

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

Date of decision: 13.12.2019

1. **FAO No. 3214 of 2015(O&M)**

Vinod Saini and othersAppellants

VERSUS

Satish and othersRespondents

2. **FAO No. 3936 of 2015(O&M)**

Vandana and anotherAppellants

VERSUS

Satish and othersRespondents

3. **FAO No. 3937 of 2015(O&M)**

Aditi SainiAppellant

VERSUS

Satish and othersRespondents

4. **FAO No. 3938 of 2015(O&M)**

Aditi SainiAppellant

VERSUS

Satish and othersRespondents

5. **FAO No. 4206 of 2015(O&M)**

Aditi Saini

.....Appellant

VERSUS

Satish and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Anurag Jain, Advocate for the appellant(s).

Mr. Vishal Aggarwal, Advocate for respondent-insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos. 3214, 4206, 3936, 3937 and 3938 of 2015 as these have emerged out of the same award dated 28.11.2014 passed by the Motor Accidents Claims Tribunal, Rohtak (in short 'the Tribunal') whereby compensation has been assessed on account of death of Bimla, Pawan, Anita, Parmod and Aditya and injuries sustained by Aditi in a motor vehicular accident that took place on 17.06.2012. All the aforesaid appeals have been filed by the claimant(s) seeking enhancement of compensation.

FAO No.3214 of 2014

The Tribunal awarded Rs.1,25,000/- with regard to death of Bimla aged 62 years. The claim has been preferred by married son, grand daughter, widowed daughter in law, Radhima daughter of Pawan Saini, Poonam and Geeta daughter of Smt. Bimla.

The Tribunal has held that the claimants were not dependent upon income of the deceased and as such awarded Rs.1,25,000/- under

conventional heads towards loss of love and affection and expenses on funeral, transportation and last rites etc. Even if claimants were not absolutely dependent upon value of services of the deceased but it is difficult to accept that married children of the deceased would not be entitle to services of their mother. Taking into consideration that a house maker cannot be equated with a daily wager in view of multifarious duties being performed by her, value of services of the deceased is assessed at Rs.6000/- per month. There would be no deduction for personal and living expenses in the light of Division Bench judgment of this Court **Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others, 2013(3) Law Herald 2730** but admissible multiplier would be 5. In this manner, loss of dependency is calculated at Rs.3,60,000/- (Rs.6000/- x 12 x 5).

Under conventional heads, the claimants are entitle to Rs.15000/- for funeral expenses.

In view of the above, total compensation comes to Rs.3,75,000/- and the additional amount is Rs.2,50,000/- (Rs.3,75,000/- - Rs.1,25,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization, in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.3936 of 2015

With regard to death of Pawan Saini, the Tribunal awarded Rs.11,20,976/- (rounded off to Rs.11,21,000/-) detailed hereunder:-

Monthly income of the deceased	Rs.8366/-
Deduction for personal expenses	1/3 rd
Multiplier	16

Loss of dependency	Rs.10,70,976/-
Loss of consortium	Rs.25,000/-
Funeral and transportation expenses and loss of estate	Rs.25,000/-

The Tribunal has assessed income of the deceased on the basis of salary slip of Pawan Saini issued by M/s Jindal Steel and Powers Ltd., proved by Vivek Ranjan Pandey, Senior Deputy General Manager of the aforesaid concern.

Vide order dated 29.05.2019, a report was called from the Tribunal with regard to income of Pawan Saini. A relevant extract therefrom, reads as follows:-

“In compliance of the aforesaid order of the Hon'ble Punjab and Haryana High Court, the petitioner and respondents were asked to lead evidence from the Income Tax Department on the point “to prove the income tax returns filed by Shri Pawan Saini and a representative of M/s Jindal Steel and Power Ltd. with complete records including form No.16 in respect of Pawan Saini.”

Sanjay Kumar, Panigrahi, Income Tax Officer, Ward No.1 Ram Garh (Chattisgarh) and Amit Garg, Deputy Manager, Haryana Department Gurugram were examined by the petitioner as PW11 and PW12 and they proved relevant documents from Exs.P29 to P36.”

In pursuance thereof, the Tribunal sent the report along with statements of PW11 Sanjay Kumar Panigrahi, a witness from the Income Tax Department, PW12 Amit Garg Deputy manager HR Gurugram and documents marked Exs.P29 to P36.

