

FAO No. 7561 of 2016 (O&M)

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

FAO No. 7561 of 2016 (O&M)

Date of Decision: December 09, 2019

Ramesh Kumar

..... Appellants(s)

Versus

Sonu and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. K.S. Dhanora, Advocate
for the appellant.

Service upon respondents no.1 & 2 dispensed with
vide order dated 21.11.2019.

Mr. Subhash Goyal, Advocate
for respondent no.3-insurance company.

LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the appellant-claimant vide award dated 29.11.2014, passed by learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal) on account of death of Murti Devi in the motor vehicle accident, which took place on 30.07.2012.

In the motor vehicle accident, which took place on 30.07.2012, a number of persons died and many others suffered serious injuries. 37 claim petitions were filed seeking compensation on account of death of

some of the persons and for the injuries suffered by others. Learned Tribunal consolidated all the 37 claim petitions and decided them vide a common award dated 29.11.2014. It is pleaded in all the claim petitions that the deceased/injured, about 60 persons, all together had gone to Amarpura Dham (Rajasthan) for pilgrimage in an Eicher Canter bearing registration No.HR-64-2433. At about 3:00 AM, on 30.07.2012 they started their journey for returning back to Kalayat (Kaithal) in the above said vehicle, which was being driven by Mahipal son of Om Parkash, on a very moderate speed while observing all traffic rules. When they reached in the area of Sainiwas Railway Crossing on Rajgarh, Hissar Road, the offending truck bearing registration No. HR-58-A-5377, being driven by respondent no.1, in rash and negligent manner came from opposite side at a very fast speed, without blowing its horn. After coming on to the wrong side of the road, it struck against the Eicher Canter bearing registration No. HR-64-2433. As a result thereof, all occupants of the Eicher Canter received multiple, serious and grievous injuries. Gaje Singh, Jagmal, Balwan, Kajal, Mahipal, Rajinder and many other persons succumbed to their injuries at the spot, whereas some other passengers namely Banarsi, Gaurav, Kuldeep, Dhoop Singh son of Inder Singh etc. received multiple serious injuries on their persons. It is pleaded that the accident in question took place due to rash and negligent driving of respondent no.1, while driving the said offending truck. Case FIR No.142 dated 30.07.2012 under Sections 279, 337, 338 and 304-A IPC was registered against respondents no.1 and respondent no.1-A with regard to the said accident.

After considering the evidence on record, facts and circumstances, learned Tribunal concluded that the accident in question took place due to the rash and negligent driving of the offending truck bearing registration no. HR-58-A-5377 by its driver – respondent no.1 Sonu. It is further concluded by the learned Tribunal that there is an admission on the part of the claimants that there were as many as 70 to 80 passengers travelling in the canter. Wooden rafters were fitted in this canter, thereby converting it into a veritable double decker vehicle. Passengers were sitting on the wooden rafters as well. Due to the impact, the wooden rafters collapsed. Consequently, the passengers who were sitting on the said rafters, fell on the passengers sitting below. This in turn increased the number of casualties. Learned Tribunal held that the act of the passengers in sitting in this fashion amounts to contributory negligence, which was assessed to the extent of 10%. Compensation in varying amounts was awarded in the separate claim petitions as per the facts of each case.

Learned Tribunal in the present case awarded a sum of Rs.6,70,000/- as compensation to the claimants on account of death of Murti Devi, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income @ 6,200 per month	6,200 x 12 = 74,400 per annum
2.	Income after applying multiplier of 9	74,400 x 9 = 6,69,600/-
3.	Loss of love and affection	50,000/-
4.	Funeral expenses	25,000/-
	Total	Rs. 7,44,600 /-

Grand total after deducting 10% on account of contributory negligence	7,44,600 – 74,460 = 6,70,140/- (rounded off to Rs. 6,70,000/-)
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Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellant submits that income of the deceased has been incorrectly assessed by the learned Tribunal and it should be assessed as at least 10,000/- per month. It is further stated that under the conventional heads, the compensation be re-worked as per the judgments of **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., in Civil Appeal No.9581 of 2018 decided on 18.09.2018.** It is thus prayed that the amount of compensation awarded to the appellant be enhanced accordingly.

Learned counsel for the insurance company, however, submits that the impugned award dated 29.11.2014 does not call for any enhancement of the compensation as the same is just and reasonable in the facts and circumstances of the case. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute regarding the death of Murti Devi, aged 60 years, in the motor vehicle accident, which took place on 30.07.2012, due to the rash and negligent driving of the offending truck bearing registration No. HR-58-A-5377, by its driver Sonu-respondent no.1. The appellant

claimed that the deceased Murti Devi was getting pension of Rs.6200/- per month and was also earning Rs.1,800/- from other sources. Copy of passbook has been placed on record as Ex.P26 to prove the income of the deceased. Income of the deceased has been assessed as Rs.6,200/- per month, which is indeed unjustified in the given facts and circumstances of the case. It cannot be ignored that the deceased would necessarily be looking after her household work as well. Therefore, even if she is taken to be a housewife, her income cannot be assessed as Rs.6,200/- per month. Notional income of a house wife in respect of an accident, which took place in the year 2011, has been assessed as Rs.7,000/- per month in FAO No.3395 of 2015 titled as ***Ved Parkash and others Vs. Ram Sarup and others***, decided on 08.10.2018. In the case of ***Harpal Kaur and others Vs. Parmod Kumar and another***, FAO No.3680 of 2009, decided on 01.06.2016, income of Rs.9,000/- per month of a housewife, in respect to an accident which took place in 2013 has been upheld. Accident in the present case took place in July 2012. In this view of the matter, it is considered just and appropriate in the facts and circumstances of the case to assess income of the deceased to be Rs.7,000/- per month instead of Rs.6,200/- per month.

In terms of the judgment of Division Bench in ***Paramjeet Singh and another Vs. Dilbag Singh alias Bagga and others***, FAO No.3310 of 2012, decided on 16.05.2013, no deduction has to be effected. Multiplier of 9 was correctly applied by the learned Tribunal and the same is upheld. Instead of a sum of Rs. 25,000/- awarded by the learned Tribunal

on account of funeral expenses, appellant is entitled to Rs.15,000/- on account of funeral expenses besides a sum of Rs.15,000/- on account of loss of estate. Appellant is entitled to a sum of Rs.40,000/- towards loss of consortium instead of Rs.50,000/- awarded by the learned Tribunal on account of loss of love and affection.

Learned Tribunal has correctly deducted 10% of the awarded amount on account of contributory negligence.

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

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	7,000 p.m. i.e. Rs.84,000/- per annum
2.	Total dependency after applying a multiplier of 9	84,000 x 9 = 7,56,000/-
3.	Funeral expenses	15,000
4.	Loss of estate	15,000/-
5.	Loss of spousal consortium to appellant	40,000/-
6.	Total	Rs.8,26,000/-
7.	Grand total after deducting 10% on account of contributory negligence	8,26,000 – 82,600 = Rs.7,43,400/-
8.	Compensation payable to the claimants	Rs. 7,43,400/-

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

However, the claimant shall not be entitled to any interest for the period of delay in filing of this appeal, which was condoned with this specific rider.

Appeal is accordingly disposed of.

December 09, 2019.

Sunil

**(LISA GILL)
JUDGE**

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