

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

**F.A.O. No.7145 of 2017(O&M)
Date of Decision: 13.08.2019**

Baljit Kaur and another

.....Appellants.

Versus

Gurtek Singh and others

..... Respondents.

AND

F.A.O. No.7144 of 2017(O&M)

Baljit Kaur and another

.....Appellants.

Versus

Gurtek Singh and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: None for the appellants.

Service upon respondents no.1 and 2, dispensed with vide order dated 01.03.2019.

None for respondent no.3.

LISA GILL, J.

This judgement shall dispose of FAO No.7144 of 2017 and FAO No. 7145 of 2017 as both these appeals arise out of same accident which took place on 05.06.2016.

MACT No. 162 of 01.08.2016, was filed by the appellant-claimants seeking compensation on account of death of Dalbara Singh,

which took place on 05.06.2016.

MACT No. 188 of 01.09.2016, was filed by the appellant-claimants seeking compensation on account of damage to the Maruti Alto car bearing registration no. PB-11-AP-4501, in which the deceased-Dalbara Singh was travelling.

Both the claim petitions were decided by the learned Motor Accident Claims Tribunal, Sangrur (for short 'tribunal'), vide separate awards dated 05.05.2017.

FAO No. 7145 of 2017 has been filed by the appellant-claimants seeking enhancement of the compensation awarded on account of death of Dalbara Singh in a motor vehicle accident which took place on 05.06.2016.

FAO No. 7144 of 2017 has been filed by the appellant-claimants, seeking enhancement of the compensation awarded on account of the damage to the Maruti Alto Car, bearing registration no. PB-11-AP-4501.

There is no representation on behalf of the parties. However, as the present, are appeals filed by the claimants (widow and mother of the deceased), I do not find any ground to defer the decision in these matters. Notice in the application for condonation of delay besides notice of motion in the appeal was issued on 01.03.2019 to respondent no.3-Insurance Company and was duly accepted by the counsel representing respondent no.3. Service upon respondents no.1 and 2 was dispensed with vide order dated 01.03.2019. For the reasons mentioned in the applications, duly supported by an affidavit of appellant-claimant no.1, delay of 04 days in filing of both these appeals, is condoned as it is considered just and

expedient to decide these claimants appeals on merits, rather than dismiss it on technical considerations, in the given circumstances.

Applications are accordingly allowed.

For the sake of convenience, facts are being extracted from FAO No. 7145 of 2017. As per the averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), on 05.06.2016, deceased-Dalbara Singh was returning to his village Sultanpura Channa from Sangrur in his Alto car bearing registration no. PB-11-AP-4501. Joginder Singh son of Gurnam Singh was following the said Alto Car, in another Car bearing registration no. PB-11-AX-3107. When they reached near water tank of village Roshanwala, one Indigo car bearing registration no. PB-11-BB-4452, being driven by respondent no.1-Gurtek Singh, in a rash and negligent manner, came from Bhawanigarh side and struck against the car of the deceased-Dalbara Singh. As a result thereof, Dalbara Singh received multiple grievous injuries. The occupants travelling in the offending car bearing registration no. PB-11-BB-4452 also received injuries on their person. The deceased and other injured persons, were shifted to Civil Hospital, Bhawanigarh. Deceased Dalwara Singh was declared as brought dead by the doctors. FIR no.80 dated 05.06.2016, under Sections 304-A, 279 and 427 IPC, Police Station Sadar Sangrur, was registered against respondent no.1-Gurtek Singh, in this respect. Compensation was thus claimed.

Learned Tribunal concluded that the accident in question was caused solely due to rash and negligent driving of the offending vehicle by respondent no.1-Gurtek Singh.

Learned tribunal while assessing the income of the deceased to be ₹12,000/-, awarded a sum of ₹11,71,000/- in MACT No. 162 of 2016, which is detailed as under:-

1.	Total income of deceased	₹12,000/- p.m.
2.	Deduction of 1/3rd on account of personal expenses	₹12000/- (₹12000/-*1/3 = ₹4000/-) i.e. ₹8000/-
3.	Annual Dependency after applying multiplier of 11	₹8000 x 12 x 11= = ₹10,56,000/-
4.	Loss of consortium to appellant no.1	₹1,00,000/-
5.	Funeral expenses	₹10,000/-
6.	Transportation expenses	₹5,000/-
	Total Compensation =	₹11,71,000/-

A sum of ₹1,05,000/- was awarded as compensation towards damage to the Maruti Alto Car. Interest at the rate of 7% was awarded in both the claim petitions by the learned tribunal.

I have perused the files as well as the record which was requisitioned.

FAO No. 7145 of 2017.

As per the grounds of appeal, it is pleaded that the deceased- Dalbara Singh was earning Rs. 1,50,000/- per month from agricultural pursuits and dairy farming. Deduction of 1/3rd, it is stated has been wrongly effected by the learned tribunal. Increment on account of future prospects is sought. Enhancement of the compensation awarded under the conventional heads is also sought.

