

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

F.A.O. No.3685 of 2015(O&M)

Date of Decision: 26.04.2019

Rajan Deep Kaur

.....Appellant.

Versus

Ojas Gera and others

..... Respondents.

AND

F.A.O. No. 3686 of 2015O&M)

Gurjant Singh and others

.....Appellants.

Versus

Ojas Gera and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: None.

LISA GILL, J.

Both the appeals are taken up for hearing together as they arise out of the same accident which took place on 01.01.2013.

These appeals had been adjourned on request of learned counsel for the appellants, but there is no representation on their behalf today.

Though, the appeals can be dismissed in default, however, the said course is not being adopted as the present are appeals filed by the claimant/claimants seeking enhancement of the compensation awarded on account of injuries received by the appellant-Rajandeep Kaur and on account of death of Gurcharan Singh in the motor vehicle accident, which took place on 01.01.2013. It is considered just and expedient to decide the matter on merits rather than dismiss the same for non-appearance of the learned counsel for the appellant/appellants. Available files have been perused.

Brief facts as pleaded in both the claim petitions are that claimant-Gurjant Singh, Rajan Deep Kaur along with their father-Gurcharan Singh (deceased) and other siblings were travelling in a three-wheeler bearing registration no. HR-37-C-4958, which was being driven by their father-Gurcharan Singh. An accident took place on 01.01.2013, at about 9.00.a.m., when they were about 1 km short of petrol pump of village Kheru Gurnan, due to the rash and negligent driving of a Verna Car bearing registration no. DL-8C-AA-6126 by its driver-respondent no.1-Ojas Gera. Gurcharan Singh lost his life in this accident. All the occupants received grievous injuries. FIR No. 1 dated 02.01.2013, under Sections 279, 337, 338, 427, 304-A IPC, Police Station Shambhu, was registered in this respect.

Two claim petitions under Section 166 of the Motor Vehicles Act (for short 'Act') were filed i.e. MACT No. 20-T of 2013 by Rajan Deep Kaur claiming compensation on account of injuries suffered by her and MACT No. 21-T of 2013 by the children of Gurcharan Singh seeking compensation on account of death of their father in the said motor vehicle accident. Both the claim petitions were decided by the learned Motor Accident Claims Tribunal, Patiala (for short 'tribunal') vide separate orders of even date i.e. 14.10.2014.

Facts as pleaded in both the petitions in respect to the manner of the accident are identical. Claimant-Rajan Deep Kaur in FAO No. 3685 of 2015 claims to have suffered permanent disability to the extent of 55%. It is pleaded that she was 16 years old at the time of accident and a student. Surgery of her right leg was performed and a rod was inserted. The first and second toe of her right foot were amputated. Deceased-Gurcharan Singh is

stated to be about 40 years old at the time of his death earning a sum of ₹12,000/- per month by plying his own three-wheeler.

Learned tribunal in both the matters concluded that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver-respondent no.1-Ojas Gera.

Learned tribunal in MACT No. 20-T of 2013, while accepting the claimant-Rajan Deep Kaur, to be a student, aged 16 years, assessed her notional income to be ₹3500/- per month and awarded a sum of ₹4,82,000/-, which is detailed as under:-

Sr. No.	Heads of Claim	Amount
1.	Income	₹3500/-
2.	Deduction	1/ 3 rd
3.	Annual Income	₹14,000/-
4.	Permanent disability	55%
5.	Multiplier	18
6.	Loss of future income	₹2,52,000/-
7.	Pain and suffering	₹1,00,000/-
8.	Matrimonial prospects	₹50,000/-
9.	Medical expenses	₹.80,000/-
	Grand Total	₹4,82,000/-

Learned tribunal in MACT No. 21-T of 2013, while accepting the deceased to be a skilled labourer, assessed his income to be ₹5000/- per month and awarded a sum of ₹9,35,000/-, which is detailed as under:-

Sr. No.	Heads of Claim	Amount
1.	Income	₹5000/-
2.	30% future prospects	₹6500/-
3.	Deduction	1/ 3 rd i.e., ₹4333.33/- paise
4.	Annual Income	₹52,000/-
5.	Multiplier	15

6.	Compensation on account of loss of income	₹7,80,000/-
7.	Love and affection	₹1,00,000/-
8.	Funeral expenses	₹25,000/-
9.	Treatment and transportation charges	₹20,000/-
10.	Loss of estate	₹10,000/-
	Grand Total	₹9,35,000/-

FAO No. 3685 of 2015.

A perusal of the file reveals that there is no dispute regarding the claimant to be a 16 year old student at that time of the accident. In the given facts and circumstances of the case, learned tribunal has erred in assessing notional income of the claimant-Rajan Deep Kaur to be ₹3500/- per month. It is apparent from a bare perusal of the impugned award itself that respondent no.3 has taken a specific stand of the claimant being a student and a non-earning person. This Court in FAO No. 8103 of 2014, decided on 11.02.2019, has held notional income of a student aged 17 years to be ₹8000/- per month in respect to an accident which took place in October, 2011. Accordingly, notional income of the claimant-Rajan Deep Kaur is assessed as ₹8000/- per month.

