

FAO-1814-2014 (O&M) with
FAO-3061-2017 (O&M)

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

Reserved on:- 19.07.2023

Pronounced on:- 10.08.2023

(1) FAO-1814-2014 (O&M)

Reliance General Insurance Company Limited

...Appellant

Versus

Smt. Sunil and others

...Respondents

(2) FAO-3061-2017 (O&M)

Smt. Sunil and others

... Appellants

Versus

Rakesh Kumar and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sanjiv Kodan, Advocate
for the appellant – Insurance Company in FAO-1814-2014.

Mr. Harender Singh, Advocate
for the appellants/claimants in FAO-3061-2017.

AMARJOT BHATTI, J.

1. The appellant – Reliance General Insurance Company Ltd. in FAO-1814-2014 has filed the present appeal for setting aside the impugned award dated 23.12.2013 passed by learned Motor Accident Claims Tribunal, Jhajjar, whereas, the appellants/claimants – Smt. Sunil and her minor children namely Sonal (daughter), Sawan (son), Neetu (daughter), Rohit (son) and Neha (daughter) (through their mother being guardian) in FAO-3061-2017 have filed the present appeal alongwith Civil

Misc. No. 10129-CII-2017 under Section 5 of Limitation Act for modification and enhancement of compensation amount of Rs. 20,95,776/- alongwith interest awarded by the Tribunal as detailed therein. Both these appeals have arisen out of the same award dated 23.12.2013, therefore, the appeals are taken up together for disposal.

2. The facts of the case are that Smt. Sunil widow of Dharmender and her minor children claimants No. 2 to 6 through their mother Smt. Sunil being their guardian filed the present claim petition under Section 166 of Motor Vehicles Act, 1988 for grant of compensation on account of death of her husband in a Motor vehicular accident which took place on 02.12.2010. Dharmender son of Sh. Tara Chand was 40 years old and he was serving in Haryana Police Department at the time of accident. He was drawing salary of Rs. 25,000/- per month. On the fateful day of 02.12.2010, Narender Singh – complainant was present in his house when his friend Dharmender and Suraj Bhan came to his house and all of them left for Jhajjar at about 06:00 P.M. in Maruti car belonging to Dharmender and after completing their personal work, they left for Gurgaon in the same car which was driven by Dharmender. Suraj Bhan was sitting at the front seat by the side of Dharmender, whereas, he was sitting at the rear seat. At about 08:15 P.M. they reached Yakubpur and were going towards Farrakh Nagar and when they reached near *Pattaka* factory, their car hit behind a Trolly which was parked on the road without indicator or reflectors thereon. Dharmender was driving his car at a normal speed and due to the reflection of light of the vehicles coming from front side, their car hit behind the Trolly which was parked on the road.

Dharmender and Suraj Bhan sustained multiple injuries on their person,

whereas, he had suffered simple injuries. He took out Dharmender and Suraj Bhan out of the car. He noticed the registration number of Trola as HR-46B-2316. The driver of the Trola fled away from the place of occurrence. He could identify the driver on seeing. The complainant further noticed that there was blood behind the Trola. A ladies sleeper was lying there on the road and a motorcycle was also lying in damaged condition. It appeared that the said motorcycle had also collided with the said Trola. He made arrangement and took Dharmender and Suraj Bhan to Kalyani Hospital, Gurgaon for treatment. One relative of Dharmender namely Sant Ram met him at the gate of hospital who admitted both the injured in the hospital. The accident had taken place due to the wrong parking of Trola on the road without using any signal, reflector or indicators. Regarding this accident FIR No. 729 dated 03.12.2010 was registered under Section 283, 336, 337, 304-A of IPC, Police Station Jhajjar. The deceased Dharmender remained under treatment and ultimately he succumbed to the injuries on 28.12.2010. They had spent Rs. 15 lacs on treatment and Rs. 1 lac on transportation, funeral etc. The Trola was driven by Rakesh Kumar – respondent No. 1. It was owned by Balwan Singh – respondent No. 2 and it was insured with Reliance General Insurance Co. Ltd. - respondent No. 3. The claimants have claimed compensation to the tune of Rs. 50 lacs alongwith interest as detailed therein.

