

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

**1)**

**FAO-10208-2014 (O&M)**

**Decided on : 06.01.2020**

HDFC ERGO General Insurance Co. Ltd.

... Appellant(s)

Versus

Monika Malhotra and others

... Respondent(s)

**2)**

**FAO-10243-201**

Monika Malhotra and others

... Appellant(s)

Versus

Dharamvir Singh and others

... Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Rajbir Singh, Advocate  
for the appellant(s) (in FAO-10208-2014) &  
for respondent No.3 (in FAO-10243-2014).

Mr. Akash Sridhar, Advocate for  
Mr. Ashwani Talwar, Advocate  
for the appellant(s) (in FAO-10243-2014) &  
for respondents No.1 to 4 (in FAO-10208-2014).

Mr. R.K. Bashamboo, Advocate  
for respondent No. 9 – Insurance Company  
(in FAO-10208-2014) &  
for respondent No.6 – Insurance Company  
(in FAO-10243-2014).

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**MANJARI NEHRU KAUL, J.**

This order shall dispose of FAO-10208-2014 and FAO-  
10243-2014, as both the above noted appeals arise out of the same award

dated 05.09.2014, passed by the Ld. Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal').

Claimants who are the appellants in FAO-10243-2014, preferred a petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'MV Act') claiming compensation on account of the death of Jagdish Kumar Malhotra, aged 44 years. Claim petition was filed by the widow and minor children of the deceased. It was pleaded in the claim petition that on 10.03.2013, when the deceased Jagdish Kumar Malhotra along with Dinesh Kumar Malhotra, Rohit Vashist and Rajinder was on way from Nainital to Faridabad in Ford Figo car bearing registration No. HR-51AP-9687, being driven by Mukesh Kumar, the offending bus bearing registration No. UP-23D-9673 came from the opposite side driven in a rash and negligent manner and struck against the car in which the deceased was travelling. Resultantly, the deceased and other occupants of the car sustained serious injuries. However, later on, the deceased succumbed to his injuries on 18.04.2013. FIR No. 36 of 2013, under Sections 279, 337, 338, 427 IPC was lodged in Police Station P.S. Sambhavli (UP).

The Tribunal on appraisal of the evidence led and other material on record, returned a finding that the offending bus was responsible for the accident in question in which the Jagdish Kumar Malhotra lost his life. The Tribunal after taking into account the relevant facts and circumstances, awarded a sum of ₹ 66,93,778/- as compensation to the claimants, which is detailed herein as under:-

| <b><i>Sr. No.</i></b> | <b><i>Heads</i></b>                        | <b><i>Calculations ( ₹ )</i></b>  |
|-----------------------|--------------------------------------------|-----------------------------------|
| 1.                    | Medical Bills                              | 19,07,778/-                       |
| 2.                    | Dependency after applying multiplier of 14 | 27,000 x 12 x 14 =<br>45,36,000/- |

|    |                                             |                    |
|----|---------------------------------------------|--------------------|
| 3. | Funeral Expenses and Transportation Charges | 50,000/-           |
| 4. | Loss of consortium to the widow             | 1,00,000/-         |
| 5. | Loss of consortium for minor children       | 1,00,000/-         |
|    | <b>Total</b>                                | <b>66,93,778/-</b> |

Insurance company has filed FAO-10208-2014 challenging the impugned award primarily on the following counts:-

- (i) The deceased was aged 44 years at the time of the accident and the Tribunal could not have assessed 50% as future prospects. Rather it should have been 25%, in view of the fact that he was self-employed.
- (ii) The income of the deceased, was wrongly assessed by the Tribunal as Rs. 24,000/- p.m. It was urged that the Income Tax Returns of the deceased, which were placed on record before the Tribunal for the Assessment Year 2010-11, depicted his total income as ₹3,28,629/-. Hence, the Tribunal was in error while assessing his monthly income as ₹24,000/- p.m., because after deduction of income tax, the amount would have worked out to ₹ 3,22,000/-.

It was further urged that no document was placed on record to substantiate the factum of the deceased being a businessman or self employed and hence, the Tribunal erred in assessing the income of the deceased on the basis of a marked document i.e. his Income Tax Return for the Assessment year 2010-11 and awarded a huge account of compensation

to the claimants.

In the appeal filed on behalf of the claimants, the claimants have prayed for enhancement of the compensation as per the Income Tax Return for the Assessment Year 2010-11, which depicted the income of the deceased as ₹3,28,629/- per annum, which in turn would come to ₹ 27,385/- p.m. and not ₹ 24,000/- p.m., as assessed by the Tribunal.

I have heard learned counsel for the parties and reappraised the evidence and other material available on record.

The deceased was aged 44 years and hence the multiplier of 14 has been rightly applied. The Tribunal had rightly deducted 1/4<sup>th</sup> towards personal expenses claimant/appellants being four in number. As far as the other conventional heads are concerned, the same do not warrant any interference. However, as per the Income Tax Returns for the year 2010-11, the income of the deceased has been shown to be Rs. 3,28,629/- per annum. Hence, after deducting the income tax, the income of the deceased would come to Rs. 3,22,000/-, which in turn, would be Rs. 26,834/- per month. The future prospects should have been taken as 25%, as the deceased was self employed. Therefore, the total amount after reassessment would work out as under:-

| <i>Sr.No.</i> | <i>Heads of Claim</i>                                                         | <i>Amount ( ₹ )</i>                                   |
|---------------|-------------------------------------------------------------------------------|-------------------------------------------------------|
| 1.            | Income @ 26,834 p.m. x 12                                                     | 3,22,000/- per annum                                  |
| 2.            | Income after 1/4 <sup>th</sup> deduction on account of personal expenses.     | 3,22,000/- x 1/4 <sup>th</sup> = 2,41,500             |
| 3.            | Total income after addition at the rate of 25% on account of future prospects | 2,41,500 + 60,375<br>(2,41,500 x 40%)<br>= 3,01,875/- |
| 4.            | Total dependency after applying a multiplier of 14                            | 3,01,875 x 14 = 42,26,250/-                           |
| 5.            | Funeral expenses and Transportation Charges                                   | 50,000/-                                              |

|    |                                       |                           |
|----|---------------------------------------|---------------------------|
| 6. | Loss of consortium to the widow       | 40,000/-                  |
| 7. | Loss of consortium for minor children | 40,000/- x 3 = 1,20,000/- |
| 8. | Medical Bills                         | 19,07,778/-               |
|    | <b>Grand Total</b>                    | <b>Rs. 63,44,028/-</b>    |

Needless to say, the amount already awarded by the the Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest at the rate of 9% per annum (as awarded by the the Tribunal) on the entire amount, from the date of filing of the claim petition till realization.

Accordingly, both the appeals are disposed of in the above terms.

(MANJARI NEHRU KAUL)  
JUDGE

January 06, 2020

J.Ram

Whether speaking/reasoned: Yes/No  
Whether Reportable: Yes/No