PW-3-Dr. Ravi Kumar Peenja, has testified that the claimant was 'a post operated case of fracture of both femur with fracture of both tibia, with scarring both thigh and leg with stiff ankle right side with pain both legs besides amputation of first and second toe of the right foot'. Her physical disability was assessed as 55% in relation to the whole body by the Medical Board of which PW-3 was a member. Disability certificate, Ex.P-1 was duly proved on record. Functional disability of the appellant in this case

is assessed as 50%.

Compensation to the appellant-Rajan Deep Kaur is thus required to be worked out in view of the judgement of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Loss of income is ₹8000 x 50/100 i.e., ₹4000/- per month.

While affording an increase of 40% in the income of the appellant on account of future income, the amount comes to [(4000/- + (4000 x 40%)] = ₹5600/- per month i.e., ₹67,200/- per annum. Age of the injured/claimant-Rajan Deep Kaur was 16 years as on the date of the accident and multiplier of 18 has been correctly applied by the learned tribunal. Loss of earnings is, thus, assessed as ₹12,09,600/- [67,200 x 18].

A sum of ₹80,000/- towards medical expenses, ₹1,00,000/- towards pain and suffering as awarded by the learned tribunal, is maintained. Keeping in view the fact that the claimant was a 16 years old unmarried girl at the time of the accident, a sum of ₹1,00,000/- instead of ₹50,000/- towards loss of matrimonial prospects, is awarded. Additionally, the claimant is entitled to a sum of ₹75,000/- for loss of amenities, besides ₹10,000/- each for special diet and attendant charges.

Compensation towards the claimant-Rajan Deep Kaur on account of the injuries/disability suffered by her is thus re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of earnings	₹12,09,600/-
2.	Medical expenses	₹80,000/-
3.	Pain and suffering	₹1,00,000/-

4.	Matrimonial prospects	₹1,00,000/-
5.	Loss of Amenities	₹75,000/-
6.	Special diet	₹10,000/-
7.	Attendant charges	₹10,000/-
	Grand Total	₹15,84,600/-

Amount already awarded by the Tribunal to claimant-Rajan Deep shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% instead of 7% per annum on the entire amount of compensation from the date of filing of petition till realization.

FAO No. 3686 of 2015.

A perusal of the file reveals that there is no dispute regarding the deceased-Gurcharan Singh to be 40 years old at the time of the accident. It is further borne out from the file that the deceased was the owner of the three-wheeler which he used to drive himself. It is pleaded that he was earning a sum of ₹12,000/- per month in this manner. However, there is no documentary evidence on record to prove the exact income of the deceased. Learned tribunal while observing that the deceased be taken as a skilled worker went on to assess income of the deceased-Gurcharan Singh to be ₹5000/- per month. It is relevant to note, at this stage that even the minimum wages of a skilled labourer in the State of Punjab as notified on 01.09.2012 and prevalent at the time of the accident i.e., 01.01.2013, were about ₹5980/- per month. Therefore, keeping in view the facts and circumstances of the case, it is considered appropriate to assess income of the deceased-Gurcharan Singh to be ₹6000/- per month.

Deceased-Gurcharan Singh was 40 years old at the time of

accident. Therefore, future prospects at the rate of 25% are afforded in view of the judgement of the Hon'ble Supreme Court in **Pranay Sethi's** case (**Supra**). Deduction of 1/ 3rd is correctly applied by the learned tribunal. Multiplier of 15 was also correctly applied by the learned tribunal. A sum of ₹20,000/- awarded towards costs of treatment and transportation by the learned tribunal is maintained.

Claimants are entitled to a sum of ₹15,000/- instead of ₹25,000/- towards funeral expenses and ₹15,000/- instead of ₹10,000/- towards loss of estate. Treatment and transportation charges as assessed by the learned tribunal are maintained. Instead of a sum of ₹1,00,000/- towards loss of love and affection, the appellants are entitled to a sum of ₹40,000/- towards loss of parental consortium in terms of the judgement of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) R.C.R (Civil), 333** and decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016, titled as 'Shri Ram General Insurance Company Limited Vs. Beant Kaur and others', and other connected matters.

Compensation towards the claimants on account of death of Gurcharan Singh, is thus re-worked as under:-

1.	Total income of deceased	₹6000/- p.m.
2.	Total income after additional of future prospects at the rate of 25%	₹6000/- (₹6000/-+₹1500/-) i.e. ₹7500/-
3.	Deduction of 1/ 3 rd on account of personal expenses	₹7500/- (₹7500*1/3=₹2500/-) = ₹5000/-
4.	Annual dependency after applying multiplier of 15	₹5000/- x 12 x 15= ₹9,00,000/-
5.	Funeral expenses	₹15,000/-

6.	Loss of estate	₹15,000/-
7.	Loss of parental consortium to the appellants	₹40,000/-
8.	Treatment and transportation charges	₹20,000/-
	Total Compensation =	₹9,90,000/-

Claimants shall be entitled to interest on the entire compensation amount at the rate of 7.5% instead of 7% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimants shall stand deducted. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

Copy of the order be conveyed to the appellant/appellants at the address available on the file. In case of any grievance, the appellant/appellants are at liberty to move an appropriate application within two months of receipt of a copy of this order.

With the abovesaid modification in the amount of compensation, FAO No. 3685 of 2015 and FAO No. 3686 of 2015 are disposed of.

26.04.2019

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.