3. Notice of claim application was given to the respondents. The respondent No. 1 appeared and filed written reply taking preliminary objection that the deceased himself was negligent in driving the car and dashed the car into the vehicle of respondent No. 1 while coming to the

extreme wrong side of the road. The deceased was untrained driver. He was not having Driving License and he was driving in violation of the traffic rules. A false case has been registered in collusion with the local police. On the merits of the case, some of the facts are denied for want of knowledge. The accident is admitted but it had occurred on account of the fault of the deceased. It is further alleged that the complainant was not present at the time of accident. He has given wrong version. The deceased was driving rashly and negligently and he could not control his vehicle. The parking lights of the Trola were on but the deceased could not judge as to whether the vehicle was parked or it was being plied. He was following another vehicle who took the turn all of a sudden while passing the stationery Trola whereas, the deceased could not control his car and dashed straightaway in the Trola. The quantum on medical expenditure, transportation and last rites is denied. The amount of compensation claimed by the claimants is exaggerated. It is alleged that the respondent No. 1 was not at fault and it is the Insurance Company which is liable to pay compensation as per the terms and conditions of insurance policy pertaining to the Trola owned by respondent No. 2. It is prayed that claim petition filed against respondent No. 1 may be dismissed with special cost.

4. The respondent No. 2 did not contest this case and was proceeded against *ex parte* vide order dated 21.07.2011.

The Insurance Company contested the claim petition by filing written statement taking preliminary objection that the respondent is not liable to pay any amount to the petitioners. The owner of the offending vehicle did not inform the Insurance Company about the accident. Without admitting the factum of accident, it was alleged that the alleged offending

vehicle was planted later on in order to grab compensation. It is further alleged that the driver of alleged offending vehicle was not holding valid and effective Driving License. The Insurance Company is not liable to pay compensation. In case accident is proved then it was deceased who was rash and negligent while driving the car. The amount of compensation claimed by the petitioners is highly excessive. The claim petition is bad for non-joinder of necessary parties. On merits, the facts are denied for want of knowledge and it is alleged that the petitioners may be put to strict proof thereof. Regarding accident, involvement of vehicle bearing No. HR-46B-2316 is denied. The manner of accident is also denied by the Insurance Company. It is prayed that the present claim petition may kindly be dismissed qua the answering respondent - Insurance Company.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 19.12.2011:-

(1) Whether the accident in question took place due to rash and negligent driving of vehicle i.e. Trola bearing No. HR-46-B-2316 by respondent No. 1 as alleged in the petition? OPP

(2) If issue No. 1 is proved, whether Dharmender son of Tara Chand sustained injuries in the accident in question and died because of those injuries, as alleged in the petition? OPP

(3) If issues No. 1 and 2 are proved, whether the petitioners are entitled for compensation on account of termination of life of Dharmender, if so to what amount and from whom? OPP

(4) Whether respondent No. 1 had no valid and effective driving license to drive the offending vehicle at the relevant time? OPR-3

(5) Whether respondent No. 2 had contravened the terms and conditions of insurance policy, if so its effect? OPR-3

(6) Relief.

6. In order to prove the claim petition, the claimant No. 1 Smt. Sunil herself appeared as her own witness as PW-2. She also examined Narender (complainant in the FIR) as PW-1, ASI Mukesh Kumar as PW-3 and Abhishek Pandey, Record Keeper, M/s Artemis Medicare Services Ltd., Sector 51, Gurgaon as PW-4 and also tendered documents Ex.P20 to Ex.P29.

7. In order to rebut the case of the claimants, the counsel for respondent No.1 tendered copy of Driving License as Ex.R1, copy of Registration Certificate as Ex.R2, copy of National Permit as Ex.R3 and Insurance Cover Note as Ex.R4 and closed the evidence.

The learned counsel for Insurance Company has examined Anoop Kumar, Ahlmad as RW-1 and closed the evidence.

In rebuttal evidence, the claimants have examined Karambir son of Tara Chand as PW-5.

8. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimants was allowed and it was held as a case of contributory negligence of the deceased as well as driver of the offending vehicle – respondent No. 1 and passed Award dated 23.12.2013 vide which the compensation was awarded to the tune of Rs. 20,95,776/- alongwith interest @ 6% per annum from the date of filing of claim petition till realization, as detailed therein by holding the liability of all the respondents as joint and several.

9. Feeling aggrieved of this award, the appeal bearing FAO No. 1814 of 2014 has been preferred by appellant/Reliance General Insurance Company Limited, whereas, the appeal bearing FAO No. 3061 of 2017 has been preferred by the appellants/claimants Smt. Sunil and her minor

children (through her mother Smt. Sunil being guardian).

