



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(i)                      **FAO-1780-1998 (O&M)**

Avtar Kaur @ Kartar Kaur  
...Appellant

VERSUS

PRTC Patiala and another  
...Respondents

(ii)                      **FAO-1781-1998 (O&M)**

Jarnail Singh and others  
...Appellants

VERSUS

PRTC Patiala and another  
...Respondents

(iii)                      **FAO-1782-1998 (O&M)**

Hardip Singh @ Hardeep Singh and others  
...Appellants

VERSUS

PRTC Patiala and another  
...Respondents

(iv)                      **FAO-1783-1998 (O&M)**

Jarnail Singh and others  
...Appellants

VERSUS

PRTC Patiala and another  
...Respondents

**Date of Decision: December 12, 2024**

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present:        Mr.Arun Bansal, Mr.Khushdeep Mann and

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Mr.Anubhav Bansal, Advocate  
for the appellants.

Mr.Anupam Singla and Mr.Lalit Goyal, Advocates  
for respondent No.1.

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**ARCHANA PURI, J.**

These are four appeals filed to challenge the inadequacy of the compensation awarded by learned Motor Accident Claims Tribunal, in four claim petitions, filed vis-a-vis, injuries sustained by Avtar Kaur @ Kartar Kaur and death of three persons, namely Mohinder Singh, Nidhan Singh and Harpal Kaur, in a motor vehicular accident. All the four separate claim petitions were consolidated and decided by common Award dated 24.12.1997.

On appraisal of the evidence, brought on record, in MACT No.13 of 19.04.1993, compensation was granted only to Kirpal Kaur, mother of deceased Mohinder Singh, to the extent of Rs.50,000/-. Likewise, in MACT No.16, the compensation was granted to the extent of Rs.75,000/- to Avtar Kaur @ Kartar Kaur, on account of injuries sustained in the accident. In MACT No.14, on account of death of Nidhan Singh, compensation was granted to the extent of Rs.50,000/-, only to his mother Bhan Kaur. However, no compensation was granted to the legal representatives of Harpal Kaur, in MACT No.17.

Before proceeding further, at this juncture, it is pertinent to mention that Award under challenge is dated 24.12.1997. The appeals in hand, relate to the year 1998. However, on account of destruction of record in the fire incident, which took place in the year 2011, in the High Court

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premises, the record is not available. Even, all the counsel making appearance, in the present appeals, have stated that no record is available with them and they have given the statement that they have no objection, if the factual position, as evident from the impugned Award and the settled position of law is taken into consideration and the appeals are disposed of accordingly.

So far as, the factum of accident and manner of taking place of the same is concerned, none of the respondents, upon whom the liability has been fastened, have filed any counter appeals. Even, counsel for respondent No.1, during the course of arguments, also do not dispute the manner of taking place of the accident. All the appeals, in hand, have been filed by the claimants, only to seek enhancement of the compensation.

However, some facts, as spelt out from the Award, to be noticed, are as herein given:-

That, on 28.09.1993, Mohinder Singh along with Ikattar Singh, Harpal Kaur, wife of Nidhan Singh, Avtar Kaur alias Kartar Kaur and Nidhan Singh were going to village Dalel Singhwala, in jeep bearing registration No.HRN-2504, being driven by Nidhan Singh. When they reached near Gurudwara Titarsar in the jurisdiction of police station Kotfatta, at about 10.15 a.m., then a bus bearing registration No.PB-11C-9446, came from the opposite side, which was driven in a rash and negligent manner and it struck into the jeep, as a result whereof, Nidhan Singh died instantaneously and other occupants of the jeep, Harpal Kaur, Mohinder Singh, Avtar Kaur and Ikattar Singh, received multiple injuries. The said bus was being driven by Gurnaib Singh, driver of PRTC, who ran away from the spot. Later on, Mohinder

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Singh and Harpal Kaur also succumbed to their injuries. It was categorical claim that the accident had taken place, due to rash and negligent driving of the bus bearing registration No.PB-11C-9446, driven by Gurnaib Singh.

