IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 30.04.2026

FAO-7480-2016 (O&M)

Santosh Kumari & Others

...Appellant(s)

Vs.

Ramesh Chander & Others

...Respondent(s)

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FAO-4771-2016 (O&M)

Future Generali India Insurance Company Limited

...Appellant(s)

Vs.

Santosh Kumari & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vishwajeet, Advocate
for the claimants/appellants in FAO-7480-2016
and respondents No.1 to 4 in FAO-4771-2016.

Mr. Vishal Aggarwal, Advocate
Mr. G.S. Sarao, Advocate
for appellant/Insurance Company in FAO-4771-2016
and respondent No.3 in FAO-7480-2016.

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NIDHI GUPTA, J.

CM-25525-CII-2016 IN FAO-7480-2016

This is an application under Section 5 of Limitation Act for condonation of delay of 44 days in filing the appeal.

After going through the contents of the application, which is supported by affidavit of appellant No.1, the same is allowed subject to all just exceptions and delay of 44 days in filing the present appeal is condoned.

FAO-7480-2016

The present appeal has been filed by the claimants seeking enhancement of compensation of Rs.9,87,800/- awarded by Motor Accident Claims Tribunal, Kurukshetra vide Award dated 19.05.2016 passed in MACP No.20 dated 25.03.2015 filed under Sections 166, 140 and 141 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). The 4 claimants are the 52-year-old widow, 34-year-old son, 32-year-old married daughter and 28-year-old married daughter of deceased Balbir Singh, who was 55 years old at the time of accident.

FAO-4771-2016

The present appeal has been filed by the Insurance Company seeking setting aside of the Award dated 19.05.2016 passed by the learned Tribunal in MACP No.20 dated 25.03.2015 filed under Sections 166, 140 and 141 of the Act, whereby Claim Petition filed by the claimants/respondents No.1 to 4 herein, has been allowed and compensation of Rs.9,87,800/- has been awarded to them.

Both the above appeals are being disposed of by this common order as they arise out of the common Award dated 19.05.2016; both emanate from the accident dated 24.12.2014; and both appeals are between the same parties; and facts and issues involved in both appeals are identical. For the sake of facility, the facts are being drawn from, and parties are being referred to as per their status in FAO-7480-2016 filed by the claimants.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties concluded that deceased Balbir Singh had died due to the injuries suffered by him in a motor vehicular accident that took place on 24.12.2014 due to the rash and negligent driving of Tractor-Trolley bearing registration No.HR-78-A-2918 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2, and insured by respondent No.3. The compensation has been awarded along with interest @ 9% per annum. Respondent No.3/Insurance Company was held liable for payment of compensation amount.

3. Learned counsel for the appellants/claimants seeks enhancement of compensation by submitting that the learned Tribunal has erred in making deduction of 1/3rd towards personal expenses. It is submitted that the deduction of 1/10th ought to have been made. It is then submitted that in actual fact, no deduction was required to be made as deceased was a teetotaler and used to spend his entire income on his family. Furthermore, income of the deceased has been assessed on the lower side; whereas the appellants had duly proved that deceased was earning Rs.40,000/- per month. Even less amounts have been awarded under the conventional heads

and the same deserve to be enhanced. It is accordingly prayed that the present appeal be allowed and the impugned Award be modified.

4. Per contra, learned counsel for the Insurance Company vehemently opposes the submissions advanced on behalf of the appellants and submits that the Insurer is challenging the very involvement of the offending vehicle. It is submitted that as per the claimants, the accident had been witnessed by PW2 Sanjeev Kumar, who is also the author of the FIR. The said Sanjeev Kumar had also taken the deceased to the Hospital. However, Claimants have failed to explain that, despite eyewitness, why was FIR registered against unknown driver and unknown tractor. Moreover, said Sanjeev Kumar was nephew of the deceased. No other person was examined as eyewitness. It is submitted that therefore, for the above reasons, the involvement of the offending vehicle is suspected.

5. As regards quantum of compensation, the learned counsel submits that income of the deceased has been taken on the higher side as Rs.8100/- per month. It is submitted that as per the relevant Minimum Wage Notification, income of the deceased should be taken as Rs.5800/- per month. Moreover, the claimants No.2 to 4 were the major married children of the deceased. No evidence has been brought on record that they were financially dependent upon the deceased. Therefore, deduction of 50% ought to have been made towards personal expenses; whereas the learned Tribunal has made a deduction of 1/3rd. It is accordingly prayed that the impugned Award be set aside.

6. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find some merit in the submissions advanced on behalf of the Insurance Company.

