S. No.217

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision:26.02.2026

1. FAO No.4836 of 2005 (O&M)

Mahabir Singh and another .....Appellants

Vs.

Phoolpati and others .....Respondents

2. FAO No.2685 of 2005 (O&M)

Phoolpati and others .....Appellants

Vs.

Mohinder Singh and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. J.S. Dhull, Advocate
for the appellants in FAO No.2685 of 2005 (O&M).

Mr. Davinder Kaliraman, Advocate for
Mr. S.S. Mor, Advocate for the appellant in
FAO No.4836 of 2005 (O&M).

Mr. Tarun K. Parasher, Advocate for
Mr. S.S. Momi, Advocate for respondent No.2 in
FAO No.2685 of 2005.

Ms. Tanvi Aggarwal, Advocate for
Mr. Vikas Mohan Gupta, Advocate for
respondent – UIIC.

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Yashvir Singh Rathor, J. (Oral)

1. This order shall dispose of above noted two appeals, as the same have emanated out of the same occurrence.

FAO No.2685 of 2005 (O&M)

1. This appeal has been instituted against the Award dated 16.02.2005 for enhancement of compensation awarded in MACT case No.139 of 2002

decided by the MACT, Jhajjar (**for short "Tribunal"**) in a petition under Section 166 of Motor Vehicles Act, 1988 vide which a sum of Rs.3,03,000/- has been awarded as compensation to the claimants/appellants alongwith interest at the rate of 9% per annum from the date of filing of claim petition till realization on account of death of Dharampal in a motor vehicle accident.

<u>FAO No.4836 of 2005 (O&M)</u>

2. This appeal has been instituted by the owner and driver of the offending vehicle against the afore-said award vide which the Insurance Company has been exonerated of its liability to indemnify the owner and liability has been fastened upon owner and driver.

3. I have heard learned counsel for the parties and have perused the material on record.

4. From the pleadings of parties, following issues were framed:-

> *"1. Whether Dharampal son of Pokhar died in a motor vehicular accident as caused by respondent No.1 petitioner Mahender Singh by driving the vehicle bearing registration No.HR-26-A/7464 in a rash and negligent manner as alleged?OPP.*
>
> *2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to claim compensation. If so, to what amount and from which of the respondents? OPP.*
>
> *3. Whether respondent No.1 was not holding a valid and effective driving license at the time of accident in question?OPR-3.*
>
> *4. Whether the deceased was travelling in the vehicle in question as a passenger, if so, its effect?OPR-3*
>
> *5. Relief."*

5. Thereafter, the parties led evidence in support of their case.

6. After hearing the parties and going through the material on the file, learned Tribunal awarded a sum of Rs.3,03,000/- as compensation to the claimants/ appellants, on account of death of Dharampal along with interest @ 9% per annum from the date of filing of claim petition till realization.

7. Feeling aggrieved, the appeal in hand has been preferred. The material on file has been perused and parties have been heard.

8. The only issue required to be determined in the present appeals relates to the assessment of compensation. Therefore, the entire facts regarding the manner of the accident are not required to be reproduced in detail, as the Tribunal has already held under Issue No.1 that the accident occurred due to the rash and negligent driving on the part of respondent No.1 while driving the offending truck No.HR-26-A-7464, owned by respondent No.2 and insured with respondent No.3. No appeal or cross-objections have been filed by respondents, challenging the said finding and accordingly finding on issue No.1 is not required to be interfered with.

9. The term `just compensation' has been elaborated by Hon'ble Supreme Court in **2009(1) RCR (Civil) 867 (SC), Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another**, and it has been held that while assessing compensation in a motor accident claims case, the Tribunal should award compensation which appears to be just. The expression "which appears to be just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. It has been further held that although the Act is a beneficial legislation, it can neither be allowed to be used as

a source of profit, nor as a windfall to the persons affected nor should it be punitive to the persons liable to pay compensation and that determination of compensation must be based on certain data establishing reasonable nexus between the loss incurred by the victim or dependents. It has been further held that misplaced sympathy, generosity and benevolence cannot be the guiding factors for determining the compensation. As such, compensation is required to be assessed by taking into consideration above-said parameters.

10. As per version of the claimants, deceased was an agriculturist. He also used to deal in the business of sale and purchase of buffaloes and was running a dairy farm. He used to earn Rs.20,000/- per month. However, no income tax returns have been produced on file and in case, his income was Rs.20,000/- per month, he must be an income tax payee. Moreover, no revenue record has also been placed on file to prove that he was owner of some land and was earning the afore-said income through agriculture. No evidence was also placed on file that he owned buffaloes and was running dairy business. No witness was also examined to prove this fact and the Tribunal thus rightly discarded the evidence led by the claimants in this regard and assessed the income of deceased to be Rs.3,000/- per month. Tribunal has observed that the labourers used to earn Rs.2,000/- per month during the year 2002 and since his income has been taken to be Rs.3,000/- per month, the same has been properly assessed and there is thus no reason to take a contrary view.

11. The Tribunal has also come to the conclusion from the post mortem report Ex.P2 that deceased was 45 years of age. As per guidelines laid down in 2017 ACJ 2700 – **National Insurance Co. Ltd. Vs. Pranay Sethi and Others,** 25% of the amount has to be added towards future prospects as deceased was a

self employed person and was not a government employee. After adding 25% towards future prospects, the monthly income comes out to **Rs.4200/- (Rs.3000/- + Rs.1200/-)**.

