

**FAO No. 7933-2015 (O&M) and
FAO No. 8099-2015 (O&M)**

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

**FAO- 7933-2015 (O&M)
Date of Decision: December 11, 2019**

1. Rama Devi and others
..... Appellants(s)

Versus

Jitender Singh and others
..... Respondent(s)

FAO- 8099-2015 (O&M)

2. Naina Devi @ Naian Devi and others
..... Appellants(s)

Versus

Jitender Singh and others
..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rahul Vats, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent no.3 - insurance company.

LISA GILL, J. (oral)

This judgment shall dispose of FAO-7933-2015 (Rama Devi and others Vs. Jitender Singh and others) as well as FAO-8099-2015 (Naina Devi @ Naian Devi and others Vs. Jitender Singh and others) as both the above noted appeals arise out of a common award dated 14.01.2015, passed by the learned Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal).

Brief facts necessary for adjudication of the case are that on 06.09.2011, Ram Niwas (since deceased) along with Bhan Singh @ Chander Bhan (since deceased), his wife and one Parmod Kumar were going on foot towards Dashmesh Nagar, Tohana from Dhani Dashmesh Nagar on the correct left side of the road. At about 8:30 A.M., one private bus bearing registration No. HR-62-1555, being driven by respondent no.1 – Jitender Singh, in a rash, negligent, fast and zigzag manner, struck against Chander Bhan @ Bhan Singh, Ram Niwas and Parmod Kumar, due to which, Chander Bhan was crushed under the bus. He received multiple serious injuries, due to which he died on the spot. Ram Niwas and Parmod Kumar also received multiple serious injuries on their persons. Both the injured were taken to the hospital but due to his critical condition, Ram Niwas was referred to PGIMS, Rohtak, where he also succumbed to his injuries on the same day at about 8:00 P.M. It is pleaded that the accident took place due to the rash and negligent driving of the offending bus bearing registration No. HR-62-1555, by its driver respondent no.1-Jitender 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, which were decided by a common award dated 14.01.2015. FAO-7933-2015 has been filed by the widow and seven minor children of the deceased Ram Niwas and FAO-8099-2015 has been filed by the widow, two minor children and mother of the deceased Chander Bhan, seeking enhancement of the compensation awarded by the learned Tribunal.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver Jitender Singh - respondent no.1. Finding of the learned Tribunal on this issue has attained finality as there is no challenge to the same.

Learned counsel for the appellants in both the appeals while not raising any objection qua the income or the age of the deceased as assessed by the learned Tribunal, submits that increment towards future prospects has not been afforded by the learned Tribunal. It is, however, fairly stated that compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court **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 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. Excessive compensation has already been awarded under the conventional heads itself. Dismissal of the appeals is prayed for.

FAO-7933-2015

Learned Tribunal while assessing the age of deceased Ram Niwas to be 38 years old, as per the postmortem report and while assessing his income to be Rs.4,500/- per month, awarded a sum of Rs.7,58,000/-, the detail of which is as under:-

Sr. No.	Heads	Calculations
1.	Income	4,500/-
2.	Income after deducting 1/5 th as personal living expenses	3,600/-
3.	Compensation after applying multiplier of 15	3,600 x 12 x 15 = 6,48,000/-
4.	Loss of consortium, love and affection etc.	1,00,000/-
5.	Funeral expenses and last rites and transportation	10,000/-
	Total	7,58,000/-

There is no dispute regarding death of Ram Niwas aged 38 years in the motor vehicle accident, which took place on 06.09.2011, due to the rash and negligent driving of the offending bus bearing registration No. HR-62-1555, by its driver Jitender Singh-respondent no.1. There is also no dispute regarding the income of the deceased i.e. Rs.4,500/- p.m. as assessed by the learned Tribunal.

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 seven minor children of the deceased, therefore, deduction of 1/5th was correctly applied by the learned Tribunal. As the deceased was admittedly 38 years old at the time of the accident, multiplier of 15 was correctly applied by learned Tribunal. However, instead of Rs.10,000/- awarded by the learned Tribunal towards funeral expenses/last rites and transportation, claimants are entitled to a sum of Rs.15,000/- on account of funeral expenses besides a sum of

Rs.15,000/- towards loss of estate. The appellants-claimants are not entitled to Rs.1 lakh awarded by the learned Tribunal towards loss of consortium etc., however, appellant-widow is entitled to a sum of Rs.40,000/- on account of loss of spousal consortium. Appellants no.2 to 8-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	4,500 x 12 = 54,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	54,000+21,600 (54,000 x 40%) = 75,600/-
3.	Income after 1/5 th deduction on account of personal expenses	75,600 – 15,120 (75,600 x 1/5) = 60,480/-
4.	Total dependency after applying a multiplier of 15	60,480 x 15 = 9,07,200/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Loss of consortium to appellant no.1	40,000/-
8.	Loss of parental consortium to appellants no. 2 to 8	40,000/-
	Grand Total	Rs.10,17,200/-

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. 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-8099-2015

This appeal has been filed by the appellants-claimants, seeking enhancement of the compensation awarded by learned Tribunal on account of death of Chander Bhan, aged 30 years, in the accident in question. Learned Tribunal while assessing income of the deceased to be Rs.4,500/- per month, awarded a sum of Rs.7,98,500/-, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	4,500/-
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, love and affection etc.	1,00,000/-
5.	Funeral expenses and last rites and transportation	10,000/-
	Total	7,98,500/-

There is no dispute regarding death of Chander Bhan aged 30

years in the motor vehicle accident, which took place on 06.09.2011, due to the rash and negligent driving of the offending bus bearing registration No.HR-62-1555, by its driver Jitender Singh-respondent no.1. There is also no dispute regarding the income of the deceased i.e. Rs.4,500/- p.m. as assessed by the learned Tribunal.

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, two minor children and mother of the deceased, therefore, deduction of 1/4th was correctly applied by the learned Tribunal. As the deceased was admittedly 30 years old at the time of the accident, multiplier of 17 was correctly applied by learned Tribunal. However, instead of Rs.10,000/- awarded by the learned Tribunal towards funeral expenses/last rites and transportation, 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 etc., however, appellant no.1-widow is entitled to a sum of Rs.40,000/- on account of loss of spousal consortium. Additionally, appellants no.2 and 3-minor children of the deceased are entitled to a sum of Rs.40,000/- towards loss of parental consortium and appellant no.4-mother of the deceased is entitled to a sum of Rs.40,000/- towards filial 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	4,500 x 12 = 54,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	54,000+21,600 (54,000 x 40%) = 75,600/-
3.	Income after 1/4 th deduction on account of personal expenses	75,600 – 18,900 (75,600 x 1/4) = 56,700/-
4.	Total dependency after applying a multiplier of 17	56,700 x 17 = 9,63,900/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Loss of consortium to appellant no.1	40,000/-
8.	Loss of parental consortium to appellants no. 2 and 3	40,000/-
9.	Loss of parental consortium to appellant no. 4	40,000/-
	Grand Total	Rs.11,13,900/-

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.

**FAO No. 7933-2015 (O&M) and
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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, both the appeals are disposed.

December 11, 2019.

Sunil

**(LISA GILL)
JUDGE**

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