10. The learned counsel for Insurance Company in FAO-1814-2014 disputed the quantum of compensation of Rs. 20,95,776/- alongwith interest @6% per annum from the date of petition till its actual realization granted by the learned Motor Accident Claims Tribunal, Jhajjar. Smt. Sunil PW-2 is not eye witness to the accident. She claimed that she had spent Rs. 12,47,604/- on the treatment of her husband and it is further admitted by her that Rs. 7 lacs were reimbursed by the Department. Abhishek Pandey PW-4 during his cross-examination clarified that the hospital charged Rs. 9,85,000/- and the rest of the amount was discounted. The quantum of compensation was wrongly assessed by learned Motor Accident Claims Tribunal, Jhajjar by taking the salary of late Dharmender as Rs. 21,644/- per month. It has come in the statement of ASI Mukesh Kumar PW-3 that his gross salary was Rs. 16,494/- per month. There was deduction of Rs. 5,150/- towards G.P.F. etc. It has further come in the cross-examination of ASI Mukesh Kumar PW-3 that the family of late Dharmender will be getting complete salary till the date of his superannuation. The learned counsel for the Insurance Company has relied upon the authority cited in **2016(4) R.C.R.(Civil) 569, Supreme Court of India**, in case titled **“Reliance General Insurance Co. Ltd. Versus Shashi Sharma & Ors.”**, where in that case *“the deceased was granted financial assistance equivalent to the loss of pay and wages of the deceased Government employee in terms of Rule 5(1) of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 where it was held that Insurance Company is liable to pay compensation towards loss of future escalation of income*

and other benefits if the deceased Government employee had survived the accident. It was further clarified that Insurance Company could not deduct Family Pension, Life Insurance, Provident Fund etc.” The learned counsel for the Insurance Company pointed out that in this case the deceased Dharmender was around 41 years of age, therefore, the family of deceased is entitled to the full wages for a period of 12 years which are liable to be deducted while granting compensation in favour of the claimants. This fact has not been considered by the learned Motor Accident Claims Tribunal, Jhajjar while passing impugned Award.

The learned counsel for the Insurance Company further raised the issue that the learned Motor Accident Claims Tribunal, Jhajjar while deciding Issue No. 1 wrongly came to the conclusion that the accident had taken place due to contributory negligence of the driver of Trola bearing No. HR-46B-2316. The site plan Ex.R-5 has not been considered, according to which, the Trola was parked by the side of the road. In fact, the accident had taken place due to sole rash and negligent driving of late Dharmender. Therefore, the claimants are not entitled to receive any compensation.

11. The learned counsel representing the appellants/claimants in FAO-3061-2017 firstly referred to the application under Section 5 of Limitation Act for condonation of delay of 1079 days in filing the appeal. It is pointed out that the claimants are simple and rustic villagers who were not aware of the law of limitation. They had spent huge amount on the treatment of late Dharmender and for this reason their financial position was also weak. The pension/salary received by the family was utilized for the education and upkeep of the children and to run the house. Under these

circumstances there is delay in filing the appeal. The appellants had approached their counsel at lower Court to arrange an Advocate for filing the appeal. They remained under wrong impression that appeal was filed on their behalf and subsequently when they checked the website through their counsel, it was revealed that the appeal was preferred by the Insurance Company. It is prayed that appeal preferred by the Insurance Company is also tagged with the present case. Therefore, the delay in filing the appeal may be condoned and it may be decided alongwith the appeal filed by the Insurance Company.

The learned counsel for the appellants in FAO-3061-2017 i.e. for the claimants argued that the facts of the case and the evidence on record were not rightly considered by the learned Motor Accident Claims Tribunal, Jhajjar while deciding Issue No. 1. The facts of the case clearly indicate that accident took place due to rash and negligent driving of Trola bearing No. HR-46B-2316 parked on the road. The said Trola was parked without any indicator or reflectors, as a result the same was not visible when the accident took place at 08:15 P.M. In case the Trola was not there, no accident would have taken place. The accident as well as rash and negligent parking of Trola on the road at night time is duly proved on record from the testimony of Narender PW-1. Therefore, the learned Motor Accident Claims Tribunal, Jhajjar wrongly reached to the conclusion that the accident had taken place due to contributory negligence of late Dharmender and Rakesh Kumar – respondent No. 1. Infact the accident took place due to sole negligence of respondent No. 1. The compensation awarded by the learned Motor Accident Claims Tribunal, Jhajjar under conventional heads is towards the lower side. No compensation has been

awarded regarding the money spent on medical treatment. Therefore, the present appellants are entitled to receive enhanced amount of compensation which the Insurance Company is liable to pay, by holding 100% responsibility of respondent No. 1 for wrong parking of the offending Trolly on the road which was owned by respondent No. 2.

