

**FAO-4965-2014 (O&M) and
FAO-8790-2014 (O&M)**

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

**FAO-4965-2014 (O&M)
Date of Decision: November 06, 2019**

The New India Assurance Company Ltd. Appellants(s)

Versus

Pardeep Kaur and others Respondent(s)

with

FAO- 8790-2014 (O&M)

Pardeep Kaur and others Appellants(s)

Versus

Jaswinder Singh alias Bhola and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Deepak Suri, Advocate and
Mr. Neeraj Khanna, Advocate
for the appellant in FAO-4965-2014 and
for respondent no.3 in FAO-8790-2014.

Mr. Ashish Gupta, Advocate
for claimants/respondents no.1 to 4 in FAO-4965-2014 and
for the claimants/appellants in FAO-8790-2014.

Mr. J.S. Maanipur, Advocate
for respondents no.5 and 6 in FAO-4965-2014 and
for respondents no.1 and 2 in FAO-8790-2014.

LISA GILL, J.

This judgment shall dispose of FAO-4965-2014 (The New India Assurance Co. Ltd. Vs. Pardeep Kaur and others) as well as FAO-8790-2014 (Pardeep Kaur and others Vs. Jaswinder Singh alias Bhola and others) as both the above noted appeals arise out of award dated 04.04.2014, passed by the learned Motor Accident Claims Tribunal, Moga (hereinafter referred to as 'the Tribunal).

Brief facts necessary for adjudication of the case are that claimants who are the appellants in FAO-8790-2014, preferred a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of Manpreet Singh, aged 24 years. Claim petition was filed by the wife, minor son and parents of the deceased. It is pleaded in the claim petition that on 25.02.2013 Manpreet Singh (since deceased) was coming from Chandigarh to his house situated at village Bukanawala, Tehsil & District Moga while driving Toyota Etios car bearing registration No. PB-29-M-1766. At about 11:50 P.M., when he crossed village Mandera, a truck bearing registration No. PB-13W-9499 being driven by respondent no.1- Jaswinder Singh alias Bhola in a rash, negligent and zig-zag manner, struck against the car driven by Manpreet Singh. As a result thereof Manpreet Singh died at the spot. FIR No. 24 dated 26.02.2013 under Sections 279, 304-A and 427 IPC was registered at Police Station Khamano, District Fatehgarh with regard to the accident against driver of the truck. The deceased was claimed to be a driver, earning Rs.8,000/- per month.

Learned Tribunal on considering the evidence on record concluded that Manpreet Singh died as a result of the injuries received by him in the motor vehicle accident, which took place due to the rash and negligent driving of the offending truck bearing registration No. PB-13W-9499, by its driver - Jaswinder Singh alias Bhola. Income of the deceased was assessed as Rs.5,000/- per month while accepting him to be a professional driver. Learned Tribunal awarded a sum of Rs.13,65,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	5,000/- per month
2.	Income after addition of 50% on account of future prospects	5,000 + 2,500/- = 7,500/- per month
3.	Income after deducting 1/4 th as personal and living expenses of the deceased	7,500 – 1,875/- = 5,625/- per month
4.	Dependency after applying multiplier of 18	5,625 x 12 x 18 = 12,15,000/-
5.	Loss of care and guidance for minor child	25,000/-
6.	Funeral expenses	25,000/-
7.	Loss of consortium	1,00,000/-
	Total	Rs.13,65,000/-

Learned counsel for the insurance company submit that the insurance company is not liable to pay the compensation at all in this case. This is so for the reason that the driver of the offending vehicle was not holding a valid licence, which authorised him to drive the offending vehicle i.e. a truck. The same it is submitted is a heavy goods vehicle and the driving license of the respondent-driver entitled him to drive only LMV(NT), LMV-GV(TR) and PSV bus (TR). In the alternate it is submitted that increment @ 50% towards future prospects has been wrongly afforded whereas it should be 40% in terms of judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**. Excessive compensation, it is contended, has been awarded under the conventional heads as well. It is thus prayed that the appeal filed by the insurance company (FAO-4965-2014) be allowed.

