

**FAO No.5163-2016 (O&M),
FAO No. 8136-2015 (O&M) and
FAO No.8137-2015 (O&M)**

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

**FAO No.5163-2016 (O&M)
Date of Decision: December 13, 2019**

1. Bijender and others Appellants(s)

Versus

Surender Kumar and others Respondent(s)

FAO No. 8136-2015 (O&M)

2. Mange Ram and others Appellants(s)

Versus

Surender Kumar and others Respondent(s)

FAO No.8137-2015 (O&M)

3. Pancha Ram and others Appellants(s)

Versus

Surender Kumar and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

**Present: Mr. Gaurav Singla, Advocate
for the appellants in FAO-5163-2016.**

**Mr. S.K. Bawa, Advocate
for the appellants in FAO Nos.8136 and 8137 of 2015.**

**Ms. Neha Rana, Advocate for Mr. Virendra Rana, Advocate
for respondent no.1.**

None for respondent no. 2, despite service.

**Mr. S.S. Sidhu, Advocate
for respondent no.3 - insurance company.**

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LISA GILL, J. (oral)

This judgment shall dispose of FAO-5163-2016 (Bijender and others Vs. Surender Kumar and others), FAO-8136-2015 (Mange Ram and others Vs. Surender Kumar and others) as well as FAO-8137-2015 (Pancha Ram and others Vs. Surender Kumar and others) as all the above noted appeals arise out of a common award dated 31.10.2013, passed by the learned Motor Accident Claims Tribunal, Nuh at Mewat (hereinafter referred to as 'the Tribunal').

Brief facts necessary for adjudication of the cases are that on 01.09.2011, Banwari Lal, Mange Ram, Jitender and Manoj were travelling on a motorcycle. They were going to village Gudha to meet the Sarpanch. When they reached about 1/2 kilometer away from village Shaikhpur towards village Gudha, a bus bearing registration no. HR-55-H-9857, driven by respondent no.1, came from the side of village Gudha in a rash and negligent manner and struck against the motorcycle of the deceased, upon which Jitender Kumar, Banwari Lal and Manoj Kumar sustained multiple injuries on their persons. All the injured were admitted in Apex Hospital and Trauma Centre, Dharuhera, who succumbed to the injuries. FIR No. 293 dated 02.09.2011 under Sections 279, 337, 338, 304-A/427 IPC was registered against respondent no.1. It was pleaded that the accident took place due to the rash and negligent driving of the offending bus bearing registration No. HR-55-H-9857, by its driver respondent no.1-Surender Kumar.

Three 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.

Learned Tribunal on considering the evidence on record concluded that Banwari Lal, Jitender and Manoj lost their lives due to the injuries received by them in the motor vehicle accident, which took place on 01.09.2011, due to the rash and negligent driving of the offending bus bearing registration No.HR-55-H-9857, by its driver Surender Kumar - respondent no.1. The said finding has attained finality.

Learned counsel for the appellants submits that income of all the deceased has been assessed to be even lesser than that of an unskilled labourer prevalent in the State of Haryana at the time of the accident i.e. on 01.09.2011. It is submitted that increment towards future prospects has not been afforded by the learned Tribunal in all the claim petitions. It is, however, fairly stated that compensation under the conventional heads be re-worked in all the appeals in terms of the judgment 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**. It is thus prayed that compensation in all the appeals be enhanced.

Learned counsel for the insurance company, however, refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. Dismissal of this appeal is prayed for.

FAO No.5163-2016

This appeal has been filed by the appellants seeking enhancement of the compensation awarded by the learned Tribunal on account of death of Jitender, who was 24 years old. Learned Tribunal awarded a sum of Rs.7,73,000/-, the detail of which is as under:-

Sr. No.	Heads	Calculations
1.	Income	4,500/- per month
2.	Income after deducting 1/3 rd as personal living expenses	3,000/-
3.	Compensation after applying multiplier of 18	3,000 x 12 x 18 = 6,48,000/-
4.	Loss of consortium	1,00,000/-
5.	Funeral expenses	25,000/-
	Total	7,73,000/-

There is no evidence regarding vocation or exact income of the deceased Jitender. Therefore, his income is assessed with reference to the minimum wage available to an unskilled labourer in the State of Haryana at the time of accident. Income of an unskilled labourer in the State of Haryana at the relevant time was Rs.4,643/- per month. Accordingly, income of the deceased is assessed as Rs.4,700/- per month.

Keeping in view the judgment of the Hon'ble supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, 40% increment has to be afforded on account of future prospects. The claimants in this case are the widow and parents of the deceased, therefore, deduction of 1/3rd was correctly effected by learned

Tribunal. As the deceased was admittedly 25 years old at the time of the accident, multiplier of 18 was correctly applied by learned Tribunal. However, instead of Rs.25,000/- awarded by the learned Tribunal towards funeral expenses, claimants are entitled to a sum of Rs.15,000/- on account of funeral expenses besides a sum of Rs.15,000/- on account of loss of estate. The appellants-claimants are not entitled to Rs.1 lakh awarded by the learned Tribunal towards loss of consortium, however, appellants no.1 and 2-parents are entitled to a sum of Rs.40,000/- on account of loss of filial consortium and appellant no.3-widow of the deceased is entitled to a sum of Rs.40,000/- towards loss of spousal 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-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	4,700 x 12 = 56,400/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	56,400+22,560 (56,400 x 40%) = 78,960/-
3.	Income after 1/3 rd deduction on account of personal expenses	78,960 – 26,320 (78,960 x 1/3) = 52,640/-

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4.	Total dependency after applying a multiplier of 18	52,640 x 18 = 9,47,520/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Loss of spousal consortium to widow	40,000/-
8.	Loss of filial consortium to parents	40,000/-
	Grand Total	Rs.10,57,520/-

