

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

**1. Date of decision: 11.07.2019
FAO No.5690 of 2015 (O&M)**

Palwinder Kaur and others

....Appellants

Versus

Jaswinder Singh and others

....Respondents

2. FAO No.3027 of 2016 (O&M)

Smt. Baljit Kaur and another

....Appellants

Versus

Jaswinder Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shakti Mehta, Advocate,
for the appellants (in FAO-5690-2015)
and Mr. Narinder Sharma, Advocate,
for the appellants (in FAO-3027-2016).

None for the respondents.

RITU BAHRI J. (Oral)

This judgment will dispose of FAO No.5690 of 2015 and FAO No.3027 of 2016 together as common questions of law and facts are involved in both these appeals being arisen out of one and the same award.

Both the above said appeals have been filed by claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') vide award dated 10.07.2015, on account of death of Lakhwinder

Singh in a motor vehicular accident which took place on 05.07.2012. Appellants in **FAO No.5690 of 2015** are widow and children, whereas appellants in **FAO No.3027 of 2016** are parents of deceased Lakhwinder Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 05.07.2012, Lakhwinder Singh (since deceased) was going from Panchkula to Morinda on a motorcycle. At about 5.00 P.M., when he reached near Brick Kiln at village Dhangrali, a Scorpio Jeep bearing registration No. CH-01-AF-2781 being driven by Jaswinder Singh-respondent No.1 in a rash and negligent manner came from the opposite side and struck against the motorcycle of Lakhwinder Singh, as a result of which, he (Lakhwinder Singh) received injuries and died. With regard to the accident, FIR No.143 dated 07.09.2012, under Sections 279/304-A/427 IPC was registered against respondent No.1 at Police Station, Morinda. Consequently, the claimant-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by respondent No.1, as a result of which Lakhwinder Singh has died and thus, returned finding on issue no.1 in favour of the claimants. This finding was rightly given on the basis of the deposition of Palwinder Singh (CW-2), who was an eye witness of the accident. Further, the claimants have proved on record copy of FIR Ex.C1, postmortem report as Ex. P20 and medical certificate of cause of death as Ex.P21.

On the basis of evidence adduced by the claimants, income of the deceased was assessed as Rs.15,500/- per month. In this income, 50% addition was made on account of future prospects. By doing so, total income came to Rs.23,250/- per month i.e. Rs.2,79,000/- per annum, out of this income, 1/4th amount was deducted towards personal expenses of the deceased, which came to Rs.2,09,250/- per annum (2,79,000 – 69,750). The deceased was 35 years of age at the time of accident/death. Multiplier of 16 was applied by the Tribunal. After applying the multiplier of 16, dependency of claimants (appellants) came to Rs.33,48,000/- (2,09,250 x 16). In addition to it, Rs.25,000/- were awarded to the parents (appellants in FAO-3027-2016) on account of loss of estate, Rs.25,000/- as funeral expenses, Rs.1,00,000/- to the widow on account of loss of consortium and Rs.1,00,000/- to the children as loss of care and guidance. Hence, appellant-claimants were found entitled to total compensation of Rs.35,98,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

Learned counsel for the claimants has informed that appeal i.e. FAO No.5688 of 2015 (titled as United India Insurance Company Ltd. vs. Palwinder Kaur and others) filed by the Insurance Company against the impugned award has already been dismissed vide order dated 19.02.2016 passed by this Court.

Keeping in view the said fact, this appeal is restricted and to be

decided only on the question of quantum of compensation.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Parties are not in dispute with respect to the findings given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1.

Learned counsel for the claimants-appellants has argued that the deceased was getting salary of Rs.15,500/- per month when he was working with SSECL, Industries Ltd. D-146, Industrial Area, Phase-VII, Mohali. However, as per Ex.C5, he had already resigned from this company. After resigning, he had joined another company i.e. M/s V.K. Gupta & Associates Engineers and Contractors, O/o SCO 26, Sector 14, Panchkula. Darshan Kumar Gupta, Director Operation of the said company, while appearing as PW-4, stated that the deceased had joined their office on 25.05.2012. As per Ex.CW4/D, after death, salary of the deceased was paid to his wife. Learned counsel further argued that once, salary of Rs.32,500/- for the period from 01.06.2012 to 30.06.2012 was received by wife of the deceased, in that eventuality, his appointment in the new company cannot be denied. Learned counsel further stated that after the accident, Lakhwinder Singh remained admitted in hospital and the company has paid salary to his wife by treating him to be on medical leave.

In view of the above arguments, appointment of deceased- Lakhwinder Singh with M/s V.K. Gupta & Associates Engineers and Contractors cannot be denied. As per document Ex.C3, the deceased was getting salary of Rs.32,500/- per month. Accordingly, after deducting the income tax, income of deceased is being taken as Rs.28,000/- per month. In

the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77, **National Insurance Company Limited Vs. Pranay Sethi and others**, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) and **Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors.**, 2018 (4) RCR (Civil) 333, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.28,000/- per month
(ii)	40% of (i) above to be added as future prospects	28,000 + 11,200 = Rs.39,200/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	39,200 – 9800 = Rs.29,400/-
(iv)	Compensation after multiplier of 16 is applied	Rs.29,400/- x 12 x 16 = Rs.56,44,800/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of consortium to claimant No.1- widow	Rs.40,000/-
(viii)	Loss of filial consortium to the children-claimant Nos.2 and 3	Rs.80,000/- (Rs.40,000/- each)
(ix)	Loss of filial consortium to parents (appellants in FAO 3027-2016)	Rs.80,000/- (Rs.40,000/- each)
(x)	TOTAL COMPENSATION AWARDED	Rs.58,74,800/-
(xi)	Enhanced amount of compensation	Rs.58,74,800 – 35,98,000 = Rs.22,76,800/-

The enhanced amount of compensation of **Rs.22,76,800/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization keeping in view the judgment passed by Hon'ble the

Supreme Court in **Dara Singh @ Dhara Banjara vs. Shyam Singh Verma & others**, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019), decided on 01.05.2019. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeals i.e. FAO No.5690 of 2015 and FAO No.3027 of 2016 are partly allowed.

(RITU BAHRI)
JUDGE

11.07.2019

ajp

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