Learned counsel for the owner and driver of the offending vehicle argues that in view of the amendment of the Motor Vehicle Act, 1988, implemented w.e.f. 14.11.1994, the term 'heavy motor vehicle' has been substituted with 'transport vehicle' in Section 10(2)(e) of the Act. The driver in this case was duly authorized to drive the vehicle in question.

Learned counsel for the claimants further submits that meagre compensation has been awarded by the learned Tribunal. Income of the deceased has been wrongly assessed as Rs.5,000/- per month, which is even lower than the minimum wages available in the State at the time of the accident, though, it is fairly stated that the compensation under the conventional heads be re-worked in terms of judgments 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**.

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

Arguments raised by learned counsel for the insurance company that the driver of the offending vehicle was not holding a valid driving license is totally un-substantiated by the evidence on record and is completely devoid of any merit. It is sought to be urged that the endorsement on the driving license of the respondent-driver is that he is authorized to drive LMV(NT), LMV-GV(TR) and PSV bus (TR), he is, thus, not entitled to drive a truck, which is a heavy goods vehicle, the gross vehicle weight of which exceeds 12,000 kilograms. Learned counsel for the

insurance company are, however, unable to deny that as per the driving license, copy of which is available on record as Ex.R2, the respondent-driver is authorized to drive an LMV, LMV-GV and a TRANSPORT vehicle. The so called classification referred to by learned counsel for the insurance company is not the one entered on the driving license but is only reflected in the report dated 24.09.2013 (Ex.R4) submitted by the surveyor of the insurance company, therefore, this argument on behalf of the insurance company, being devoid of any merit, is rejected. Reference by the learned Tribunal to the unladen weight of the vehicle or the gross vehicle weight is irrelevant in view of the specific endorsement on the driving license of the respondent-driver. The insurance company is thus liable to indemnify the insured. Ultimate finding of the learned Tribunal in this regard is thus upheld.

In so far as the quantum of the compensation is concerned, it is noticed that the claimants have successfully proved that Manpreet Singh (deceased) was a professional driver. Learned Tribunal has rightly accepted him to be so. It is a matter of record that the minimum wage of a skilled labourer in the State of Punjab at the time of the accident i.e. on 25.02.2013 was Rs.6,877/- per month. Income of the deceased is accordingly assessed as Rs.7,000/- per month (Rs.6,877/- rounded of) .

In terms of the judgment of Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, 40% increment towards future prospects has to be afforded and not 50%. The claim petition has been filed by the widow, minor child and parents of the deceased. Father of the deceased was admittedly 52 years old

at the time of the accident. Learned counsel for the claimants is unable to point out any evidence on record to indicate that the father was also dependent on the deceased, therefore, deduction of 1/3rd instead of 1/4th is to be applied in this case. As the deceased was admittedly 24 years old at the time of the accident, multiplier of 18 was correctly applied by learned Tribunal. Widow of the deceased is entitled to Rs.40,000/- instead of Rs.1 lack as awarded by the learned Tribunal towards loss of consortium. Minor child of the deceased is entitled to a sum of Rs.40,000/- towards loss of parental consortium and not Rs.25,000/- awarded by the learned Tribunal on account of loss of care and guidance. Parents of the deceased are also entitled to Rs.40,000/- towards loss of filial consortium. Instead of a sum of Rs.25,000/- awarded by the learned Tribunal towards funeral expenses, appellants are entitled to Rs.15,000/- on this count besides a sum of Rs.15,000/- towards loss of estate. 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-2110-2016, 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:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income # 7,000 x 12	84,000/- per annum
2.	Income after 1/3 rd deduction on account of personal expenses.	84,000 - (84,000 x 1/3) = 56,000/-

3.	Total income after addition at the rate of 40% on account of future prospects	56,000 + 22,400 (56,000 x 40%) = 78,400/-
4.	Total dependency after applying a multiplier of 18	78,400 x 18 = 14,11,200/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Loss of spousal consortium to widow	40,000/-
8.	Loss of parental consortium to minor child	40,000/-
9.	Loss of filial consortium to parents	40,000/-
	Grand Total	Rs. 15,61,200/-

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 (instead of 6% per annum as awarded by the learned Tribunal) 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 in terms thereof.

November 06, 2019.

Sunil

(LISA GILL)
JUDGE

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