

FAO-2485-2015(O&M);
FAO-2563-2015(O&M); and
FAO-3020-2015(O&M)

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

(1) FAO-2485-2015(O&M)

Jatin

...Appellant

Versus

Manoj and others

...Respondents

(2) FAO-2563-2015(O&M)

Smt.Sushila Devi

...Appellant

Versus

Manoj and others

...Respondents

(3) FAO-3020-2015(O&M)

Smt.Roshani Devi

...Appellant

Versus

Manoj and others

...Respondents

Date of Decision:-15.7.2019

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

Present: Mr.Vijay Kumar Sheoran, Advocate
for the appellant in FAO-2485-2015 and FAO-3020-2015.

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Mr.V.K. Sheoran, Advocate for
Kr.Vikas P Singh, Advocate
for the appellant in FAO-2563-2015.

Mr.Sumit Gupta, Advocate
for respondent No.3 – insurance company in all the appeals.

H.S. MADAAN, J.

CM-7714-CII-2015 in
FAO-2485-2015 and
CM-7853-C-II-2015 in
FAO-2563-2015

Heard.

For the reasons mentioned in the applications, delay of 64 days in filing of FAO-2485-2015 and the delay of 80 days in filing FAO-2563-2015 stand condoned. The applications stand disposed of accordingly.

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By this order, I shall dispose of three FAOs i.e. FAO-2485-2015 filed on behalf of appellant – Jatin minor through his guardian, FAO-2563-2015 filed on behalf of appellant Smt.Sushila Devi and FAO-3020-2015 filed on behalf of appellant Smt.Roshani Devi, which have arisen out of the same accident.

Briefly stated, facts of the case as per version of the claimants are that on 11.11.2013 at about 9:30 a.m. Jatin along with his maternal uncle Ashok and Sandeep son of Jagdish, a friend of Ashok, was coming from village Jhojhu Kala to Bhiwani on a motorcycle bearing registration No.HR19-C-9607 in connection with a personal work; that the said

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motorcycle was being driven by Sandeep on which Ashok and Jatin were pillion riding; that when the motorcycle reached near petrol pump within the area of village Haluwas, in the meanwhile a Bolero Camper bearing registration No.HR-64-7873 (hereinafter referred to as the offending vehicle) being driven by Manoj – respondent No.1 in a rash and negligent manner and at a high speed came from Bhiwani side and hit against the motorcycle, resultantly all the three riders fell down and received multiple injuries; that Sandeep Kumar succumbed to the injuries at the spot; that an ambulance was called and other two injured Jatin and Ashok were taken to General Hospital, Bhiwani, however the attending doctor referred Ashok to PGI, Rohtak where he was declared dead and Jatin was however treated; that FIR No.855 dated 11.11.2013 for the offences under Sections 279 and 304-A IPC was registered against respondent No.1 – Manoj with Police Station Sadar, Bhiwani.

Petitioner Smt.Sushila Devi – mother of deceased Sandeep had brought a claim petition bearing MACT Petition No.7 of 2014 against respondents i.e. Manoj – driver, Ramesh Kumar – owner and National Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lacs on account of death of her son Sandeep in a motor vehicular accident.

Petitioner Smt.Roshani Devi – mother of deceased Ashok had also brought a claim petition bearing MACT Petition No.8 of 2014 against the above-said respondents, claiming compensation to the tune of Rs.50 lacs on death of her son Ashok in a motor vehicular accident.

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Petitioner Jatin had brought a claim petition bearing MACT Petition No.26 of 2014 against the above-said respondents, claiming compensation to the tune of Rs.10 lacs on account of injuries suffered by him in the motor vehicular accident.

Since all the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Bhiwani.

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

After hearing arguments, the claim petitions were allowed partly by the Tribunal vide award dated 29.9.2014. Petitioner Smt.Sushila Devi, who had filed MACT Petition No.7 of 2014 was awarded compensation of Rs.8,02,600/-, petitioner Smt.Roshani Devi, who had filed MACT Petition No.8 of 2014 was awarded compensation of Rs.7,59,400/- and petitioner Jain - minor, who had filed MACT Petition No.26 of 2014 through his guardian/next friend was awarded compensation of Rs.1,20,880/- along with interest at the rate of 6% per annum from the date of filing of the petitions till final realization payable by all the respondents jointly and severally.

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

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Notice of the appeals was issued to the respondents. Respondents No.3 – insurance company has appeared through counsel, whereas service of respondents No.1 and 2 was dispensed with.

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

First coming to FAO-2563-2015 filed by appellant Smt.Sushila Devi. The Tribunal had taken the age of deceased Sandeep to be 25 years. However, the assertion of the claimant that deceased was working as Halwai (Sweet maker) in the shop of M/s Dalal Misthan Bhandar, Ghuskani getting salary of Rs.12,000/- and he used to take bookings of marriages and his total income was Rs.60,000/- per annum was disbelieved. The depositions of PW1 Smt.Sushila Devi and PW6 Jai Bhagwan, Proprietor of Dalal Misthan Bhandar, Ghuskani in that regard were rejected. But it was so done by giving valid reasonings and no interference therewith is called for. The Tribunal has taken wages of deceased Sandeep being that of a unskilled worker to the tune of Rs.4,800/-.

However, learned counsel for the claimant has contended that wages of an unskilled worker in State of Haryana at the relevant time were Rs.5,341/- per month. He has referred to a communication issued by Labour Commissioner, Haryana in that regard. This contention could not be controverted by learned counsel appearing for the insurance company. Under the circumstances, it would be proper and appropriate to take monthly income of the deceased Sandeep as Rs.5,341/- instead of

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Rs.4,800/- so assessed by the Tribunal.