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 on the enhanced amount from the date of filing of the claim petition till realization. The appellants are however, not entitled to interest for the period of delay in filing of this appeal, which was condoned while specifically observing so. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

FAO No. 8136-2015

This appeal has been filed by the appellants seeking enhancement of the compensation awarded by the learned Tribunal on account of death of Manoj Kumar, who was 28 years old at the time of accident/death. Learned Tribunal awarded a sum of Rs.8,13,500/- to the claimants, the detail of which is as under:-

Sr. No.	Heads	Calculations
1.	Income	4,500/- per month
2.	Income after deducting 1/4 th as personal living expenses	3,375/-
3.	Compensation after applying multiplier of 17	3,375 x 12 x 17 = 6,88,500/-
4.	Loss of consortium	1,00,000/-
5.	Funeral expenses	25,000/-
	Total	8,13,500/-

There is no evidence regarding vocation or exact income of the deceased. Therefore, his income is assessed with reference to the minimum wage available to an unskilled labourer in the State of Haryana at the time of accident. Income of an unskilled labourer in the State of Haryana at the relevant time was Rs.4,643/- per month. Accordingly, income of the deceased Manoj Kumar is assessed as Rs.4,700/- per month.

Keeping in view the judgment of the Hon'ble supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, 40% increment has to be afforded on account of future prospects. The claimants in this case are the parents, widow and three minor children of the deceased, therefore, deduction of 1/4th was correctly effected by learned Tribunal. As the deceased was admittedly 28 years old at the time of the accident, multiplier of 17 was correctly applied by learned Tribunal. However, instead of Rs.25,000/- awarded by the learned Tribunal towards funeral expenses, claimants are entitled to a sum of Rs.15,000/- on account of funeral expenses besides a sum of Rs.15,000/- on account of loss of

estate. The appellants-claimants are not entitled to Rs.1 lakh awarded by the learned Tribunal towards loss of consortium, however, appellants no.1 and 2-parents are entitled to a sum of Rs.40,000/- on account of loss of filial consortium. Appellant no.3-widow of the deceased is entitled to a sum of Rs.40,000/- on account of spousal consortium and appellants no.4 to 6-minor children of the deceased are 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-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	4,700 x 12 = 56,400/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	56,400+22,560 (56,400 x 40%) = 78,960/-
3.	Income after 1/4 th deduction on account of personal expenses	78,960 – 19,740 (78,960 x 1/4) = 59,220/-
4.	Total dependency after applying a multiplier of 17	59,220 x 17 = 10,06,740/-
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/-

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9.	Loss of filial consortium to parents	40,000/-
	Grand Total	Rs.11,56,740/-

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 on the enhanced amount from the date of filing of the claim petition till realization. The appellants are however, not entitled to interest for the period of delay in filing of this appeal, which was condoned while specifically observing so. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

FAO No. 8137-2015

This appeal has been filed by the appellants seeking enhancement of the compensation awarded by the learned Tribunal on account of death of Banwari Lal, who was 28 years old at the time of accident/death. Learned Tribunal awarded a sum of Rs.8,13,500/- to the claimants, the detail of which is as under:-

Sr. No.	Heads	Calculations
1.	Income	4,500/- per month
2.	Income after deducting 1/4 th as personal living expenses	3,375/-

3.	Compensation after applying multiplier of 17	3,375 x 12 x 17 = 6,88,500/-
4.	Loss of consortium	1,00,000/-
5.	Funeral expenses	25,000/-
	Total	8,13,500/-

There is no evidence regarding vocation or exact income of the deceased Banwari Lal. Therefore, his income is assessed with reference to the minimum wage available to an unskilled labourer in the State of Haryana at the time of accident. Income of an unskilled labourer in the State of Haryana at the relevant time was Rs.4,643/- per month. Accordingly, income of the deceased is assessed as Rs.4,700/- per month.

Keeping in view the judgment of the Hon'ble supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, 40% increment has to be afforded on account of future prospects. The claimants in this case are the widow, minor daughter and parents of the deceased, therefore, deduction of 1/4th was correctly effected by learned Tribunal. As the deceased was admittedly 28 years old at the time of the accident, multiplier of 17 was correctly applied by learned Tribunal. However, instead of Rs.25,000/- awarded by the learned Tribunal towards funeral expenses, claimants are entitled to a sum of Rs.15,000/- on account of funeral expenses besides a sum of Rs.15,000/- on account of loss of estate. The appellants-claimants are not entitled to Rs.1 lakh awarded by the learned Tribunal towards loss of consortium, however, appellants no.1 and 2-parents of the deceased are entitled to a sum of Rs.40,000/- on account of

loss of filial consortium. Additionally, appellant no.3-widow of the deceased is entitled to a sum of Rs.40,000/- towards loss of spousal consortium and appellant no.4-minor child of the deceased is 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-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	4,700 x 12 = 56,400/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	56,400+22,560 (56,400 x 40%) = 78,960/-
3.	Income after 1/4 th deduction on account of personal expenses	78,960 – 19,740 (78,960 x 1/4) = 59,220/-
4.	Total dependency after applying a multiplier of 17	59,220 x 17 = 10,06,740/-
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.11,56,740/-

Needless to say, the amount already awarded by the learned

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Tribunal shall stand deducted from the compensation as detailed above.

Claimants shall be 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.

The appellants are however, not entitled to interest for the period of delay in filing of this appeal, which was condoned while specifically observing so.

Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

With the modification in the amount of compensation, all the three appeals are disposed of.

December 13, 2019.

Sunil

**(LISA GILL)
JUDGE**

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