12. I have considered the arguments advanced before me and have gone through the record carefully. Firstly I will deal with the application filed by the appellants/claimants in FAO-3061-2017 under Section 5 of Limitation Act for condonation of delay of 1079 days in filing the appeal. In this case, Smt. Sunil and her minor children had filed claim petition under Section 166 of Motor Vehicles Act which was allowed by the learned Motor Accident Claims Tribunal, Jhajjar by passing impugned Award dated 23.12.2013. Feeling aggrieved of this Award, the Insurance Company filed FAO-1814-2014 challenging the aforesaid Award on the ground that there was rash and negligent driving on the part of deceased victim Dharmender and he was solely responsible for the said accident as well as regarding the quantum of compensation awarded by passing aforesaid Award. The FAO No. 3061 of 2017 is also filed on the same ground alleging that the accident took place due to rash and negligent driving of Rakesh Kumar alone and the quantum of compensation awarded by the Tribunal is also challenged. In view of these facts, the rash and negligent driving as well as quantum of compensation awarded by the Tribunal has to be considered on merits. The claimants Smt. Sunil and others took the stand that they had approached the trial Court Counsel to arrange Advocate for filing appeal before the High Court and they remained under this impression that the appeal has been filed but

subsequently it came to their knowledge that the appeal was filed by Reliance General Insurance Company Ltd. They engaged a counsel and came to know about the status of the case and under these circumstances there is delay in filing the appeal. It is further alleged that she lost her husband and was taking care of her minor children and the household work. Therefore, she personally could not contact her Counsel. No reply is filed to this application. Both the appellants i.e. the Insurance Company as well as Smt. Sunil and others have challenged the Award on the same ground. Therefore, it is in the interest of justice that both the parties are given opportunity of being heard so that the case is decided on merits. Therefore, taking a lenient view, the delay in filing the FAO-3061-2017 is condoned and CM-10129-CII-2017 is accordingly allowed.

13. The learned Motor Accident Claims Tribunal, Jhajjar framed specific Issue No. 1 as to whether the accident in question took place due to rash and negligent driving of Trola bearing No. HR-46B-2316 driven by respondent No. 1 as alleged and the onus to prove this issue was on the appellants/claimants. In order to discharge this onus, the learned counsel for the appellants/claimants had examined Narender as PW-1 who filed his affidavit Ex.PW1/A narrating the manner in which the accident took place. He is also author of FIR No. 729 dated 03.12.2010 registered at Police Station Jhajjar which is Ex.P1. He categorically stated that on the fateful day of 02.12.2010, he alongwith Dharmender and Suraj Bhan were returning to Gurgaon after finishing their personal work and at about 08:15 P.M. they were on Yakubpur to Farrakh Nagar road and when they reached near *Pataka* factory, there was one Trola parked on the road without indicator, rear lights or reflectors, as a result Dharmender who was driving

the car could not see the Trola parked on the road and hit behind the Trola, as a result of which both Dharmender and Suraj Bhan suffered serious injuries whereas he had received minor injuries. The perusal of written reply filed by respondent No. 1 clearly shows that the accident is not denied by Rakesh Kumar – respondent No. 1. As per his version, it was Dharmender, the deceased victim who was negligent in driving the car and dashed the car into the vehicle of respondent No. 1 while coming to his extreme wrong side of the road. The aforesaid written reply clearly indicates that the accident as well as the manner in which it took place is not disputed. The respondent No. 1 has not stepped into the witness box and statement of Narender PW-1 has remained unrebutted. The learned counsel for the Insurance Company took the stand that it was Dharmender who was driving his car in a rash and negligent manner and hit behind the alleged offending Trola bearing No. HR-46B-2316 and in this regard it was pleaded that the site plan proved on record as Ex.R-5 has not been taken into consideration. I have carefully seen the site plan Ex.R-5 which was prepared on 03.12.2010 (one day after the said accident). The position of the Trola is shown as Mark AB which is shown to be parked on the left side of the road. It is not the case that the Trola was parked on extreme left side on the *kacha* berm. The note written on the site plan Ex.R-5 further confirms that the Trola was without any side indicator or reflectors. In order to ascertain the rash and negligent act on the part of respondent No. 1 for parking his Trola on the road, the time on which the said accident took place is material. The accident took place in the month of December at 08:15 P.M. when it is complete darkness. It is not the case that the accident took place in the day light in which the deceased victim

