parental consortium (Instead of a sum of Rs.10,000/- awarded by the learned Tribunal on account of loss of love and affection). Mother of the deceased is also entitled to a sum of Rs.40,000/- towards loss of filial 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-2011-2016, title *Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others.*

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

Sr. No.	Heads	Calculations
1.	Income	5,400/- per month
2.	Income after 1/5 th deduction on account of personal expenses	5,400 - 1080 (5,400 x 1/5 th) = 4,320/-
3.	Total income after addition at the rate of 10% on account of future prospects	4,320 + 432 (4,320 x 10%) = 4,752/-

4.	Total dependency after applying a multiplier of 11	4,752 x 12 x 11 = 6,55,776/- (rounded off to Rs.6,27,264/-)
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of spousal consortium to the widow of the deceased	40,000/-
8.	Loss of parental consortium to the children of the deceased	40,000/-
9.	Loss of filial consortium to the mother of the deceased	40,000/-
	Total	7,77,264/-

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 entire 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.

In view of the discussion as above, both the appeals are disposed of with the modification in the quantum of compensation.

September 02, 2019.

Sunil

(LISA GILL)
JUDGE

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