

FAO-6048-2010 (O&M)

FAO-6053-2010 (O&M)1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(212)

Date of Decision :24.07.2024

1. FAO-6048-2010 (O&M)

Ompati Devi and another...Appellants

Versus

M. Anand Krishna and others

...Respondents

2. FAO-6053-2010 (O&M)

Ajay Bansal...Appellant

Versus

M. Anand Krishna and others

...Respondents

CORAM: HON’BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Amit Singla, Advocate
for the appellants in both the appeals.

Mr. R.C. Kapoor, Advocate
for respondent No.2-Insurance Company.

Mr. Anil K. Sakal, Advocate for
Mr. Vaibhav Jain, Advocate for respondent No.3/driver.

RITU TAGORE, J (ORAL)

CM-29299-CII-2010 in FAO-6053-2010

Application is for condonation of delay of 09 days in refiling the appeal. Application is duly supported by affidavit of appellant Ajay Bansal.

For the reasons mentioned in the application and the arguments addressed, the delay of 09 days in refiling the appeal is condoned.

Application is accordingly disposed of.

**FAO-6048-2010 (O&M)****FAO-6053-2010 (O&M)****2****CM-29300-CII-2010 in FAO-6053-2010**

Application is for condonation of delay of 348 days in filing the appeal. Application is duly supported by affidavit of appellant Ajay Bansal.

For the reasons mentioned in the application and the arguments addressed, the delay of 348 days in filing the appeal is condoned subject to the condition that the claimants shall not be entitled to claim interest for the period of delay.

Application is accordingly disposed of.

CM-27293-CII-2010 in FAO-6048-2010

Application is for condonation of delay of 348 days in filing the appeal. Application is duly supported by affidavit of appellant No.2-Satpal

For the reasons mentioned in the application and the arguments addressed, the delay of 348 days in filing the appeal is condoned subject to the condition that the claimants shall not be entitled to interest for the period of delay.

Application is accordingly disposed of.

FAO-6048 and 6053 of 2010

1. This judgment shall dispose of the above captioned appeals filed against the same award dated 06.01.2009 passed by learned Motor Accident Claims Tribunal, Hissar (hereinafter referred to as 'the Tribunal') in a MACT Claim Petitions No.8 and 9 of 2007, on account of death of Nitin and the injuries sustained by Ajay Bansal, in a motor vehicular accident dated 23.10.2007.

2. These appeals are for the enhancement of the compensation amount. The learned counsel for the parties, have consented and agreed to dispose of these appeals by common judgment.



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3. On 23.10.2007, Nitin (deceased) and Ajay Bansal (injured) were travelling on a motorcycle from Hissar to Hansi, at a moderate speed. At about 8.30 p.m. upon reaching near TCP Gate No.3, Hissar Cantt. Hissar, they were struck by offending vehicle, a Maruti Car bearing registration No.WNC/4760, driven by respondent No.3/driver, in a very rash and negligent manner. As a result of collision, both the occupants sustained multiple grievous injuries and were taken to Civil Hospital, Hissar for treatment, where Nitin was declared dead after examination. The claimant-injured Ajay Bansal was shifted to CMC Hissar after giving first aid. FIR No.915, dated 24.10.2007 under Sections 279 and 304-A IPC was registered at Police Station Sadar, Hissar against the respondent No.3/driver for causing the accident.

4. Claimants (parents of deceased Nitin) filed the petition under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') for the death of their son, seeking compensation of Rs.10,00,000/- stating that they were totally dependent on the income of the deceased. The injured claimant Ajay Bansal, also filed a claim petition under Section 166 of the Act, seeking compensation of Rs.10,00,000/- on account of multiple grievous injuries sustained in the accident and resultant suffering of pain and suffering, loss of income and expenses incurred on the treatment etc.

5. Respondents (owner, insurer and driver) filed their respective pleadings, denied the averments of the claimants in both the petitions, as to cause and manner of the accident, age and income of the deceased, dependency of claimants upon deceased, sustaining the injuries in accident by injured claimant Ajay Bansal, the expenses on the treatment and entitlement of the claimants to receive compensation.

6. From the pleadings of the parties, learned Tribunal framed the



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issues and parties led the evidence. Upon appraisal of evidence led by the parties, learned Tribunal answered all the issues in favour of the claimants and granted Rs.1,50,000/- to the injured Ajay Bansal and Rs.3,55,000/- for the death of deceased Nitin, along with interest @ 9% per annum from the date of filing of the petition till its realization and made all the respondents jointly and severally liable to satisfy the award.

7. Being dissatisfied with the awarded amount, the claimants have preferred these appeals.

8. Learned counsel for the appellants/claimants in case of death of Nitin, argues that the assessment of loss of dependency by the learned Tribunal, has been faulty; firstly, future prospects were not added while considering the total loss of dependency. Secondly, multiplier has been wrongly selected based on the age of the parents, which is contrary to the directions given in '*Sarla Verma and others vs. Delhi Transport Corporation and another*' 2009 (3) R.C.R. (Civil) 77. Thirdly, grant of compensation for loss of estate and expenses on transportation is also not in accordance with principles laid in '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others*' (2018) 18 SCC 130 and '*National Insurance Company Limited vs. Pranay Sethi and others*' (2017) 16 SCC 680.

