

**FAO-5219-2015 and
FAO-6448-2015 (O&M)**

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

**FAO- 5219-2015
Date of Decision: May 15, 2019**

Sourabh

..... Appellants(s)

Versus

Wazir Singh and another

..... Respondent(s)

with

FAO- 6448-2015

Rekha and others

..... Appellants(s)

Versus

Wazir Singh and another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kartar Singh Malik-I, Advocate
for the appellant in FAO-5219-2015.

Mr. Pankaj Mehta, Advocate
for the appellants in FAO-6448-2015.

Mr. Lalit Garg, Advocate
for respondent no.2 – insurance company.

LISA GILL, J.(oral)

This judgment shall dispose of FAO-5219-2015 (Sourabh Vs. Wazir Singh and another) as well as FAO-6448-2015 (Rekha and others Vs. Wazir Singh and another) as both the above noted appeals arise out of award dated 11.03.2015, passed by the learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal).

Brief facts necessary for the adjudication of the cases are that on 07.07.2013 Sanjeev Sharma (since deceased) and Sourabh were going to Rohtak from village Mayana on a motorcycle bearing registration No.HR-12U-0336. Sourabh was driving the motorcycle and the deceased was riding pillion. At about 10:30 p.m. when they reached near the water works, within the area of Rohtak, their motorcycle was hit by another motorcycle bearing registration No. HR-12N-9458, which came from the opposite direction being driven at a very high speed and in a rash and negligent manner by Wazir Singh - respondent no.1. As a result thereof, both of them fell down on the road and sustained multiple grievous injuries. Sanjeev Sharma died at the spot. It is pleaded that Sanjeev Sharma was employed as a Cook-cum-Supervisor with a caterer under the name and style of Vishwas Caterers. He was also claimed to be working as a decorator in marriage parties, earning Rs.20,000/- per month from both the vocations. His wife and two minor sons were dependent upon him.

Sourabh, the pillion rider was taken to PGIMS Rohtak, where he remained admitted as indoor patient upto 28.07.2013. Later he was operated upon as he received pelvic injury. After discharge he continued to visit the hospital for follow-up treatment and was again admitted in PGIMS, Rohtak for some days for a second operation. It is pleaded that Sourabh was 28 years old at the time of accident and was employed as a driver. He suffered permanent disability due to the injuries received by him in the accident in question. It was pleaded that the accident took place due to the rash and negligent driving of the offending motorcycle bearing registration No. HR-12N-9458, by its driver respondent no.1 - Wazir Singh.

Two claim petitions i.e. subject matter of the present appeals, were filed under Section 166 of the Motor Vehicles Act, 1988 before the learned Tribunal, one by injured Sourabh seeking compensation on account of injuries received by him in the above said accident and another by the widow and minor children of deceased Sanjeev Sharma, seeking compensation on account of his death.

I have heard learned counsel for the parties and have gone through the file.

FAO-6448-2015

This appeal has been filed by the legal heirs of deceased Sanjeev Sharma claiming compensation on account of death of Sanjeev Sharma in the motor vehicle accident, which took place on 07.07.2013, due to the rash and negligent driving of the offending tractor bearing registration No. HR-12N-9458 by its driver Wazir Singh-respondent no.1.

Learned Tribunal while concluding that the accident took place due to the rash and negligent driving of the offending motorcycle bearing registration No. HR-12N-9458, by its driver respondent no.1 – Wazir Singh, awarded a sum of Rs.8,45,000/-, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	6,000/- per month
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	$6,000 - 1/3^{\text{rd}} = 4,000/-$
3.	Loss of dependency after applying multiplier of 15	$4,000 \times 12 \times 15 = 7,20,000/-$
4.	Loss of consortium	1,00,000/-
5.	Funeral expenses	25,000/-
	Total	8,45,000/-

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants submits that increment on account of future prospects be awarded and compensation be worked out in terms of the judgments of the 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.***

