

FAO-2569-2018(O&M);
FAO-2658-2018(O&M); and
FAO-3009-2018(O&M)

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

(1) FAO-2569-2018(O&M)

Balo Bai and another

...Appellants

Versus

Princepal Singh and others

...Respondents

(2) FAO-2658-2018(O&M)

Smt.Krishna Kaur and another

...Appellants

Versus

Princepal Singh and others

...Respondents

(3) FAO-3009-2018(O&M)

Ravi Kumar

...Appellant

Versus

Princepal Singh and others

...Respondents

Date of Decision:-28.8.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mrs.G.K. Turka, Advocate
for the appellants in all three appeals.

Mr.Shakti Mehta, Advocate
for respondents No.1 and 2 in all three appeals.

Mr.R.C. Gupta, Advocate, Advocate
for respondent No.3 – insurance company in all three appeals.

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H.S. MADAAN, J.

By this order, I shall dispose of three FAOs i.e. FAO-2569-2018 filed on behalf of appellants Smt.Balo Bai and another, FAO-2658-2018 filed on behalf of appellants Smt.Krishna Kaur and another and FAO-3009-2018 filed on behalf of appellant Ravi Kumar, which have arisen out of the same accident.

Briefly summed up, the facts of the case as per version of the claimants are that on 29.10.2016 deceased Sonu alias Sonu Kumar along with Sukhwinder Singh @ Happy and Ravi Kumar were riding a motorcycle; the said motorcycle was being driven by Ravi Kumar; they were going from Samana towards Patiala side; at about 8:30 p.m., when they reached near Radiant Factory in the area of village Kheri Fattan, then a Swift car bearing registration No.PB-11CA/9950(T) (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Princepal Singh in a rash and negligent manner came from wrong side of the road and hit against the motorcycle, resultantly, all the three riders of the motorcycle fell down on the road and suffered multiple injuries; all the three injured were removed to Rajindra Hospital, Patiala, where Sonu @ Sonu Kumar and Sukhwinder Singh @ Happy died; an FIR No.174 dated 30.10.2016 regarding the accident was registered at Police Station Samana.

The parents of deceased Sonu @ Sonu Kumar, namely, mother – Smt.Balo Bai, aged about 42 years and father - Raju Ram @ Raj

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Pal aged about 44 years had brought a claim petition bearing Case No./MACP/417 of 2016 against respondents i.e. Princepal Singh – driver, Surinder Singh – owner and National Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lacs on account of death of their son Sonu @ Sonu Kumar in a motor vehicular accident.

The parents of deceased Sukhwinder Singh @ Happy, namely, mother – Smt.Krishna Kaur, aged about 43 years and father – Sh.Dolat Ram, aged about 44 years had also brought a claim petition bearing Case No./MACP/24 of 2016 against the above-said respondents, claiming compensation to the tune of Rs.50 lacs due to death of their son Sukhwinder Singh @ Happy in the mishap.

Petitioner Ravi Kumar had also brought a claim petition bearing Case No./MACP/36 of 2017 against the above-said respondents, claiming compensation to the tune of Rs.20 lacs on account of injuries suffered by him in that very accident.

On getting notice all the respondents had appeared in all the three petitions and filed written statements. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petitions were allowed by the Tribunal vide separate awards dated 16.8.2017. Petitioners Balo Bai and Raju Ram alias Raj Pal, who had filed MACP/417 of 2016 were awarded compensation of Rs.10,48,000/-, petitioners Smt.Krishna Kaur and Sh.Dolat Ram, who had filed MACP/24 of 2016 were also awarded

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compensation of Rs.10,48,000/- and petitioner Ravi Kumar, who had filed MACP/36 of 2017 was awarded compensation of Rs.1,78,200/- along with interest at the rate of 6% per annum from the date of filing of the petitions till actual payment payable by all the respondents jointly and severally.

All the claimants were dissatisfied with the amounts of compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

First coming to FAO-2658-2018 filed by appellants Smt.Krishna Kaur and Sh.Dolat Ram, parents of deceased Sukhwinder Singh @ Happy, who lost his life in the accident. Sukhwinder Singh @ Happy was a bachelor. As per the case of the claimants, the deceased was working on contract basis in preparing the bodies of cabin of four wheelers at Samana and was earning a sum of Rs.25,000/- per month. The Tribunal took his age to be in between 21 to 25 years considering that the age entered in his postmortem report was 24 years, whereas according to the claimants, he was aged about 25 years. The Tribunal observed that there was no cogent and convincing evidence to prove the alleged avocation and earning of deceased, as such took him to be a casual labourer and assessed his monthly income to be Rs.8,500/-. However, no

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addition was made towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased was aged less than 40 years, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.}8500 + 3400 = \text{Rs.}11,900/-$.

Since the deceased was a bachelor, 50% of the amount is to be deducted towards his personal and living expenses In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**. Doing that the dependency of claimant comes out to $\text{Rs.}5,950/-$ per month, annual dependency comes out to $\text{Rs.}5950 \times 12 = \text{Rs.}71,400/-$.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to $\text{Rs.}71,400 \times 18 = 12,85,200/-$.

The Tribunal has further granted a sum of $\text{Rs.}1,00,000/-$ towards loss of love and affection, $\text{Rs.}25,000/-$ towards funeral expenses and $\text{Rs.}5,000/-$ towards loss of estate. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get less compensation under conventional heads i.e. $\text{Rs.}15,000/-$ on account of loss of estate and $\text{Rs.}15,000/-$ as funeral expenses, total $\text{Rs.}30,000/-$. The total compensation comes out to $\text{Rs.}12,85,200 + 30,000 = 13,15,200/-$.