7. The pleaded case of the claimants before the learned Tribunal as recorded in Para 3 of the Award is that:-

> *"3. Brief facts of the petitions are that on 24.12.2014, Balbir Singh, since deceased, was returning to his village Bibipur from Shahabad while driving car bearing registration No.HR07-A-0384 brand Maruti at a moderate speed on the correct side of the road and he was being followed by his nephew Sanjeev Kumar on his motorcycle. At about 6.30 p.m., when he reached near Gurcharan Singh Dera short of village Dhakala, respondent No.1, who was driving Tractor-trolley bearing registration No.HR78-A-2918, at a high speed and in a rash, and negligent manner without observing traffic rules came from the side of village Dhakala and hit the car of Balbir Singh. Resultantly, window and roof of the car were damaged and the car fell in the field situated on the right side of the road. In the accident, Balbir Singh received grievous injuries on various parts of his body including on his head. After causing the accident, respondent No.1 fled from the spot along with his Tractor-trolley by taking the benefit of fog. Balbir Singh was taken out of the car by the said Sanjeev Kumar with the help of passersby and then, he was taken to CHC, Shahabad, where, he was declared dead by the doctors. It was alleged that accident in question had taken place due to the sole negligence and rash driving of respondent No.1. A criminal case was registered against respondent No.1 for causing the accident*

and he was facing the trial. Car bearing registration No. HR07-A-1052 belonging to petitioner Sandeep Kumar was also damaged in the accident. It is alleged that as the accident had taken place due to sole negligence and rash driving of respondent No.1, therefore, all the respondents being driver, owner and insurer of offending vehicle, were jointly and severally liable to pay the compensation of ₹40 lacs to Santosh Kumari and others, petitioners of the first petition, on account of death of Balbir Singh and to pay a compensation of ₹2 lacs to Sandeep Kumar, petitioner of the second petition, on account of damage caused to his Car bearing registration No. HR07-A-0384 with interest @18% per annum from the date of accident till payment."

8. The involvement of the offending vehicle in the accident in question has been proved from the evidence of eyewitness Sanjeev Kumar PW2, on whose statement FIR No.497 dated 24.12.2014 had been registered under Sections 279 and 304A IPC at Police Station Shahabad. Merely because PW2 happens to be nephew of the deceased would not in any manner discount his evidence. Rather, it is admitted by the learned counsel for the Insurance Company that PW2 himself had taken the deceased to the hospital. Therefore, his presence at the spot of accident is proved. Moreover, the fact that FIR was registered against an unknown person and unknown vehicle is also understandable as accident had taken place on winter evening at 6:30 PM. As such, it is very probable that number of offending vehicle would not be visible to PW2 at that time. Even otherwise, PW2 would be more focused on rushing his Uncle to the

hospital. In any event, details of the offending vehicle were disclosed to the appellants by another eyewitness, PW4 Vikram Singh. Thus, contention of ld. Counsel for the Insurance Company that offending vehicle was not involved in the accident dated 24.12.2014, is without merit.

9. As regards quantum of compensation, age of the deceased was determined to be 55 years at the time of accident on the basis of his Post-Mortem Report (Ex.P5). It was pleaded case of the appellants before the learned Tribunal that deceased was an agriculturist and dairy farmer and earning Rs.40,000/- per month. However, no evidence to this effect was produced by the claimants before the Tribunal in the form of any Jamabandi or J-Forms to show that deceased was an agriculturist and dairy farmer. Accordingly, the Tribunal had taken income of the deceased as labourer as Rs.8100/- per month on the basis of Maximum Wage fixed by the State Government vide Gazette Notification of Labour Department dated 19.10.1989. Ld. counsel for the Insurance Company has produced a Notification issued by the State of Haryana as per which on dated 01.07.2014, Minimum Wage of Rs.5639.50/- was payable to an unskilled labourer; and on 01.01.2025, Minimum Wage of Rs.5812.75/- was payable to an unskilled worker. Present accident had taken place on 24.12.2014. Accordingly, income of deceased is taken as Rs.5800/- per month.

10. As deceased was 55 years old, no future prospects were liable to be added. Multiplier of 11 has been correctly applied. I also find merit in the submission of the Insurance Company that the claimants No.2 to 4

being major married children of the deceased could not be held to be dependents and therefore, deduction of 50% ought to have been made.

11. Under the conventional heads, the learned Tribunal has awarded Rs.1 lakh towards consortium to claimant No.1/widow; and Rs.50,000/- each to the claimants No.2 to 4; along with funeral expenses and transportation expenses of Rs.25,000/-; thereby awarding total compensation of Rs.9,87,800/-. The said amounts are also not in conformity with the law in this regard lay down by the Supreme Court. Accordingly, in view of the above discussion compensation payable to the claimants is reassessed in the following manner: –

Head	**Awarded by learned Tribunal**	**Re-assessed compensation**
Income	Rs.8100/- per month	Rs.5800/- per month
Deduction	($1/3^{rd}$) Rs.5400/-	(50%) Rs.5800/- - Rs.2900/- = Rs.2900/-
Annual income	Rs.64,800/-	Rs.2900/- x 12 = Rs.34,800/-
Multiplier	(11) Rs.7,12,800/-	(11) Rs.34,800/- x 11 = Rs.3,82,800/-
Consortium	Rs.1 lakh to claimant No.1	Rs.40,000/- to claimant No.1 Rs.40,000/- x 3 = Rs.1,20,000/- to three children
Love and affection	Rs.1,50,000/- i.e. Rs.50,000/- each	--
Funeral + transportation expenses	Rs.25,000/-	Rs.15,000/-
Loss of estate	--	Rs.15,000/-
Total	**Rs.9,87,800/-**	**Rs.5,72,800/-**
Interest	9% p.a.	9% p.a.

12. Thus, **FAO-7480-2016** filed by the claimants is **dismissed;** and **FAO-4771-2016** filed by the Insurance Company is **allowed.**

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

30.04.2026 **(NIDHI GUPTA)**
Sunena **JUDGE**

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