There is no dispute regarding the deceased Sanjeev Sharma being 35 years of age at the time of the accident. Learned counsel for the appellants does not raise any serious dispute regarding income of the deceased as assessed by the learned Tribunal as Rs.6,000/- per month. 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. Deduction of 1/3rd was correctly effected by learned Tribunal. Multiplier of 16 instead of 15 has to be applied. Claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate instead of Rs. 25,000/- awarded by the learned Tribunal towards funeral expenses. Instead of a sum of Rs. 1,00,000/- awarded on account of loss of consortium, appellant no.1 is entitled to Rs.40,000/-. Appellants no.2 and 3 are also entitled to a sum of Rs.40,000/- towards loss of parental 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:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income # 6,000 – 1/3 rd = 4,000/-	48,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	48,000+19,200 (48,000 x 40%) = 67,200/-
3.	Total dependency after applying a multiplier of 16	67,200 x 16 = 10,75,200/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Loss of consortium to appellant no.1	40,000/-
7.	Loss of consortium (parental) to appellants no. 2 & 3	40,000/-
	Grand Total	Rs.11,85,200/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants are entitled to interest at the rate of 7.5% per annum on the enhanced 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.

FAO-5219-2015

This appeal has been filed by Sourabh claiming compensation on account of injuries suffered by him in the above said accident.

Learned Tribunal awarded a sum of Rs.2,70,000/- to appellant-claimant Sourabh, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Medical treatment and other expenses	70,000/-
2.	Loss of earning	1,50,000/-
3.	Pain and sufferings	50,000/-
	Total	2,70,000/-

Appellant Sourabh is proved to have suffered permanent disability to the extent of 40% on account of loss of flexion at the hip joint and loss of internal rotation of the hip joint. Disability certificate issued by the PGIMS, Rohtak is on record. It is further borne out from the record that the claimant Sourabh remained admitted in PGIMS, Rohtak from 07.07.2013 to 28.07.2013 and thereafter, from 24.09.2013 to 02.10.2013. PW-2 Vikram, MRC, PGIMS, Rohtak has proved the medical records/discharge card issued by PGIMS, Rohtak.

As per the disability certificate issued by PGIMS, Rohtak, the claimant has suffered 40% permanent disability on account of the injuries received by him in the accident. It is, however, a matter of record that no doctor or expert has been examined by the claimant to indicate the impact of the said injuries on the vocation followed by the claimant. The appellant was working as a driver at the time of the accident. Keeping in view the factual matrix of the case and evidence on record, functional disability of the appellant is assessed as 50% in this case.

There is no dispute regarding the age of the appellant to be 28 years at the time of the accident. In so far as his vocation is concerned, learned Tribunal has accepted the claimant Sourabh to be working as a driver at the time of the accident. Minimum wage of a driver in the state of Haryana at the time of accident was admittedly about Rs.6,000/- per month. Income of the claimant is thus assessed as Rs.6,000/- per month and an increment of 40% on account of future prospects is afforded.

Compensation to the appellant is thus required to be reworked in terms of the guidelines laid down in Sayed Sadiq etc. Vs. Divisional Manager, United India Insurance Company, 2014(1) RCR (Civil) 765. Loss of income is assessed as Rs.3,000/- per month (6,000/- x 50%). With increase in income on account of future prospects at the rate of 40%, the amount is [3,000 + 1,200 (3,000 x 40%)] Rs.4,200/- per month i.e. Rs. 50,400/- per annum. Multiplier of 17 is to be applied. Loss of earnings is, thus, assessed as Rs.8,56,800/- [50,400 x 17].

Appellant is also entitled to a sum of Rs.1,00,000/- towards pain and suffering instead of Rs.50,000/- awarded by learned Tribunal on account of pain and suffering. Appellant is further entitled to a sum of Rs.50,000/- for loss of amenities of life. Instead of a consolidated amount of Rs.70,000/- awarded by the learned Tribunal on account of medical expenses, the appellant is held entitled to Rs.55,500/- on account of medical expenses as medical bills Ex.P-5 to Ex.P-18 for a sum of Rs.54,973/-, stand proved on record. Claimant is also entitled to Rs.50,000/- towards future medical expenses. He is further entitled to Rs.10,000/- each towards special

diet, transportation charges and attendant charges.

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

1.	Disability	8,56,800/-
2.	Medical expenses	55,500/-
3.	Transportation charges	10,000/-
4.	Attendant charges	10,000/-
5.	Special diet	10,000/-
6.	Pain and suffering	1,00,000/-
7.	Loss of amenities	50,000/-
8.	Future medical expense	50,000/-
	Total	11,42,300/-

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 on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization.

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

May 15, 2019.

Sunil

(LISA GILL)
JUDGE

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