The Tribunal has added 50% amount of that amount towards future prospects. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects keeping in view the age of the deceased. Doing that the monthly income of the deceased is taken as Rs.5,341 + 2136 = Rs.7,477/-.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** where the deceased was a bachelor and the claimants are the parents, deduction towards self-expenses is to be taken as 50%. Doing that the dependency of claimant comes out to Rs.3,738/- per month, annual dependency comes out to Rs.3,738 x 12 = Rs.44,856/-.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 44,856 x 18 = 8,07,408/-.

The Tribunal has further granted a sum of Rs.25,000/- on account of funeral expenses. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimant is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 8,07,408 + 30,000 = 8,37,408/-.

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The Tribunal has awarded compensation of Rs.8,02,600/-.

In this way, the enhanced amount comes out to Rs.34,808/- (8,37,408 - 8,02,600). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization. The other terms and conditions shall remain the same as given in the original award.

With the above modification, **FAO-2563-2015** filed on behalf of appellant Smt.Sushila Devi stands allowed partly with costs.

Now coming to FAO-3020-2015 filed by appellant Smt.Roshani Devi. The Tribunal had taken the age of deceased Ashok to be 30 years. However, the assertions of the claimant that deceased was working as earning Rs.30,000/- per month from agriculture and Rs.25,000/- per month by sale of milk were rejected on account of lack of cogent and convincing evidence. The Tribunal has taken wages of deceased Ashok being that of a unskilled worker to the tune of Rs.4,800/-.

However, learned counsel for the claimant has contended that wages of an unskilled worker in State of Haryana at the relevant time were Rs.5,341/- per month. He has referred to a communication issued by Labour Commissioner, Haryana in that regard. This contention could not be controverted by learned counsel appearing for the insurance company. Under the circumstances, it would be proper and appropriate to take monthly income of the deceased Ashok as Rs.5,341/- instead of Rs.4,800/- so assessed by the Tribunal.

The Tribunal has added 50% amount of that amount towards

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future prospects. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects considering the age of the deceased at the time of accident. Doing that the monthly income of the deceased is taken as $\text{Rs.}5,341 + 2136 = \text{Rs.}7,477/-$.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** where the deceased was a bachelor and the claimants are the parents, deduction towards self-expenses is to be taken as 50%. Doing that the dependency of claimant comes out to Rs.3,738/- per month, annual dependency comes out to $\text{Rs.}3,738 \times 12 = \text{Rs.}44,856/-$.

The Tribunal has used multiplier of 17, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to $\text{Rs.}44,856 \times 17 = 7,62,552/-$.

The Tribunal has further granted a sum of Rs.25,000/- on account of funeral expenses. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimant is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to $\text{Rs.}7,62,552 + 30,000 = 7,92,552/-$.

The Tribunal has awarded compensation of Rs.7,59,400/-.

In this way, the enhanced amount comes out to Rs.33,152/-

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(7,92,552 - 7,59,400). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization. The other terms and conditions shall remain the same as given in the original award.

With the above modification, **FAO-3020-2015** filed on behalf of appellant Smt.Roshani Devi stands allowed partly with costs.

Now coming to FAO-2485-2015 filed by appellant Jatin Kumar – minor. The Tribunal considering the age of Jatin and he being a student of 8th class, period of hospitalization for 15-16 days and a rod inserted in his right leg, which had got fractured in the accident granted him Rs.20,880/- as medical bills and treatment charges in light of documents produced as Ex.P7 to Ex.P9, Mark D to Mark K. This claimant had not come up with a plea that he had suffered any permanent disability. 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 either not kept or gets lost or misplaced. Thus, the compensation under that head is enhanced to **Rs.25,000/-**.

No amount has been awarded towards further medical treatment. The injury suffered by the claimant had fracture, which means that the claimant would be required to undergo further treatment, of course spending money on that account. He needs to be compensated for future medical treatment. A sum of **Rs.10,000/-** is awarded to him for that purpose.

The amount of **Rs.60,000/-** awarded towards costs of

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transportation, special diet and attendant etc. seem to be sufficient and no interference therewith is called for.

Similarly, an amount of **Rs.40,000/-** awarded for pain and sufferings is adequate and does not ask for any enhancement.

However, the Tribunal has not awarded any compensation under various other heads, which the claimant deserve to be given.

Of course on account of suffering injuries in the accident, his hospitalization and inability to move around, some compensation ought to have been granted to him. Thus a sum of **Rs.15,000/-** is awarded to the claimant in that regard.

For loss of amenities and loss of expectation of life and for the reason that his marital prospects have been affected, the claimant deserve to be compensated. With injury in his legs, he may not be able to find a suitable life partner and would not be able to walk, run and lead life of a normal human being. His life expectancy is also likely to be affected. Thus, I award a sum of Rs.20,000/- each (total **Rs.60,000/-**) under those heads.

The total compensation comes out to Rs.2,10,000/-.

The Tribunal has awarded compensation of Rs.1,20,880/-.

In this way, the enhanced amount comes out to Rs.89,120/- (2,10,000 - 1,20,880). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization of the amount. The other terms and conditions given in the relief clause shall remain the same.

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With the above modification, **FAO-2485-2015** filed on behalf of appellant Jatin through his guardian/next friend Meena Devi(mother) stands allowed partly with costs.

15.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No