Counsel for the appellants would argue that as per income tax return for assessment year 2010-11 Ex.P29, gross income of the deceased was Rs.7,13,032/-. In the latest return for the assessment year 2011-12, his income is Rs.15,14,753/- per annum. It is argued that though Sh. Amit Garg PW12 has produced documents i.e. form No.16 Exs.P33 to P36, income of the deceased may be assessed on the basis of latest income tax return for the assessment year 2011-12. It is further argued that income of the deceased shown in the return Ex.P30 exactly tally with form No.16 Ex.P34 wherein it has been mentioned that gross salary of the deceased was Rs.7,37,736.80 and value of perquisites under Section 17(2) to be Rs.7,86,616.29 making total sum of Rs.15,24,353.09, out of which Rs.9600/- was deducted towards allowance to the extent exempt under Section 10 making balance to the tune of Rs.15,14,753.09. In addition, it is argued that Amit Garg has also produced form No.16 for the period from 01.04.2012 to 31.03.2013 pertaining to assessment year 2013-14 recording deduction of TDS to the tune of Rs.6986/- deposited on 06.06.2012 and Rs.1222/- deposited on 06.07.2012. It is argued that as Pawan Saini passed away on 17.06.2012 deduction of TDS from the salary upto 16.06.2012 was made and for that reason, there is difference of deduction of TDS from the salary of May and June, 2012. It is further argued that in form No.16-AA, gross salary of the deceased is mentioned at Rs.1,40,322.97 INR.

According to counsel, this salary pertains to the period from 01.05.2012 to 17.06.2012 even though in the document the period is stated to be from 01.05.2012 to 01.07.2012 because question of payment of salary after death of Pawan Saini does not arise in any circumstance. Counsel would argue that on the basis of salary reflected in form No.16-AA for a period of 46/47 days pertaining to month of May, 2012 and 16 days of June, 2012, monthly salary of the deceased comes to more than Rs.90,000/- per month. The last submission made by counsel is that taking into consideration the documents produced by representative of employer of the deceased, monthly income of the deceased is liable to be assessed to the tune of approximately Rs.1 lakh per month.

Counsel representing the insurance company, while refuting contention of the appellants, would argue that appellants failed to adduce clear evidence with regard to components of salary of the deceased which was paid to him for the month of May, 2012 or 16 days of June, 2012 as he died on 17.06.2012. It is further argued that private companies give certain allowances which are personal to the employee and benefit thereof may not be available to his family and cannot be extended for computing loss of dependency. It is further argued that since the document Ex.P36 form No.16-AA pertains to the period from 01.05.2012 to 01.07.2012, contention of the appellants cannot be accepted that salary of Rs.1,40,322.97 pertains to 46/47 days and not to the period of two months from 01.05.2012 to 30.06.2012. It is further argued that in the income tax return for the assessment year 2010-11, gross total income is Rs.7,13,032/-. In the return for assessment year 2011-12, gross total income is

Rs.15,14,753/-. It is vehemently argued that it is difficult to believe that gross total income of the deceased doubled within one year or to say there is increase of 100% in his income in assessment year 2010-11. He would also apprise the Court that both these returns were filed on 28.07.2011 which also create doubt regarding its validity.

I have heard counsel for the parties, perused the paper book and records.

Perusal of the documents Exs.P29 & P30 would reveal that computation of income is not appended with these documents. The witness from the Income Tax Department had admitted that he had not brought that computation pertaining to income tax returns. However, income reflected in the ITR Ex.P30 for assessment year 2011-12 amounting to Rs.15,14,753/- per annum exactly tally with form No.16 for the period 01.04.2010 to 31.03.2011 and assessment year 2011-12. As per document Ex.P34, gross salary of the deceased of that period was Rs.7,37,736.80 and value of perquisites Rs.7,86,616.29 making total of Rs.15,24,353.09. By deducting Rs.9600/- of allowance exempt under Section 10, the remaining amount comes to Rs.15,14,753.09. The value of perquisites for the period from 01.04.2011 to 31.03.2012 reflected in form No.16 from 01.04.2011 to 01.11.2011 and 01.11.2011 to 31.03.2012 is only Rs.36,752.09. Total salary of the deceased for the period from 01.04.2011 to 31.03.2012 reflected in form No.16 is approximately Rs.12,64,000/- out of which a sum of Rs.75,025/- was deducted towards tax. In form No.16 for the period from 01.04.2012 to 31.03.2013 pertaining to assessment year 2013-14 Ex.P36, TDS was deducted only for two months, detailed hereinbefore,