Though, in the written statement, as evident from the impugned Award, the accident, as such, was denied, but however, during the course of the evidence, Gurnaib Singh, driver of the offending bus, had stepped into witness box as RW-1. Qua issue No.1 framed in the case, with regard to the factum and manner of taking place of the accident, Ikattar Singh, one of the occupant of the jeep, had stepped into witness box as AW-1 and he has deposed in consonance with the pleaded case of the claimants, with regard to manner of taking place of the accident. Besides the same, even Avtar Kaur alias Kartar Kaur, one of the injured, stepped into witness box as AW-3 and has deposed about the manner of taking place of the accident. Besides the same, AW-4 Dr.Lathakiana, had also been examined, vis-a-vis, admission and treatment of Avtar Kaur alias Kartar Kaur, in the hospital and treatment undergone by her. Even, AW-2 Dr.Kiran Garg, Medical Officer had deposed having conducted post-mortem examination of Nidhan Singh.

In such backdrop, now let us consider the claim qua enhancement of compensation awarded, on account of death of Mohinder Singh and others, in the accident in question.

As spelt out from the impugned Award, qua death of Mohinder Singh, it is pleaded case of the appellants-claimants that Mohinder Singh was working as an agriculturist and he was 48 years old and was earning Rs.3000/- per month, at the time of accident. MACT No.13 relating to death of Mohinder Singh was filed by his sons, Hardeep Singh as well as

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Sukhdeep Singh and daughter Sukhvinder Kaur, besides mother Kirpal Kaur and widow Rajpal Kaur. However, learned Tribunal reached the conclusion, on considering the age of Hardeep Singh as well as considering there to be no evidence of dependency of Sukhvinder Kaur and Sukhdeep Singh and also while observing, Rajpal Kaur, to have already died, had granted compensation, only to mother of Mohinder Singh, namely Kirpal Kaur and a lumpsum compensation granted was Rs.50,000/-.

Likewise, qua claim petition No.14, relating to the death of Nidhan Singh, the same was filed by his sons Jarnail Singh and Baljinder Singh, as well as Bhan Kaur, who is mother of Nidhan Singh. Baljinder Singh, one of the sons had stepped into witness box as PW-5. Considering the sons, to be major and married, learned Tribunal had not granted any compensation and lumpsum amount of Rs.50,000/- was granted only to Bhan Kaur, mother of deceased Nidhan Singh.

Furthermore, qua death of Harpal Kaur, claim petition No.17 was filed by her sons Jarnail Singh and Baljinder Singh. However, they being major, they were not granted any compensation, on account of death of Harpal Kaur.

Besides the aforesaid, qua injuries sustained by Avtar Kaur @ Kartar Kaur, who filed MACT No.16. Considering the testimonies of claimant Avtar Kaur @ Kartar Kaur herself as well as AW-4 Lathakiana, who had deposed about admission of claimant Avtar Kaur @ Kartar Kaur, in CMC Ludhiana, at first instance from 01.03.1993 to 12.04.1993 and then again from 20.07.1993 to 29.07.1993 and also considering the claimant to have suffered degloving injury of left lower limb with open knee joint and



vascular impairment and also considering the fact of claimant having undergone seven operations, compensation was granted to the extent of Rs.75,000/-.

Being aggrieved with the extent of compensation, the appellants had filed the appeals in hand, for seeking enhancement of the compensation.

Be it noted that no appeal, as such, has been filed by the respondents, who had been made liable to pay the compensation.

At the very outset, it is pertinent to mention that since there is no material coming on record, with regard to the age of the deceased as well as nature of injuries sustained by Avtar Kaur @ Kartar Kaur and the period of her admission in the hospital, some guess work, has to be made, while making out a case for enhancement of compensation.

Be it noted that learned Tribunal had outrightly not granted any compensation to the sons and daughter of Mohinder Singh and Nidhan Singh as well as Harpal Kaur, which is palpably wrong. Even if, sons and daughters of the deceased are grown up children, they cannot be denied any compensation, solely on the account of they being settled in their own lives. The fact remains that they are legal representatives.