could have seen the Trola parked on the road. Since, the accident took place at night time, therefore, it was not possible for the deceased victim to see the Trola parked on the road especially when it was without any indicator or reflector. The perusal of para No. 9 of the written reply further clarifies where the respondent No. 1 himself conceded that Dharmender was following another vehicle which took sudden turn while overtaking stationary Trola whereas the deceased could not control his car and dashed straightaway in the Trola. Therefore, the time and the manner in which the accident took place clearly indicates that Rakesh Kumar parked the offending Trola on the road without indicator or reflector, as a result of which it was not visible and the deceased victim Dharmender could not see the Trola parked on the road in pitch darkness and hit behind the Trola. In case the Trola was not parked on the road, the said accident would have not taken place. The respondent No. 1 in preliminary objection No. 2 took the stand that the deceased was an untrained driver. However, it has come in the statement of ASI Mukesh Kumar PW-3 that deceased Dharmender was working as a Driver with the Commissioner of Police, Gurgaon. Copy of his Driving License is also produced as Ex.P23. Considering these facts, in my opinion, the finding given by the learned Motor Accident Claims Tribunal, Jhajjar holding the deceased Dharmender and Rakesh Kumar equally responsible for the said accident does not hold good. The findings given by the learned Motor Accident Claims Tribunal, Jhajjar regarding Issue No. 1 are accordingly reversed holding Rakesh Kumar – respondent No. 1 solely responsible for his rash and negligent act for parking his Trola at night time on the road without indicator or reflector.

14. The Issue No. 3 is pertaining to the entitlement of appellants/claimants regarding the quantum of compensation which they are entitled to receive on the death of late Dharmender. Smt. Sunil who is one of the claimant, widow of Dharmender has stepped into the witness box as PW-2 to prove the facts stated in the claim application. Karambir, brother of the deceased also stepped into the witness box as PW-5 confirming that all the claimants were dependent on the income of late Dharmender. The appellants/claimants examined ASI Mukesh Kumar (PW3) who has proved on record the pay slip of deceased EHC Dharmender, No. 1468/GGN, posted as Driver of Commissioner of Police, Gurgaon, according to which his net salary is mentioned as Rs. 16,494/-, total deductions towards G.P.F. etc. are mentioned as Rs. 5,150/- and the gross salary is mentioned as Rs. 21,644/-. During the cross-examination of this witness, it is also revealed that the claimants are getting full salary after the death of late Dharmender and they shall get the same till the date of superannuation. In this regard, the learned counsel for the Insurance Company has referred to Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006, according to which considering the age of late Dharmender as 41 years, the family will get salary of late Dharmender for a period of 12 years as per Rule 5(1)(b). The learned counsel for the Insurance Company while relying upon the authority cited in **2016(4) R.C.R.(Civil) 569, Supreme Court of India**, case titled **“Reliance General Insurance Co. Ltd. Versus Shashi Sharma & Ors.”**, it is pointed out that the aforesaid salary to be received by the claimants should be reduced from the quantum of compensation awarded under the provisions of Section 166 of Motor Vehicles Act. On

this point, there is authority of **Hon'ble Coordinate Benches in FAO No. 7236 of 2011 decided on 07.05.2019** in case titled "**Roshni Devi and another Versus Vivek Kumar and others**" and FAO-3064-2013 (O&M) titled "**Kamla Devi and others Vs. Sahib Singh and others**" decided on **30.11.2017**. The claimants were to receive financial assistance of a sum equal to the pay and other allowances that was last drawn by the deceased employee under the provisions of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. Even otherwise about 50% of the amount was to be received by the claimants by way of family pension. Therefore, the claimants are getting approximately 50% extra on the basis of aforesaid Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. Considering the Salary Slip Ex.P-2, the family of deceased will get financial assistance to the tune of Rs. 20,184/- approximately (as per Salary Slip – Basic Pay Rs. 13,920/- + D.A. Rs. 6,264/-) and the annual income is Rs. 2,42,208/- and for a period of 12 years Rs. 29,06,496/-. Thus one half amount is Rs. 14,53,248/- which can be deducted from the compensation assessed in this case.

