

FAO No. 7159 of 2017 (O&M)

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

FAO No. 7159 of 2017 (O&M)

Date of Decision: May 17, 2019

Harbans Lal and others

..... Appellants(s)

Versus

Malkit Singh @ Bhola and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Bhavyadeep Walia, Advocate
for the appellants.

Service upon respondents no.1 & 2 dispensed with
vide order dated 01.08.2018.

Mr. Vinod Gupta, Advocate
for respondent no.3.

LISA GILL, J. (oral)

This appeal has been filed seeking enhancement of the compensation awarded to the claimants vide award dated 09.01.2017, passed by learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal).

Brief facts of the case are that the claimants, who are the husband and children of the deceased, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Nirmala Devi, due to the injuries received by her in a motor vehicle accident, which took place on 19.09.2015, due to the rash and negligent

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driving of the offending bus bearing registration No. PB-31-J-4225, by its driver Malkit Singh @ Bhola - respondent no.1. It is claimed that Nirmala Devi was 53 years old at the time of accident. Besides doing household work, she used to cook food by running a Dhaba and was earning Rs.10,000/- per month. It is further pleaded that the husband of the deceased was paralytic and totally dependent upon his wife.

Learned Tribunal concluded that Nirmala Devi, aged 60 years, died to the injuries received by her in the accident, which took place on 19.09.2015, due to the rash and negligent driving of the offending bus bearing registration No. PB-31-J-4225, by its driver Malkit Singh @ Bhola-respondent no.1. Learned Tribunal assessed income of the deceased as Rs.5,000/- per month and awarded a sum of Rs.7,16,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income 5000 x 12	60,000/- per annum
2.	Income after deducting 1/3 rd as personal living expenses of the deceased	60,000 - 1/3 rd = 40,000/-
3.	Loss of dependency after applying multiplier of 09	40,000 x 9 = 3,60,000/-
4.	Medical expenses	56,000/-
5.	Loss of consortium to husband	1,00,000/-
6.	Loss of love and affection	1,00,000/-
7.	Loss of estate	50,000/-
8.	Funeral expenses	50,000/-
	Total	7,16,000/-

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Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants argues that income of the deceased has been wrongly assessed, whereas it is proved from the evidence on record that she was earning Rs.10,000/- per month by cooking food at various functions. Reference is made to the statement of Jagjit Kaur CW-3. It is further submitted that increment on account of future prospects should be afforded in terms of **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**. It is, thus, prayed that compensation be enhanced.

Learned counsel for the insurance company, however, refutes the above said averments and submits that just and reasonable compensation has already been afforded to the appellants. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the certified copies of the statements of the witnesses, produced in Court today.

Having heard learned counsel for the parties and going through the file, it is found that assessment of the income of the deceased as Rs.5,000/- per month is unjustified in the given facts and circumstances. Though, the evidence on record does not point out to the deceased earning Rs.10,000/- per month by cooking at various functions. As noticed in the foregoing paras, it is mentioned in the claim petition that the deceased was running a Dhaba and cooking food over there. However, evidence of CW-3 – Jagjit Kaur does not prove the same. CW-3 Jagjit Kaur stated that she along

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with Nirmala Devi used to cook food at functions together. There is no evidence much less documentary evidence to prove that the deceased Nirmala Devi was earning Rs.10,000/- per month by cooking at functions or by running a Dhaba. However, it cannot be ignored that the deceased was definitely a house-wife, looking-after her family and doing the routine household chores. This Court in FAO-3440-2017, titled **Bawa Singh Vs. Mehar Singh and others**, has assessed notional income of a house-wife, aged 66 years to be Rs.7,000/- per month in respect to an accident, which took place in 2015. In the present case, the deceased was held to be 60 years old on the basis of the postmortem report Ex.C-3. There is no evidence on record that the deceased was 53 years old as claimed. It is relevant to note that husband of the deceased was 62 years old, thus age of the deceased as assessed by the learned Tribunal is upheld. The accident in this case had taken place in 2015. Notional income of the deceased is thus assessed as Rs.7,500/- per month.

In view of the Division Bench judgment of this Court in **Paramjit Singh and another v. Dilbagh Singh @ Bagga and others, 2014(4) RCR (Civil) 895**, no deduction is to be effected in the compensation to be awarded in the case of death of a house-wife. Multiplier of 9 has also been correctly applied by learned Tribunal. Instead of a sum of Rs.1,00,000/- awarded towards loss of consortium for the husband, he is entitled to Rs.40,000/-. Instead of a sum of Rs.50,000/- each awarded by learned Tribunal towards loss of estate, appellants are entitled to a sum of Rs.15,000/- each in terms of the judgment of Hon'ble Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**.

Appellants no.2 to 4 are not entitled to Rs.1,00,000/- on account of loss of love and affection, however, they are entitled to a consolidated sum of Rs. 40,000/- on account of loss of parental consortium in terms of 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 No.2110 of 2016, titled Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr. No.	Heads	Calculations
1.	Income 7,500 x 12	90,000/- per annum
2.	Compensation after applying multiplier of 9	90,000 x 9 = 8,10,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
5.	Loss of consortium to appellant no.1	40,000/-
6.	Loss of parental consortium to appellant no.2 to 4	40,000/-
	Total	9,20,000/-

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

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amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

May 17, 2019.

Sunil

**(LISA GILL)
JUDGE**

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