At this juncture, it is important to make reference to the decision rendered in ***National Insurance Company Limited v. Birender [(2020) 11 SCC 356]***, wherein, a claim petition was filed by major married and earning sons of the deceased mother and the Hon'ble Supreme Court held as follows:-

*“12. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166 (1). The major married son who is also earning and not*



*fully dependent on the deceased would be still covered by the expression “legal representative” of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression “legal representative” has not been defined in the Act. xxx xxx xxxx*

*13. In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.*

*14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per*



*annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”*

*(emphasis added)*

Adverting to the cases in hand, it is pertinent to mention that though, Hardeep Singh, Sukhvinder Kaur and Sukhdeep Singh, may be well settled in their lives, but the fact remains that they are the legal representatives of the deceased. Likewise, even Jarnail Singh and Baljinder Singh, who are sons of both deceased Nidhan Singh and Harpal Kaur, may be settled in their own lives, but they are legal representatives and therefore, in the backdrop of the aforesaid case law, solely on account of they being grown up children, they cannot be deprived of the compensation.

The word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and other may be dependent in terms of service. Thus, dependency is a relative criteria to claim loss of dependency. It may be financial, it may be gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Thus, considering the same, the children of deceased persons, ought not to be deprived of the compensation.

It is also essential to note that in the Award, there is mention made about Rajpal Kaur widow of Mohinder Singh, to have died. But however, during the pendency of the appeal, an application was filed for impleadment of LRs of Kirpal Kaur and therein, it is also stated that Rajpal Kaur has been wrongly recorded to have died. Even copy of Aadhaar Card, duly signed by Rajpal Kaur, supported by an affidavit, has also been filed

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and she has been impleaded as one of the LRs of Kirpal Kaur and therefore, is also entitled to compensation, on account of death of Mohinder Singh.

Besides the aforesaid, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, the compensation is to be granted to the claimants, under the conventional heads also, namely, 'loss of consortium', 'loss of estate' and 'funeral expenses'. 'funeral expenses'. As per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', all the claimants/dependents, are entitled to compensation, on the count of 'loss of consortium'. However, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the count of 'loss of consortium', works out to be, Rs.48,400/- to each of the claimants and on the similar pattern, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-**, on each count.

So far as, assessment of loss of dependency is concerned, on account of loss of record, 'work on' cannot be made, as per settled law, but however, some guess work, has to be made and considering the same and also considering the entitlement of sons and daughters to compensation under the conventional heads, in the fitness of the circumstances, in claim petition No.13, Rs.70,000/- each is granted to all the claimants, which is inclusive of compensation under the conventional heads. The extent of compensation already granted to Kirpal Kaur, shall be adjusted in the amount, as now awarded. However, the extent of share of Kirpal Kaur, shall be equally disbursed amongst LRs, now impleaded as per the amended

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memo of parties.

Now coming to claim petition No.14, relating to death of Nidhan Singh, the sons of deceased Nidhan Singh, namely, Jarnail Singh and Baljinder Singh, even though, grown up and married sons, are also entitled to compensation, on the same analogy, as observed aforesaid. However, from the impugned Award, nothing, as such, is evident about the vocation followed by Nidhan Singh and about his age as well as age of his wife Harpal Kaur. In the given circumstances, some guess work has to be applied. So far as, death of Nidhan Singh is concerned, in MACT No.14, claimants Jarnail Singh and Baljinder Singh as well as Bhan Kaur are together entitled to compensation, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses'.

While applying some guess work for loss of dependency, all the claimants are held entitled to compensation, to the extent of Rs.70,000/- each. However, the compensation already granted to Bhan Kaur shall be adjusted from the amount, as now awarded.

On account of paucity of evidence, due to loss of record, on the same analogy, as observed aforesaid, sons of deceased Harpal Kaur, namely, Jarnail Singh and Baljinder Singh, in claim petition No.17, are also held entitled to Rs.70,000/- each, which is inclusive of compensation under the conventional heads i.e. loss of consortium, loss of estate and funeral expenses.

