

243 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Decided on : 15.03.2022

**FAO-7818-2015 (O&M)**

SBI General Insurance Co. Ltd.

..... Appellant

Versus

Rasidan and others

..... Respondents

**FAO-6876-2016 (O&M)**

Smt. Rasidan

..... Appellant

versus

Bhagat Singh and others

..... Respondents

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

Present : Mr. Satpal Dhamija, Advocate  
for the appellant in FAO-7818-2015 and  
for respondent No.3 in FAO-6876-2016.

Mr. Ashish Gupta, Advocate  
for the appellant in FAO-6876-2016 and  
for respondents No.1 & 2 in FAO-7818-2015.

Mr. Vishal Singh, Advocate for  
Mr. Keshav Pratap Singh, Advocate  
for respondents No.1 and 2 in FAO-6876-2016 and  
for respondents No.3 and 4 in FAO-7818-2015.

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**Manjari Nehru Kaul, J.(Oral)**

**CM-23936-2016 in FAO-6876-2016**

This is an application under Section 5 of Limitation Act for  
condonation of delay of 205 days in filing the appeal.

After hearing learned counsel and perusing the paper book,  
application is allowed and the delay of 205 days in filing the appeal is  
condoned.

Main case

This order shall dispose of FAO No.7818 of 2015 and FAO No.6876 of 2016 as both of them have arisen out of common order dated 12.08.2015. Brief facts of the case are taken from FAO No.7818 of 2015.

The appellant-Insurance Company is impugning the award dated 12.08.2015 passed by Motor Accidents Claim Tribunal, Gurgaon vide which the claim petition filed by respondents No.1 and 2 was allowed and respondent No.1 was awarded Rs.8,85,000/- @ 9% interest per annum on account of the death of her son Fakrudin @ Fakru in motor vehicular accident, from the date of filing of petition till its actual realization. The amount awarded by the Tribunal in the sum of Rs.8,85,000/- was assessed as follows:

| Sr. No. | Heads of claim                        | Amount awarded              |
|---------|---------------------------------------|-----------------------------|
| 1       | Income taken per month                | Rs.5,000/-                  |
| 2       | Future prospects @ 50% per month      | Rs.2,500/-                  |
| 3       | Total income                          | Rs.7,500/-                  |
| 4       | Multiplicand (annualized)             | Rs.7,500 x 12 = Rs.90,000/- |
| 5       | Deduction 1/2 towards personal living | Rs.45,000/-                 |
| 6       | Multiplier                            | 18                          |
| 7       | Total                                 | Rs.8,10,000/-               |
| 8       | Loss of love and affection            | Rs.50,000/-                 |
| 9       | Funeral expenses                      | Rs.25,000/-                 |
|         | Total                                 | <b>Rs.8,85,000/-</b>        |

Brief facts of the case are that Fakrudin @ Fakru (since deceased), aged 17 years, a bachelor along with Jamshed was going to village Faridpur on kacha portion of the road on 29.04.2014. At about 9.00 am when they reached on Master Road of Sector 77 near Faridpur-Fajjupur Chowk, a dumper bearing registration No.HR-73-1331 came in a rash and negligent manner and ran over the deceased. On account of the multiple

injuries sustained, the deceased died on the spot. The driver of the offending vehicle, however, fled away alongwith the vehicle from the spot. The deceased was stated to be working as a helper in a shop and earning Rs.9,000/- per month.

On being put to notice, respondents put in appearance. Respondents No.1 and 2 i.e. owner and the driver of the offending vehicle, filed their written statement wherein the factum of accident in question was denied. Similar stand was taken by respondent No.3 i.e. the appellant herein.