There is no dispute regarding the death of Dalbara Singh in a motor vehicle accident, which took place on 05.06.2016 due to the sole

negligence of respondent no.1, the driver of the offending Indigo Car. The said finding has attained finality. It is to be noticed that FAO No. 5486 of 2017, filed by the Insurance Company, was dismissed by this Court on 24.08.2017. The said appeal was filed by the Insurance Company in MACT No. 188 of 2016 with the averments that the present was a case of contributory negligence on the part of the deceased and furthermore the driver of the offending Indigo Car did not have a valid license as he was authorised to drive only a 'Light Motor Vehicle' (LMV) whereas the offending car was being plied as a Taxi. Both the pleas were negated while dismissing FAO No. 5486 of 2017.

There is no dispute regarding the deceased being 52 years old at the time of accident. Learned tribunal has assessed his income as ₹12,000/- per month while concluding that there is no evidence on record to indicate the exact income of the deceased. Claimants have examined, CW-3-Kuldeep Singh son of Joginder Singh, who stated that the deceased-Dalbara Singh used to sell milk to them. Baljit Kaur, claimant has testified as CW-1. She testified that the deceased was an agriculturist owning 11 acres of land, besides running a dairy farming. However, it is a matter of record that there is no evidence on record to indicate the exact income of the deceased or that of running of the dairy farm as claimed. Furthermore, in the given circumstances, the claimants are entitled to loss of managerial services. The land in question was admittedly mutated in favour of claimant-Baljit Kaur as is admitted by her in her cross-examination. Learned tribunal in the given facts and circumstances of the case has rightly assessed the income of the deceased to be ₹12,000/- per month. Therefore, income of the deceased as

assessed by the learned tribunal to be ₹12,000/-, is maintained.

However, in terms of the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009**, future prospects at the rate of 10% are afforded. Deduction of 1/ 3rd is correctly applied by the learned tribunal. Multiplier of 11 was also correctly applied by the learned tribunal. However, instead of a sum of ₹10,000/- towards loss of funeral expenses, the claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate.

Appellant No.1-widow is held entitled to a sum of ₹40,000/- instead of ₹1,00,000/- on account of loss of consortium. The deceased is also survived by an aged mother, who is also entitled to ₹40,000/- on account of loss of filial consortium in terms of the judgement of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) R.C.R (Civil), 333** and decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016 and other connected matters. A sum of ₹5,000/- awarded on account of transportation, is maintained.

Compensation towards the claimants on account of death of Dalbara Singh, is thus re-worked as under:-

1.	Total income of deceased	₹12,000/- p.m.
2.	Total income after additional of future prospects at the rate of 10%	₹12,000/- (₹12000/-+₹1200/-) i.e. ₹13,200/-
3.	Deduction of 1/3 on account of personal expenses	₹13,200/- (₹13,200*1/3=₹4400/-) = ₹8800/-
4.	Annual dependency after applying multiplier of 11	₹8800/- x 12 x 11= ₹11,61,600/-
5.	Funeral expenses	₹15,000/-

6.	Loss of estate	₹15,000/-
7.	Loss of consortium to appellant No.1	₹40,000/-
8.	Filial consortium to appellant no.2	₹40,000/-
9.	Transportation	₹5,000/-
	Total Compensation =	₹12,76,600/-

Claimants shall be entitled to interest on the entire compensation amount at the rate of 7.5% instead of 7% per annum from the date of filing of petition till realization. Needless to say that the amount, if any, already disbursed to the claimants shall stand deducted. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

FAO No. 7144 of 2017.

Appellant-claimants claimed compensation to the tune of ₹2,50,000/- on account of the damage to the Maruti Alto car bearing registration no. PB-11-AP-4501, in the motor vehicle accident which took place on 05.06.2016.

Learned tribunal, rejected the assessment regarding cost of repair set forth by CW-1-Rakesh Kumar, Proprietor of M/s Rakesh Maruti Service, Jind-Delhi Road, Sangrur, to the tune of ₹2,03,260/- and accepted the costs of repair to the tune of ₹1,15,000 + spare parts worth ₹27,000/- = ₹1,41,000/-, as assessed by Mr. V.K.Kohli, Surveyor, who testified as RW-1. After deducting the depreciation of ₹47,000/- from the total cost of repair i.e. ₹1,41,000, claimants were awarded a sum of ₹95,000/- (₹1,41,000/- - ₹47,000). Claimants were also awarded a sum of ₹10,000/- for the

inconvenience faced by them. A total sum of Rs. 1,05,000/- was awarded by the learned tribunal.

A perusal of the record reveals that the learned tribunal has rightly placed reliance on the assessment prepared by RW-1 and correctly assessed the compensation of the vehicle as ₹95,000/-. However, keeping in view the facts and circumstances of the case, it is considered just and expedient to award a sum of ₹25,000/- instead of ₹10,000/- towards inconvenience faced by the claimants. Thus, a total sum of ₹1,20,000/- is awarded to the appellant-claimants on account of damage caused to the Maruti Alto Car.

Claimants shall be entitled to interest on the entire compensation amount at the rate of 7.5% instead of 7% per annum from the date of filing of petition till realization. Needless to say that the amount, if any, already disbursed to the claimants shall stand deducted. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

With the abovesaid modification in the amount of compensation, FAO No. 7145 of 2017 and 7144 of 2017, are disposed of.

13.08.2019
s.khan

[LISA GILL]
Judge

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