Now, coming to the compensation, qua injuries sustained by Avtar Kaur @ Kartar Kaur. As evident, Avtar Kaur @ Kartar Kaur had sustained injuries in the accident in question. As observed aforesaid, no

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record, as such, with regard to the extent of injuries is available. However, from the impugned Award, it is evident that Avtar Kaur @ Kartar Kaur stepped into witness box as AW-3 and she had stated about the injury sustained on left leg and skin of which was mutilated. She also deposed about having remained admitted in CMC Ludhiana, for a period of about two months. Likewise, it is also evident from the impugned Award that AW-4 Dr.Lathakiamama, who had treated patient, had stated about Avtar Kaur @ Kartar Kaur, to have remained admitted from 01.03.1993 to 12.04.1993 and again from 20.07.1993 to 29.07.1993, as indoor patient. The said doctor had also brought the record of admission of Avtar Kaur @ Kartar Kaur and deposed about the patient to be having degloving injury on the left lower limb, with open knee joint and there was vascular impairment. She was operated five times on different dates, in first go and second time, she was operated upon twice. Thus, it is evident that Avtar Kaur @ Kartar Kaur had seven operations.

It is pertinent to mention that at the time of recording of evidence before learned Tribunal, Avtar Kaur was still under treatment and therefore, no disability, as such, was assessed. Even though, it is submitted by learned counsel for appellant Avtar Kaur @ Kartar Kaur that disability certificate was produced before Lok Adalat and order dated 12.09.2002 is also available on record, whereupon, the compensation was worked upon before Lok Adalat, but however, the compromise did not fructify, as PRTC later on did not give concurrence to the said compromise.

May it be so. The disability certificate is not coming forth, at present and therefore, assessment as such, on the count of 'disability', cannot be

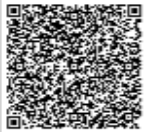
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made on account of non-availability of the record. However, seven operations undergone, as such, is not the fact, which is disputed by respondent No.1 and is evident from the impugned Award.

It is pertinent to mention that compensation of Rs.75,000/-, considering the circumstances, as spelt out from the Award, cannot be stated to be on higher side. In fact, it is important to make mention that several counts have been given amiss, while making assessment of the compensation. There are various counts, like '**pain and suffering**', '**special diet**', '**attendant charges**', '**medical expenses**' etc., which are required to be considered, while making assessment of the compensation. However, on these counts, no compensation has been worked upon.

Applying some guess work and taking into consideration the trauma, which Avtar Kaur @ Kartar Kaur, must have passed through, on account of injuries sustained in the accident in question and her life having been displaced, at least for a period one year, after sustaining of the injuries, in the fitness of the circumstances, another sum of Rs.75,000/- is granted, as compensation, besides Rs.75,000/- as already granted by Tribunal.

However, in FAO-1781-1998, Paramjit Kaur, Kirandeep Kaur, Amandeep Kaur and Sandeep Kaur, being children of Baljinder Singh, since deceased, who was impleaded as claimant No.2 in MACT No.14, are entitled to the compensation, falling to the share of Baljinder Singh and they are also entitled to half share of compensation (equally), falling to the share of Bhan Kaur and another half share of compensation, falling to the share of Bhan Kaur, shall be disbursed to Jarnail Singh, other grandson of Bhan Kaur.



Similarly, in FAO-1783-1998, Paramjit Kaur, Kirandeep Kaur, Amandeep Kaur and Sandeep Kaur, being children of Baljinder Singh, since deceased, who was also son of deceased Harpal Kaur, relating to whom MACT No.17 was filed, are entitled to the compensation, falling to the share of Baljinder Singh, in equal proportions.

Likewise in FAO-1782-1998, since appellant No.4 Kirpal Kaur has already died, therefore, appellants No.1 to 3 and 5, are held entitled to the compensation falling to the share of Kirpal Kaur, in equal proportions.

In FAO-1780-1998, the amount of compensation, as now awarded shall be disbursed to the LRs of Avtar Kaur in equal proportions.

In the light of the aforesaid discussion, all the appeals in hand, stand allowed and the enhancement is made, as observed aforesaid. The remaining terms of the Award, with regard to interest and liability, shall remain the same.

December 12, 2024  
Vgulati

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes/No