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

Date of decision : 22.08.2025

FAO-548-2016

OM PATI ....Appellant

Versus

JASVIR SINGH AND ORS ...Respondents

FAO-2092-2016

GURDEV ....Appellant

Versus

JASVIR SINGH AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. H.S. Sandhu, Advocate for the appellant(s).

Mr. Sanjiv Pabbi, Advocate for the respondent-Insurance Co.

PANKAJ JAIN, J. (ORAL)

These two appeals arise out of the same accident. Both the appeals are at the behest of the claimants.

2. As per the facts on record, Balraj (deceased) and Gurdev, appellant in FAO No.2092 of 2016 were travelling on a motor-cycle when they were hit by offending vehicle Toyota Qualis being driven by respondent No.1 and insured with respondent No.3. Balraj lost his life on the spot. Gurdev was left seriously injured. FIR No.478 dated 31.12.2014 was registered for the offences punishable under Section 279, 304-A IPC at Police Station Pehowa, District Kurukshetra against respondent No.1.

3. Mother of Balraj preferred MACT Case No.54 of 2015. Injured Gurdev filed claim petition i.e., MACT Case No.55 of 2015. Both the claim petitions stand allowed. LR of Balraj has been awarded compensation of Rs.12,64,300/-. Gurdev Singh, the injured/claimant has been awarded compensation of Rs.4,50,563/- In both the claim petitions, MACT awarded interest @ 9% per annum from the date of filing of the claim petitions till the date of realisation.

4. In FAO No.548 of 2016, claimant seeks enhancement of compensation.

5. Counsel for the appellant submits that Tribunal erred in assessing the income of the deceased as Rs.8,100/- deeming him to be a casual labour. Deceased Balraj was doing agricultural work and running a tent shop in the name of Dhanda Tent House. He was earning more than Rs.20,000/- per month.

6. On being asked w.r.t. evidence led to prove the same, counsel does not dispute that apart from oral testimony of the claimant/PW-1 Om Pati, there is no other evidence on record.

7. In view of above, this Court does not find any reason to interfere in the award. The only modification that needs to be made in the impugned award is that nothing has been paid on account of loss of consortium, appellant Om Pati is held entitled to an amount of Rs.48,400/- on account of loss of consortium.

8. FAO No.548 of 2016 is disposed off with the aforesaid modification.

9. In FAO No.2092 of 2016, appellant Gurdev has been rendered crippled for whole of his life. His disability has been assessed to be 81%. Dr. Anup Mehta appeared as PW4 and deposed that the appellant Gurdev Singh suffered fracture of the right humerus and an injury to the right leg and treated as amputation through right knee. The fresh x-ray shows delayed union of the right humerus. Appellant remained admitted in PGIMER, Chandigarh in serious condition from 01.01.2015 to 04.01.2025. On account of amputation of leg, he is confined to bed for life. Keeping in view the injuries suffered by him, functional disability of the claimant/appellant Gurdev Singh is taken as 100%.

10. This Court in the case of **'Shrimati Dharminder Kaur vs. The Divisional Manager, Chandigarh Transport Undertaking, Chandigarh' - FAO No.2468 of 2000** *decided on* 25.09.2024, dealt with peculiar and non-peculiar heads which need to be considered for awarding compensation in the cases of 100% permanent disability and observed as under:

> "[6] The issue with respect to effect of compassionate appointment on the compensation payable on account of death of employee is no more *res integra* and has been answered by Hon'ble the Supreme Court in the case of '***Vimal Kanwar and others*** *versus* ***Kishore Dan and others***', reported as ***2013(7) SCC 476***. The Supreme Court in the said case dealt with the compensation payable to widow of the deceased employee who got employment on compassionate basis. Culling out the issues in the case, the Supreme Court observed in para No.15 as under:-

"15. The issues involved in this case are:-

(i) Whether Provident Fund, Pension and Insurance receivable by the claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction.

(ii) Whether the salary receivable by claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction.

(iii) Whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act and

(iv) Whether the compensation awarded to the appellants is just and proper."

[7] Answering on Issue No.2, the Supreme Court observed as under:-

"20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage liable for deduction."

"Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness ie. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of

the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act. "

[8] Thus, the question already stands answered. The compassionate appointment cannot be termed as pecuniary advantage liable to be deducted from the compensation payable. Compassionate appointment to the widow of the victim is in terms of the Service Rules. Her appointment though an exception to right to equal opportunity, still is subject to fulfillment of the terms and conditions enumerated under the statutory rules. The salary being paid to her is on account of hard labour put by her in discharging her duties. The same does not qualify to be termed as the 'financial assistance'. Thus, the compassionate appointment earned by the appellant shall have no bearing on the compensation payable to the claimant under the Act of 1913."

11. In view of aforesaid parameters, the compensation payable to the appellant Gurdev, is enhanced and is awarded as under:

Heads	**Compensation**
Medical Expenses	30,563/-
Transportation, Attendant & Diet	Rs.1,00,000/- + Rs. 10,00,000/- + Rs.2,00,000/-
Income	Rs.8,100/- per month
Annual Income	Rs.8,100/- X 12 = Rs.97,200/-
Future Prospects @ 40%	Rs.1,36,080/-
Loss of Income	Rs.1,36,080/- X 17 X 100 ÷ 100 = Rs.23,13,360/-
Pain and suffering	Rs.5,00,000/-
Loss of Amenities	Rs.2,00,000/-
Loss of Marriage Prospects	Rs.5,00,000/-
Future Medical Expenses	Rs.2,50,000/-

12. With the aforesaid modification, FAO-2092-2016 is disposed off.

13. In both the appeals, the appellants shall also be entitled for interest on the enhanced compensation @ 9% per annum from the date of filing of the claim petitions till the date of actual realization.

14. A copy of this order be kept on the file of other connected case.

August 22, 2025 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No