12. Deceased has left behind his wife, one son and one minor daughter and accordingly, one third of the income has to be deducted towards personal and living expenses as per law laid down in 2009(6) SCC 121 – **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Another.** After deducting one third of the income towards personal expenses, the monthly dependency comes out to Rs.2800/- and the annual dependency comes out to **Rs.33,600/- (Rs.2800/- x 12).** As per guidelines laid down in **Sarla Verma's case (supra)**, multiplier of 14 has to be applied as deceased was 45 years of age and after applying the same, the compensation comes to **Rs.4,70,400/- (Rs.33,600/- x 14)**.

13. In addition to this, claimant No.1 is also held entitled to a sum of Rs.70,000/- under conventional heads i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- on account of funeral expenses as per law laid down in **Pranay Sethi's case (supra)** Likewise, in view of guidelines laid down in 2018 (4) R.C.R. (Civil) 333, **'*Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Others*'**, appellants No.2 and 3, who are children of deceased, are also held entitled to a sum of **Rs.40,000/-** each towards parental consortium.

14. Accordingly, the compensation to be awarded to the appellant is assessed as under:-

S.No.	Under Head	Compensation awarded by the Tribunal	Compensation awarded by the High Court
1.	Monthly income of deceased	Rs.3,000/-	Rs.3,000/-
2.	Age of deceased	45 years	45 years
3.	Future prospects @40%	Nil	Rs.1200/-

4.	**Total income**	**Rs.3,000/-**	**Rs.4,200/-**
5.	**Number of dependents**	**03**	**03**
6.	**Deduction towards personal expenses of the deceased**	**Rs.1,000/-**	**Rs.1,400/- (1/3rd)**
7.	**Annual loss of dependency**	**Rs.24,000/-**	**Rs.33,600/- (2800X12)**
8.	**Multiplier**	**12**	**14**
9.	**Compensation on account of Loss of dependency**	**Rs.2,88,000/- (Rs.24,000/- X 12)**	**Rs.4,70,400/- (Rs.33,600/- X 14)**
10.	**Compensation to claimant for loss of consortium, loss of estate & funeral expenses**	**Rs.15,000/-**	**Rs.70,000/- (Rs.40,000/- + Rs.15,000/- + Rs.15,000/-)**
11.	**Parental consortium to children**	**Nil**	**Rs.80,000/- (Rs.40,000/- X 2)**
12.	**Total Compensation**	**Rs.3,03,000/-**	**Rs.6,20,400/-**
13.	**Interest**	**9%**	**9%**

15. As result of afore-said discussion, the compensation works out to Rs.6,20,400/- out of which Tribunal has already awarded Rs.3,03,000/- as compensation and the enhanced compensation to claimants thus comes out to Rs.3,17,400/-.

16. The second appeal bearing FAO No.4836 of 2005 (O&M) has been instituted by owner and driver of the offending vehicle.

17. Learned counsel for owner/driver, who are appellants in the afore-said appeal, has argued that the vehicle was insured with respondent No.4 but the Insurance Company has been exonerated only on the ground that the deceased was a gratuitous passenger. Infact, no fare had been charged from him and as such, he was not travelling in the vehicle for hire or reward and learned counsel prayed that the insurance company be held liable to indemnify the insured.

18. However, I do not find any force in the contention raised by learned counsel. Admittedly, the offending vehicle is a goods carriage vehicle in which passengers cannot be carried. The driver had stepped into the witness box as RW1 and during cross-examination, he admitted that truck was being used for carrying

bricks and on that day, he was carrying cow dung in the truck for transporting it to the brick kiln. He admitted that deceased was travelling in the truck out of his own sweet will, meaning thereby, he was not owner of the goods and was rather a gratuitous person. There was thus violation of terms and conditions of the insurance policy by the insured and insurance company thus has been rightly exonerated of its liability to indemnify the insured but has been directed to pay the awarded amount with a right to recover the same from the owner/ insured and driver on account of violation of terms and conditions of the insurance policy. There is thus no reason to interfere with the said finding on issue No.4, the same being legal and valid.

19. As a result of afore-said discussion, FAO No.2685 of 2005 (O&M) filed by the claimants is partly accepted with costs while FAO No.4836 of 2005 (O&M) filed by owner and driver against the award dated 16.02.2005 is ordered to be dismissed with costs. Claimants in FAO No.2685 of 2005 (O&M) are held entitled to enhanced compensation of Rs.3,17,400/- payable by respondents No.1 and 2 jointly and severally. However, the enhanced compensation shall be paid by the Insurance Company to the claimants but it shall have a right to recover the same from the owner/ insured and driver along with interest @ 6% from the date of deposit till realisation without filing a separate suit. Out of the afore-said amount, a sum of Rs.1.5 lakh be paid to claimant No.1 and remaining amount be paid to claimants No.2 and 3 in equal shares alongwith proportionate interest.

20. Registry is directed to email the authenticated copy of the award to the respondent Insurance Company in terms of direction issued by the Hon'ble Supreme Court in Writ Petition (Civil) No.534 of 2020 titled **Bajaj Allianz General Insurance Company Versus Union of India and others,** decided on

16.03.2021 and Insurance Company shall comply with the directions as issued under Clause (F) of the said judgment.

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

22. A photocopy of this order be placed on the file of connected case.

(Yashvir Singh Rathor)
Judge

February 26, 2026
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Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No