deposited on 06.06.2012 and 06.07.2012. Though in form No.16-AA Ex.P36, the period referred to is 01.05.2012 to 01.07.2012 but from the tax deduced at source, it can safely be inferred that TDS to the tune of Rs.1222/- was deducted for the month of June, 2012 vis a vis Rs.6986/- for the month of May, 2012 as the deceased died on 17.06.2012 and paid salary only for a period of 16 days.

Counsel for the insurance company is right in his submission that appellants failed to make the picture clear with regard to components of monthly salary reflected in Ex.P32. However, the proceedings before the Tribunal are summary in nature and strict principles of law of evidence are not applied. The insurance company did not examine a witness of Jindal Steel and Power Ltd. nor made a request for deferring cross examination of Amit Garg with a direction to provide details of monthly salary of the deceased. Taking a cumulative, reasonable and sympathetic view of the matter, in my considered opinion, monthly income of the deceased can be assessed at Rs.85,000/- and ordered accordingly. Claimants shall be entitle to addition in income for future prospects @ 50%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.1,63,20,000/- [Rs.1,63,20,000/- (Rs.85000/- x 12 x 16) + Rs.81,60,000/- (50% addition towards future prospects) - Rs.81,60,000/- (1/3rd deduction towards personal expenses).

Under conventional heads, claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017**

SCC 1270 and Sebastiani Lakra and others Vs. National Insurance Co. Ltd. and another, AIR 2018 SC 5034, detailed hereunder:-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation is Rs.1,63,90,000/- and additional amount Rs.1,52,69,000/- (Rs.1,63,90,000/- - Rs.11,21,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be shared by the claimants in ratio 40:60. The amount falling to the share of minor shall be invested in fixed deposit till the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

FAO No.3937 of 2015

With regard to death of Anita aged about 38 years, the Tribunal awarded Rs.11,95,000/- detailed hereunder:-

Monthly income of the deceased	Rs.12975/- (rounded off to Rs.13,000/-)
Deduction for personal expenses	50%
Multiplier	15
Loss of dependency	Rs.11,70,000/-
Funeral and transportation expenses and loss of love and affection	Rs.25,000/-

The Tribunal has assessed income of the deceased on the basis of income tax returns proved by Ajay, Tax Assistant, ITO, Ward- 1, Rohtak PW-1 and the same is affirmed. In addition to income of Anita

recorded in the income tax returns, claimant is entitle to value of services of deceased as a house maker. Since Anita was involved in some business activity, value of her services is assessed at Rs.5000/- per month. There would be no deduction for personal and living expenses of the deceased qua value of her services in the light of judgment in **Paramjit Singh's case** (supra). The Tribunal has rightly applied multiplier of 15. However, claimant shall be entitle to addition in income for future prospects qua income of Rs.13000/- per month.

The claim has been preferred by daughter of the deceased as her husband unfortunately died in the same occurrence. Taking into consideration the number of members of family before her unfortunate demise, deduction for personal and living expenses of deceased would be $1/3^{\text{rd}}$ in respect of her earning. In this manner, loss of dependency qua earning of deceased is Rs.21,84,000/- [Rs.23,40,000/- (Rs.13000/- x 12 x 15) + Rs.9,36,000/- (40% addition towards future prospects) - Rs.10,92,000/- ($1/3^{\text{rd}}$ deduction towards personal expenses). With regard to value of her services, loss of dependency is calculated at Rs.9,00,000/- (Rs.5000/- x 12 x 15). Total loss of dependency comes to Rs.30,84,000/-.

Compensation allowed under conventional heads is modified to the effect that claimant shall be entitle to Rs.30,000/- detailed hereunder:-

Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation is Rs.31,14,000/- and additional amount Rs.19,19,000/- (Rs.31,14,000/- - Rs.11,95,000/-) payable with interest at the rate of 7.5% per annum from the date of

petition till realization to be invested in fixed deposit till the appellant attains majority or for a period of three years, whichever is later. Interest accruing on the FDR shall be paid to guardian of the minor for meeting her expenses.