9. Learned counsel further argues that the grant of compensation to the injured claimant is also on meager side. The evidence on record shows that the injured sustained injuries to his head, shoulder and teeth. He was hospitalized for fifteen days, suggesting he suffered a lot of physical pain and agony. It is urged that the compensation granted under both pecuniary and

non-pecuniary heads does not match the severity of the injuries sustained by



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the injured, hospitalization period, the treatment duration, and the corresponding expenses incurred under these heads. A request is made to re-determine the compensation amount.

10. Learned counsel for the Insurance Company could not refute that assessment of loss of income in death case is not as per the settled principles culled out in various judicial precedents. However, defended the grant of compensation under the different heads in an injury case.

11. I have heard learned counsel for the parties and have gone through the paper book and the available document with their able assistance.

12. The findings of the learned Tribunal that deceased, Nitin, suffered fatal injuries and claimant Ajay Bansal, sustained multiple grievous injuries in the accident caused by respondent No.3/driver, while driving the offending vehicle are not in dispute. Therefore, same stands affirmed.

13. Insofar as the assessment of monthly income of the deceased by the Learned Tribunal at Rs.3,000/- appears reasonable and requires no enhancement considering the minimum wages prevalent at the relevant time. However, the learned Tribunal committed an error in not considering future prospects and in selecting the multiplier based on the age of the deceased's parents while computing the total loss of dependency. The Learned Tribunal also erred in deducting 1/3rd towards the personal maintenance of the deceased, whereas it should have been 1/2 (as deceased was a bachelor), in accordance with the principles culled out in *Magma General Insurance Company Limited (supra)* and *Pranay Sethi and others (supra)*. Furthermore, from the evidence as discussed by learned Tribunal in an injury case, it is made out that the claimant-injured suffered multiple injuries in the

accident affecting his head, shoulder and teeth, and he remained hospitalized

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for about 15 days. The statement of claimant-injured regarding his injuries was corroborated by Dr.Vijay Kumar, Medical Officer, Neuro- Surgeon, N.C. Jindal Hospital, Hissar, who deposed that a CT scan of the injured revealed severe head injury and he was treated conservatively for the same and was discharged from the hospital on 07.11.2006.

14. Learned Tribunal has granted the claimant-injured Rs.38,000/- on account of pain and suffering; Rs.10,000/- for the loss of earning/education during the period he remained on bed; Rs.10,000/- for transportation; and another Rs.10,000/- for special diet and attendant charges.

15. Undoubtedly, determining compensation is a complex task and can never be an exact science. Perfect compensation is rarely possible, especially in cases of injury and disability. The Motor Vehicles Act is a beneficial piece of legislation. The principle essentially followed by the Courts in assessing motor vehicle compensation claims is to grant 'just compensation', which include all elements that would go to place the victim in as near a position as she or he was in before the occurrence of the accident. It is true that no amount of money or other material compensation can renew a physical frame that has been battered in accident, however, some measure by way of restitution in form of monetary compensation can be provided to those who survive or the victims who have to face their lives.

16. To the considered opinion of this Court, the compensation awarded to the injured considering the nature of injuries and other relevant factors discussed above, appears inadequate. Accordingly, another lump sum amount of Rs.50,000/- towards pain and suffering, transportation, special diet and attendant charges is awarded to the claimant-injured Ajay Bansal. It is

settled position of law that the endeavour of the Courts, in such cases is to

place the victim (injured) to the same position as prior to the accident and that the award should be reasonable and just.

17. Taking into account the appropriate multiplier based on age and income of the deceased, the total compensation in case of death of Nitin is re-assessed as follows :-

Name of the deceased – Nitin Status - Unmarried Age – 23 years Amount given by learned MACT - Rs.3,55,000/- along with 9% interest per annum		
Reassessment of award amount		
Sr. No.	Heads	Income (in Rupees)
1.	Income	Rs.3,000/-
2.	Future prospects @ 40%	Rs.4,200/- (Rs.3,000 + 1,200)
3.	Deduction 1/2 towards personal expenses	Rs.2,100/-
4.	Total income	Rs.2,100/-
5.	Multiplier	18
6.	Total loss of dependency	Rs.4,53,600/- (Rs.2,100 x 12 x 18)
7.	Loss of estate	Rs.18,000/-
8.	Loss of funeral expenses	Rs.18,000/-
9.	Loss of consortium x 2	Rs.96,000/- (Rs.48,000/- x 2)
10.	Total	Rs.5,85,600/-

18. The grant of 9% interest per annum requires no interference same appears to be reasonable.

19. No other point was raised or pressed.

20. After deducting the amount of Rs.3,55,000/- already awarded by the learned Tribunal in a death case of Nitin, the enhanced amount of compensation is held to be **Rs.2,30,600/-** (Rs.5,85,600 - Rs.3,55,000). Thus, the claimants are entitled over and above, the amount already granted by learned Tribunal, and in injury case **Rs.50,000/-** along with same rate of interest as granted by learned Tribunal from the date of filing the petition till its realization, minus the interest for the period of delay of 348 days in filing the present appeals, payable within 30 days from the date of receipt of certified copy of this judgment. Remaining conditions of disbursal of amount as given by learned Tribunal shall remain unaltered. Needless to mention that the amount, if any, already deposited by Insurance company shall be adjusted.
21. Accordingly, both the appeals preferred by the claimants are allowed in the above terms.
22. Pending miscellaneous application(s), if any, stand disposed of accordingly.
23. A photocopy of this order be placed on the connected case file numbered above.

(RITU TAGORE)
JUDGE

July 24, 2024
Rimpal

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