On the basis of pleadings of parties, following issues were framed:

1. Whether the accident, which took place on 29.04.2014 had occurred due to rash and negligent driving of the vehicle No.HR-73-1331 by Narender, respondent No.2? OPP
2. If issue No.1 is proved in favour of the petitioners then whether the petitioners are entitled for compensation on account of death of Fakrudin @ Fakru son of Mohardin 2 Mohar Khan in the accident and from whom? OPP
3. Whether the vehicle was being driven in contravention of terms and conditions of the insurance policy? OPR 3
- 4 Relief

Learned counsel for the appellant-Insurance Company has primarily impugned the award passed by the Tribunal on quantum by urging

that the Tribunal had erred in adding 50% of the income of the deceased towards future prospects despite the fact that it was a matter of record that the deceased was not in any employment. It has also been argued that the Tribunal had erred in applying multiplier of '18' and not '15' as in the postmortem report, it stood reflected that the age of deceased was not 17 years as had been claimed by the claimants but 15 years. Learned counsel for the appellant therefore vehemently submitted that the award required to be reassessed. In support of his submissions, learned counsel has placed reliance upon *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, *Reshma Kumari & others vs. Madan Mohan & another*, 2013(9) SCC 65 and *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others*, 2018(4) RCR (Civil) 333.

Learned counsel for the respondents have, however, opposed the prayer made by counsel for the appellant by urging that the award passed by the Tribunal was just and rather the compensation awarded under conventional heads was on the lower side and not in consonance with the ration laid down in *National Insurance Co. Ltd. vs. Pranay Sethi & ors.*, 2017(4) RCR (Civil) 1009 and *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & ors.*, 2018 (4) RCR (Civil) 333.

After hearing learned counsel for the parties and on perusing the case file, this Court is of the opinion that the compensation awarded by the Tribunal requires to be reassessed in consonance with the judgment rendered by the Constitution Bench of Hon'ble Supreme Court in *Pranay Sethi's case(supra)*.

The deceased in the present case was below 17 years of age and was working as a helper in a shop. Thus, 40% of the income is added

towards loss of future prospects. The Hon'ble Apex Court in *Pranay Sethi's case(supra)* has quantified the amount in the sum of Rs.15,000/-, Rs.15,000/- and Rs.40,000/-to be awarded under conventional heads i.e. loss of estate, funeral expenses and loss of consortium respectively. Still further, it has been held that the aforesaid amounts would be further subject to 10% enhancement after every three years. Therefore, the claimant would be entitled to 10% enhancement as was also held and reassessed by Hon'ble Apex Court in *Rasmita Biswal and others vs. Divisional Manager, National Insurance Co. Ltd. and another, 2022(1) RCR(Civil) 344* as per the ratio laid down in *Pranay Sethi's case(supra)*.

However, this Court is of the opinion that no interference is warranted with respect to the multiplier applied i.e. 18, which is in consonance with the settled law. Resultantly, the compensation is re-assessed as follows:

| Sr. No. | Heads of claim                      | Amount awarded       |
|---------|-------------------------------------|----------------------|
| 1       | Income taken per month              | Rs.5,000/-           |
| 2       | Future prospects @ 40% per month    | Rs.2,000/-           |
| 3       | Total income                        | Rs.7,000/-           |
| 4       | Annual income (Rs.7,000 x 12)       | Rs.84,000/-          |
| 5       | Deduction ½ towards personal living | Rs.42,000/-          |
| 6       | Multiplier                          | 18                   |
| 7       | Total                               | Rs.7,56,000/-        |
| 8       | Loss of estate                      | Rs.16,500/-          |
| 9       | Funeral expenses                    | Rs.16,500/-          |
| 10      | Loss of filial consortium           | Rs.44,000/-          |
| 11      | Total                               | <b>Rs.8,33,000/-</b> |

The claimant is therefore, held entitled to a total of Rs.8,33,000/- as compensation alongwith interest @ 9% per annum from the date of filing of petition till its actual realization.

With these modifications, the present appeals stand disposed of  
in above terms.

(MANJARI NEHRU KAUL)  
JUDGE

15.03.2022  
*sonia*

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