The appeal is partly allowed in the aforesaid terms.

FAO No.3938 of 2015

With regard to death of Parmod Saini, the Tribunal has awarded Rs.48,55,000/- detailed hereunder:-

Gross annual salary of the deceased	Rs.7,22,053/-
Income tax paid	Rs.31,200/-
Net annual salary	Rs.6,90,853/-
Deduction for personal expenses	50%
Multiplier	14
Loss of dependency	Rs.48,30,000/-
Funeral and transportation expenses and loss of love and affection	Rs.25,000/-

The entire annual salary of the deceased to the tune of Rs.6,90,853/- (rounded off to Rs.6,91,000/-) shall be taken into account for computing loss of dependency. Claimant shall be entitle to addition in income for future prospects at the rate of 30%. The multiplier applied by the Tribunal is correct and affirmed.

The claim has been preferred by minor Aditi Saini who lost both her parents and she is the only survivor of the accident. Before his unfortunate demise, Parmod Saini had a family consisting of his wife, minor son and a daughter but unfortunately his wife and son also died in

the occurrence. In the given circumstances, admissible deduction for personal expenses would be $\frac{1}{3}^{\text{rd}}$. Accordingly, loss of dependency is calculated at Rs.83,84,133/- [Rs.96,74,000/- (Rs.6,91,000/- x 14) + Rs.29,02,200/- (30% addition towards future prospects) - Rs.41,92,066/- ($\frac{1}{3}^{\text{rd}}$ deduction towards personal expenses)].

Under conventional heads, claimant shall be entitle to Rs.30,000/- detailed hereunder:-

Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation is Rs.84,14,133/- and additional amount Rs.35,59,133/- (Rs.84,14,133/- - Rs.48,55,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be invested in fixed deposit till she attains majority or for a period of three years, whichever is later. Interest accruing on the FDR shall be paid to guardian of the minor for meeting her expenses.

The appeal is partly allowed in the aforesaid terms.

FAO No.4206 of 2015

Aditi Saini, minor, has filed appeal seeking enhancement of compensation in respect of injuries sustained in the occurrence. She is awarded a sum of Rs.4,19,993 (rounded off to Rs.4,20,000/-) detailed hereunder:-

Medical expenses	Rs.3,29,993/-
Permanent disability	Rs.40,000/-
Pain and suffering	Rs.25,000/-
Transportation charges	Rs.15,000/-

Special diet

Rs.10,000/-

The injured has suffered permanent disability to the extent of 20% on account of visual handicap of right eye to the extent 0.5DSph 6/18 and no improvement with glasses or pinhole. Aditi was 13 years old at the time of occurrence. There is no medical opinion as to how this disability is to be considered qua functional disability. At the same time, disability appears to be of right eye, therefore, vision of left eye would be intact. Keeping in view the above, she may not have much difficulty in her day to day affairs though she may have some difficulty while driving a vehicle. In the given circumstances, functional disability is assessed less than 10% and accordingly the claimant is awarded a sum of Rs.1,00,000/- (additional sum of Rs.60,000/-) in respect of disability, in the light of judgment of Hon'ble the Supreme Court **Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Ltd. and another, 2013(4) RCR (Civil) 295**. Compensation awarded with regard to medical expenses, pain and suffering and special diet are affirmed.

The Tribunal in para 61 of the award has noticed that the claimant is residing at Rohtak and initially took treatment from PGI Chandigarh and thereafter from Sir Ganga Ram Hospital, New Delhi and remained admitted from 18.6.2012 to 16.7.2012. The distance between Delhi and Rohtak is approximately 80 KMs. Keeping in view the above, claimant is awarded additional sum of Rs.5000/- for transportation charges. Taking into consideration age of the victim and the fact that she is a girl child, interest of justice commands that the claimant is awarded a sum of Rs.2,00,000/- for loss of matrimonial prospects and amenities of life.

In view of the above, total compensation is Rs.6,84,993/- and additional amount Rs.2,64,993/- (Rs.6,84,993/- - Rs.4,20,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be invested in fixed deposit till she attains majority or for a period of three years, whichever is later. Interest accruing on the FDR shall be paid to guardian of the minor for meeting her expenses.

The appeal is partly allowed in the aforesaid terms.

DECEMBER 13, 2019	(REKHA MITTAL)
‘D. Gulati’	JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no