The learned Motor Accident Claims Tribunal, Jhajjar rightly considered the income of the deceased as per his salary slip Ex.P-2 to the tune of Rs. 21,644/-. He was employed as Head Constable in Haryana Police Department, therefore, 30% increase in income on account of future prospects has been rightly assessed as Rs. 6,493/- and the monthly income is taken as Rs. 28,137/- (Rs. 21,644/- + Rs. 6,493/-) and annual income Rs.3,37,644/-. The learned Motor Accident Claims Tribunal, Jhajjar has reduced 20% income towards Income Tax without considering the tax

laws applicable at that time i.e. in the year 2011-12. On annual income of Rs. 3,37,644/- no tax was payable on income up to Rs. 1,60,000/-. Under Section 80C of Income Tax Act, there was rebate up to Rs. 1,00,000/-. Therefore, the taxable income is about Rs. 77,644/- and the amount of tax comes out to be Rs. 7,764/-. However, the learned Motor Accident Claims Tribunal, Jhajjar has reduced the income wrongly by deducting tax to the tune of 20%. After deduction of tax, the income is taken as Rs. 3,29,880/-. The deceased was having a wife, three daughters and two sons which means that six family members were dependent on the income of late Dharmender, therefore, 1/4th income is deducted towards personal expenses and the dependency of the family is to the tune of Rs. 2,47,410/-. Considering the age of deceased as 41 years plus, multiplier of 14 was rightly applied by the learned Motor Accident Claims Tribunal, Jhajjar and with this multiplier, the amount of compensation comes out to be Rs.34,63,740/-. As referred above, the claimants were to receive full salary of the deceased under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. Therefore, Rs. 14,53,248/- is to be deducted from the quantum of compensation assessed as above, which comes out to be Rs. 20,10,492/- (Rs. 34,63,740/- - 14,53,248/-). Therefore, the appellants/claimants are entitled to receive this amount on account of death of late Dharmender.

The learned Motor Accident Claims Tribunal, Jhajjar has granted Rs. 1,00,000/- towards loss of consortium. In this case, the applicant/claimant No. 1 Smt. Sunil has lost her husband whereas, the appellants/claimants No. 2 to 6 have lost their father in their young age.

Therefore, all of them are granted compensation on account of loss of

consortium @ Rs. 44,000/- which comes out to be Rs. 2,64,000/-.

The appellants/claimants are further granted Rs. 16,500/- towards funeral expenditure, Rs. 16,500/- towards loss of estate and Rs. 5,000/- towards transportation. Therefore, the total amount of compensation comes out to be Rs. 23,12,492/-.

Out of total medical bills of Rs. 9,85,000/-, the department reimbursed Rs. 7,00,000/- and the balance is Rs. 2,85,000/- which the claimants are entitled under the head of Medical Expenditure. However, the learned Motor Accident Claims Tribunal, Jhajjar wrongly concluded the medical expenditure by taking it as Rs. 12,47,604/- without considering the cross-examination of the witness Abhishek Pandey (PW4), where he categorically stated that only Rs. 9,85,000/- were charged by the hospital authorities and rest of the amount was discounted. Thus, total amount of compensation comes out to be Rs. 25,97,492/- (Rs. 23,12,492/- + Rs. 2,85,000/-) which the appellants/claimants are entitled to receive from the respondents who are liable to pay this amount jointly and severally. The appellants/claimants are entitled to receive enhanced amount of compensation by adjusting the compensation already received by them in equal shares with interest @6% per annum from the date of filing of FAO-3061-2017 till its realization.

Resultantly, the findings given by the learned Motor Accident Claims Tribunal, Jhajjar by passing impugned Award dated 23.12.2013 are modified. The FAO No. 1814 of 2014 filed by the appellant - Insurance Company and FAO No. 3061 of 2017 filed by the appellants/claimants – Smt. Sunil and others are partly accepted and disposed of accordingly.

The copy of record received from the Tribunal be sent back to the concerned quarter.

Pending application(s), if any, also stand disposed of.

Photocopy of this order be placed on the connected file.

10.08.2023
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes/No