

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

1 **FAO-6337-2015(O&M)**
Date of Decision : September 24, 2019

NEW INDIA ASSURANCE COMPANY LTDAppellant

VERSUS

NAZAR SINGH AND ORSRespondents

2 **FAO-6338-2015**

NEW INDIA ASSURANCE COMPANY LTDAppellant

VERSUS

NAZAR SINGH AND ORSRespondents

3 **FAO-8385-2015(O&M)**

NAZAR SINGH AND ANRAppellants

VERSUS

SURJEET SINGH AND ORSRespondents

4 **FAO-8386-2015(O&M)**

NAZAR SINGH AND ANRAppellants

VERSUS

SURJEET SINGH AND ORSRespondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Man Mohan Singh, Advocate
for the appellant in FAOs-6337 and 6338-2015 and
for respondent No.3 in FAOs-8385 and 8386-2015.

Mr. Chirag Wadhwa, Advocate
for the appellants in FAOs-8385 and 8386-2015 and
for respondents No.1 and 2 in FAOs-6337 and 6338-2015.

NIRMALJIT KAUR, J. (Oral)

All the above mentioned four appeals shall stand decided by
this common order as the same arise out of the same award.

The appeals i.e. FAOs-6337 and 6338 of 2015 have been
filed on behalf of the Insurance Company for reduction of the
compensation on the ground of contributory negligence as well as on the
ground of quantum.

FAO-6337-2015

The question of contributory negligence was gone into detail
by the co-ordinate Bench of this Court on an earlier occasion when the
matter was listed for hearing on 9.4.2019. The Court has already rejected
the said ground by observing as under:-

“Consequently, with no evidence whatsoever having
been led either by the appellant-insurance company or the
driver and owner of the vehicle insured by the company,
i.e. the TATA Canter vehicle bearing registration no.HR-
62-4988, to the effect that Harman Singh, who was riding
motorcycle bearing registration no.HR-05X-5832, was in
any manner negligent in driving his vehicle, I would not
be inclined to reverse the finding of the Tribunal on issue
no.1 and consequently, that argument of learned counsel
for the appellant-insurance company is rejected.”

Coming to the quantum of compensation, learned counsel for the appellant submitted in FAO-6338-2015 that the deceased was only 16 years of age and the income has been assessed as Rs.6,700/- per month whereas, at that point of time, the minimum wages were Rs.5,547/-. Secondly, the future prospects should have been @ 40% and not @ 50%.

Learned counsel for respondents No.1 and 2 does not dispute the legal position but submitted that, if at all, it should be rounded off to Rs.6,000/- per month taking into account that both the mother and child died in the said accident. Agreeing with the same, this Court finds that the income should be assessed as Rs.6,000/- per month to be fair instead of Rs.6,700/- per month. Similarly, there is no dispute with respect to the future prospects which should have been granted @ 40% instead of @ 50%.

Accordingly, the award is modified as per the calculation provided as under:-

Sr. No.	Head	Amount assessed
1	Income	Rs. 6000 x 12 = Rs.72,000/- p.a.
2	Deduction @ ½	Rs.72000x ½ = 36,000/-
3	Future prospects @ 40%	Rs.36,000 x 40% = 14400 Rs.36,000+14400 = 50,400/-
4	Multiplier	Rs.50,400 x 18 = 9,07,200/-
5	Loss of love and affection	Rs.2,00,000/-
6	Funeral expenses	Rs.25,000/-
7	Total	Rs.11,32,000/-
8	Compensation awarded by the Tribunal	Rs.13,10,400/-

It is pointed out that the entire recovery of the amount was

stayed vide order dated 22.9.2015. Accordingly, the amount as per the above calculation i.e. Rs.11,32,000/- is modified to be now deposited before the concerned Tribunal within two months from today alongwith interest as per the award passed by the Tribunal. In case, the said amount is not deposited within two months, the Insurance Company shall be liable to pay interest @ 12% per annum after the expiry of the aforesaid period of two months. However, in case the excess amount beyond Rs.11,32,000/- has been deposited by the Insurance Company, the same shall be recovered.

Accordingly, the appeal i.e. FAO-6337-2015 filed by the Insurance Company is partly allowed as per the modification of the award mentioned above.

FAO-6338-2015

Similarly, in the present appeal i.e. FAO-6338-2015, learned counsel for the appellant-Insurance Company submitted that the income of Rs.9,500/- per month of deceased-Surender Kaur has been assessed on the higher side whereas it should have been Rs.5,547/- per month as per the minimum wages applicable at that point of time.

However, learned counsel for respondents No.1 and 2 while opposing the same has relied upon the judgment rendered by this Court in the case of **United India Insurance Co. Ltd. Vs. Sube Singh and others**, FAO No.218 of 2014 decided on 15.1.2014 wherein the Court did not interfere with the assessment of the deceased who was a housewife like in the present case wherein the Tribunal had fixed the notional

income of Rs.9,000/- per month while relying on judgment in the case of **Lata Wadhwa and others Vs. State of Bihar and others**, reported as 2001(4) RCR (Civil) 673. In the case of Lata Wadhwa (supra), the accident had taken place in the year 1981 where the income was assessed as Rs.3,000/- per month. The fact that the accident had taken place almost thirty five years thereafter, the evaluation of the contribution of a housewife at that point of time cannot be equated at the same rate as in the year 2014. The observations rendered in the United India Insurance Co. Ltd's case (supra) while upholding the notional income qua the housewife at Rs.9,000/-, the same held as under:-

“Learned counsel for the appellant has argued that even while noticing that the income of a skilled worker in 2012 was approximately Rs.8000/- the Tribunal has wrongly assessed the income of the deceased as Rs.9000/-. As per him once the notional income had been taken a deduction had to be made for personal expenses. This argument is flawed. In **Lata Wadhwa and others v. State of Bihar and others** reported as 2001(4) RCR (Civil) 673 (where the accident had taken place in 1981) the Hon'ble Supreme Court evaluated the contribution of a house wife at Rs.3000/-per month. The accident in the present case took place after 23 years. In my considered opinion to tag a house wife as a 'skilled worker' alone does not do complete justice to her multifarious role as a home manager.”

In view of the above, this Court finds no ground to interfere in the award dated 3.7.2015 qua the compensation awarded to the claimants qua deceased-Surender Kaur wherein the income was assessed

as Rs.9,000/- per month taking into account that the accident is after thirty five years of the date of the accident in the case of Lata Wadhwa (supra).

In view of the above, the appeal i.e. FAO-6338-2015 filed by the Insurance Company is dismissed.

While issuing notice of motion in FAO-6338-2015, the interim order dated 22.9.2015 was passed staying the recovery of 50% of the amount in question. The balance amount be deposited forthwith as per the direction of the Tribunal to be disbursed to the claimants.

FAOs-8385 and 8386-2015

In view of the same reasons and grounds as above, the appeals i.e. FAOs-8385 and 8386-2015 filed by the claimants too have to be dismissed.

Dismissed accordingly.

September 24, 2019

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**(NIRMALJIT KAUR)
JUDGE**

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No