

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

Decided on : 23.08.2022

FAO-1307-2017 (O&M)

Royal Sundaram Alliance Insurance Co. Ltd. Appellant

Versus

Kashmiro and others Respondents

FAO-1282-2017 (O&M)

Kashmiro and others Appellants

Versus

Rajpal and others Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Amit Goyal, Advocate
for the appellant in FAO No.1307 of 2017 and
for respondent No.3 in FAO No.1282 of 2017.

Ms. Savita Rana, Advocate
for the appellants in FAO No.1282 of 2017 and
for respondents No.1 to 4 in FAO No.1307 of 2017.

Mr. Parminder Singh, Advocate
for respondents No.5 and 6 in FAO No.1307 of 2017.
for respondents No.1 and 2 in FAO No.1282 of 2017.

Manjari Nehru Kaul, J.(Oral)

This order shall dispose of two appeals i.e. FAO No.1282 and 1307 of 2017 as both of them have been filed against the award dated 18.10.2016 passed by the Motor Accident Claims Tribunal, Karnal. Brief facts of the case are taken from FAO No.1307 of 2017.

Instant appeal has been filed by the appellant-Insurance Company challenging the award dated 18.10.2016 passed by Motor

Accident Claims Tribunal, Karnal (hereinafter called as 'the Tribunal') in the claim petition filed under Section 166 of Motor Vehicles Act wherein the following compensation was assessed and awarded to the claimants on account of death of Dalbir Singh, aged 30 years (hereinafter referred to as 'deceased') in a motor vehicular accident, which took place on 04.11.2014:

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.8,100/-
2	Future increase (50%)	Rs.4,050/-
3	Annual income (Rs.8,100 + Rs.4,050 x 12)	Rs.1,45,800/-
4	Deduction towards personal expenses (1/4)	Rs.36,450/-
5	Loss of dependency (Rs.1,45,800 – Rs.36,450)	Rs.1,09,350/-
6	Multiplier	17
7	Total dependency(Rs.1,09,350 x 17)	Rs.18,85,950/-
8	Transportation and funeral charges	Rs.25,000/-
9	Loss of estate, love and affection	Rs.1,00,000/-
10	Loss of consortium	Rs.1,00,000/-
	Total compensation	Rs.20,83,950/-

The aforementioned amount of compensation along with interest @ 9% p.a. from the date of filing of the petition till the date of realization, was ordered to be paid jointly and severally by all the respondents.

Learned counsel for the appellant-Insurance Company has impugned the award passed by the learned Tribunal on the following counts:

- (i) that the involvement of the car bearing registration No.HR-05-AB-6639 (hereinafter referred to as 'offending vehicle') in the accident in question was

highly suspect as here was an unexplained delay of one day in lodging of the FIR, which was registered against an unknown person and unknown vehicle. It is submitted that in fact it was a hit and run case and thus, the Tribunal erred in fastening the entire liability upon the insurance company.

- (ii) that the compensation awarded, on the face of it, was on the higher side and not in consonance with the settled ratio of law in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270 and Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) RCR (Civil) 333.*

Learned counsel for the appellant still further submits that the monthly income of the deceased, who was treated as a casual labourer, was assessed at Rs.8,100/- per month, which was much higher than the minimum wages notified by the State Government in respect of a casual labourer. It has been urged that the income of the deceased should have been taken to be Rs.5,640/-per month as per the notification of the State Government for the relevant period. It is also submitted that even under the conventional heads, the compensation awarded required to be reassessed and scaled down.

Per contra, learned counsel appearing for the claimants while opposing the prayer and submissions made by the learned counsel for the

Insurance Company has vehemently argued that the compensation awarded was grossly inadequate and instead required to be enhanced as per the settled law. Learned counsel submits that the deceased was a 30 years old man, who was working as a home guard and drawing a salary of Rs.12,000/- per month. Besides this, he was running a milk dairy from where he was getting an additional income of Rs.10,000/- per month. It is thus, submitted that the Tribunal erred in assessing the monthly income of the deceased at only Rs.8,100/- per month by treating him as a casual labourer. It is further submitted that the claimants, who are widow and three minor children of the deceased, should have been compensated for loss of consortium, which had erroneously not been done by the Tribunal.

Heard learned counsel for the parties and perused the relevant material available on record.

This Court does not concur with the submissions made by the learned counsel for the Insurance Company qua the involvement of the offending vehicle being suspect in the accident in question. Mere delay of one day in lodging of the FIR would not in any manner cast any shadow of doubt about the involvement of the offending vehicle in the accident in question. PW-4 Sewa Singh, who is the eyewitness of the accident in question, deposed in no uncertain terms that the accident had occurred due to the rash and negligent driving of respondent No.1-driver of the offending vehicle.

This Court also does not find any error in the monthly income of the deceased, which has been assessed by the Tribunal at Rs.8,100/- by treating him as a casual labourer. PW-2 Sneha Lata, Home Guard Clerk from the office

of District Commandant, Home Guard, Haryana while stepping into the witness box had produced the record file Ex.PW-2/A and PW-2/B and on perusal of the same, it stood reflected that the deceased was being paid Rs.300/- per day on daily wage basis. Hence, the amount assessed in the sum of Rs.8,100/- per month cannot by any stretch of imagination be said to be so exorbitant, which would warrant the interference of this Court.

The compensation awarded under conventional heads including compensation towards loss of consortium to the widow of the deceased and for loss of estate, love and affection to the children in the sum of Rs.1 lakh each admittedly is not in consonance with the settled law. The children are entitled to Rs.40,000/- each for loss of parental consortium as per *Pranay Sethi's case (supra)*. Rs.1 lakh granted to the widow of the deceased for loss of consortium being not in consonance with the settled law would stand reduced to Rs.40,000/-. At the same time, since the deceased was 30 years of age on the date of accident, the claimants would be entitled to an addition of 40% to the income of the deceased towards future prospects as per the settled law. The claimants would be entitled to Rs.15,000/- each for loss of estate and for funeral expenses, which requires to be modified. Since it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years, 10% enhancement qua the above-mentioned conventional heads would have to be made. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimants, who are wife and three minor children of the deceased, are entitled to Rs.44,000/- each, for loss of spousal and parental consortium

respectively.

The compensation is reassessed and modified as follows:

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.8,100/-
2	Future increase (40%)	Rs.3,240/-
3	Annual income (Rs.8,100 + Rs.3,240 x 12)	Rs.1,36,080/-
4	Deduction towards personal expenses (1/4)	Rs.34,020/-
5	Loss of dependency (Rs.1,36,080 – Rs.34,020)	Rs.1,02,060/-
6	Multiplier	17
7	Total dependency(Rs.1,02,060 x 17)	Rs.17,35,020/-
8	Loss of estate	Rs.16,500/-
9	Funeral expenses	Rs.16,500/-
10	Loss of consortium (Rs.44,000 x 4)	Rs.1,76,000/-
	Total compensation	Rs.19,44,020/- (rounded off to Rs.19,44,000/-)

With the above modifications, the appeals stand disposed of in the same terms and ratio as ordered by the Tribunal.

Since the main case stands disposed of, pending application(s), if any, also stand(s) disposed of.

23.08.2022
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No