The Tribunal has awarded compensation of $\text{Rs.}10,48,000/-$

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along with interest at the rate of 6% per annum from the date of filing of the petition till actual payment payable by all the respondents jointly and severally. The same is enhanced to Rs.13,15,200/-.The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.13,15,200/-, payable by all the respondents jointly and severally. The other terms and conditions shall remain the same as given in the original award.

With the above modification, **FAO-2658-2018** filed on behalf of appellants Krishna Kaur and another stands allowed partly with costs.

Now coming to FAO-2569-2018 filed by appellants Balo Bai and another. The Tribunal had taken the age of deceased Sonu @ Sonu Kumar to be 20 years as mentioned in the postmortem report. Though as per case of claimants, the deceased was running a shop of dry cleaner at Samana and was earning Rs.20,000/- per month and the claimants were fully dependent upon income of the deceased. However, in absence of enough cogent and convincing evidence, the version of the claimants with regard to avocation and income of the deceased was not accepted and he was taken to be casual labourer and his monthly income was assessed to be Rs.8,500/-. However, no addition was made towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased was aged less than 40 years, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly

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income of the deceased is taken as Rs.8500 + 3400 = Rs.11,900/-.

Since the deceased was a bachelor, 50% of the amount is to be deducted towards his personal and living expenses In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77.** Doing that the dependency of claimant comes out to Rs.5,950/- per month, annual dependency comes out to Rs.5950 x 12 = Rs.71,400/-.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.71,400 x 18 = 12,85,200/-.

The Tribunal has further granted a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.5,000/- towards loss of estate. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get less compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs.12,85,200 + 30,000 = 13,15,200/-.

The Tribunal has awarded compensation of Rs.10,48,000/- along with interest at the rate of 6% per annum from the date of filing of the petition till actual payment payable by all the respondents jointly and severally. The same is enhanced to Rs.13,15,200/-.The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.13,15,200/-,

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payable by all the respondents jointly and severally. The other terms and conditions shall remain the same as given in the original award.

With the above modification, **FAO-2569-2018** filed on behalf of appellants Smt.Balo Bai and another stands allowed partly with costs.

Now coming to FAO-3009-2018 filed by appellant Ravi Kumar. The Tribunal had granted compensation of Rs.1,78,200/- to him as per details below:

Heads	Amount in Rs.
Medical expenses relating to treatment as per bills/receipts	32,700.00
Attendant charges	5,000.00
Transportation	5,000.00
Damages on account of pain & sufferings, trauma	1,00,000.00
Loss of earnings	25,500.00
Special diet	10,000.00
Total	1,78,200.00

The Tribunal referring to judgment **Raj Kumar Vs. Ajay Kumar and another [2011(1) SCC 343]** has observed that the injured is to be granted compensation under the head of pecuniary damages (Special Damages) and non-pecuniary damages (General Damages) as detailed below:

(A) Pecuniary damages (Special Damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

(B) Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

While assessing the compensation payable to Ravi Kumar, the Tribunal has discussed testimony of claimant – Ravi Kumar, who had appeared as CW1 and had stated that he had suffered multiple injuries on his body including right thigh, finger of right hand and right above ankle, resultantly, he faced difficulty in sitting and standing and he had spent Rs.5 lakhs on his treatment. The Tribunal has observed that no record regarding medical treatment had been placed on file by the claimant and he had not produced any record with regard to his avocation and monthly income, therefore, he was also taken to be a casual labourer and his

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monthly income was also assessed to be Rs.8,500/- and calculating the amount in terms of the bills relating to the medicines proved in evidence by the claimant Ex.P1 to Ex.P8, the said amount has been worked out to Rs.32,700/- and such amount was granted to the claimant. The Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to Rs.35,000/-.

No amount has been awarded towards future treatment. If find it proper and appropriate to award a sum of Rs.15,000/- under that head.

The Tribunal has awarded a sum of Rs.5,000/- each as attendant charges and for transportation. I find the amount so awarded to be on lower side and those are enhanced to Rs.10,000/- each.

The Tribunal has awarded a sum of Rs.1 lakh on account of pain and suffering, trauma. That amount is found to be sufficient and does not call for any interference.

An amount of Rs.25,500/- has been awarded by the Tribunal on account of loss of earnings and an amount of Rs.10,000/- has been awarded as special diet, which I find to be just and adequate.

However, since as submitted by learned counsel for the appellant, the claimant was a bachelor at the time of accident and his marital prospects have been effected on account of suffering injuries in

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the road side accident, he deserves to be compensated for that reason.

Accordingly, a sum of Rs.30,000/- is awarded to him under that head.

No amount has been awarded to the claimant Ravi Kumar on account of loss of expectation of life. A sum of Rs.25,000/- is awarded to him under that head.

The total compensation comes out to Rs.2,60,500/-.

The Tribunal has awarded compensation of Rs.1,78,200/- along with interest at the rate of 6% per annum from the date of filing of the petition till actual payment payable by all the respondents jointly and severally. The same is enhanced to Rs.2,60,500/-. The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.2,60,500/-, payable by all the respondents jointly and severally. The other terms and conditions shall remain the same as given in the original award.

With the above modification, **FAO-3009-2018** filed on behalf of appellant Ravi Kumar stands allowed partly with costs.

28.8.2019
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No