



***FAO-1196-2022 (O&M) &
FAO-3819-2022 (O&M)***

-1-

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

262

FAO-1196-2022 (O&M)

Date of decision: 28.04.2025

New India Assurance Co. Ltd.

... Appellants

Vs.

Savita Kumari and others

... Respondents

262-2

FAO-3819-2022 (O&M)

Savita Kumari and others

... Appellants

Vs.

The New India Assurance Company Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Lalit Garg, Advocate
for the appellants FAO-1196-2022 and
for respondent No.1 in FAO-3819-2022.

Mr. Ankur Lal, Advocate
for the appellants in FAO-3819-2022 and
for respondents No. 1 to 5 in FAO-1196-2022.

SUVIR SEHGAL J.

CM-11720-CII-2022 in FAO-3819-2022

1. For the reasons given in the application, which is supported with an affidavit of appellant No.1, it is allowed.



***FAO-1196-2022 (O&M) &
FAO-3819-2022 (O&M)***

-2-

2. Delay of 47 days in filing of the appeal is condoned.

CM-11721-CII-2022 in FAO-3819-2022

3. Instant application has been filed under Order 22 Rule 3 CPC for impleading the legal heirs of Sheela Devi, appellant No.4, who expired on 11.08.2021. Application is supported with an affidavit of appellant No.1 and it has been stated that besides the legal representatives mentioned in para 3 of the application, deceased is not survived by any other heir.

4. Application is allowed, as prayed for.

5. Legal representatives of deceased-appellant No.4 are ordered to be impleaded in place of the deceased, subject to all just exceptions.

6. Amended memo of parties is taken on record.

Main cases.

7. This order shall dispose off both the above noted appeals as they arise out of award passed by the Motor Accident Claims Tribunal, Rewari, (for short, "the Tribunal"). For the sake of convenience, factual position is being taken from FAO-1196-2022.

8. Instant appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (for brevity "MV Act") impugning award dated 10.11.2021, passed by the Tribunal, whereby a petition filed by claimants-respondents No. 1 to 5 seeking compensation on account of the demise of Balkesh in a vehicular accident, has been partly accepted.



***FAO-1196-2022 (O&M) &
FAO-3819-2022 (O&M)***

-3-

9. Facts, in brief, leading to the filing of the appeal are that on the intervening night of 21/22.07.2018, Balkesh was travelling to Kulana Warehouse from Dehradun on his vehicle. A truck bearing registration no. UK-17-CA-1521, which was being carelessly driven by Shahanud Ali, hit the vehicle of Balkesh. As a result of the impact, Balkesh sustained multiple injuries. He was taken to the G.H. Saharanpur where he succumbed to injuries. An FIR (Ex.P1) No. 159, dated 22.07.2018 under sections 279, 337, 338, 427 and 304-A was lodged at Police Station Fatehpur, Distt. Saharanpur, U.P. Claimants filed a petition under Section 166 of the MV Act claiming compensation on account of the death of Balkesh, which has been partly accepted and they have been granted compensation of Rs.24,26,200/-. Respondents have been jointly and severally held liable to pay the compensation, along with interest @ 7.5% p.a., from the date of filing of the claim petition.

10. Counsel for the appellant-Insurance company has argued that there is no evidence to show that Shahanud Ali was driving rashly and negligently. It is his argument that claimants have failed to produce an eye-witness to show that the accident had taken place and FIR has been registered by brother of the deceased, who was not present at the spot. On the other hand, counsel for the claimants-respondents No.1 to 5 has relied on the testimony of brother of the deceased, who has supported their version. Counsel for the claimants asserts that the compensation awarded by the Tribunal is on the lower side and deserves to be suitably enhanced.



***FAO-1196-2022 (O&M) &
FAO-3819-2022 (O&M)***

-4-

11. I have heard counsel for the parties and considered their respective submissions.

12. The unfortunate vehicular accident had taken place on the intervening night of 21/22.07.2018 and Balkesh succumbed to his injuries. A criminal case was registered on the statement of his brother, Balwan, on the very next day. Even though, Balwan, is not an eye-witness to the accident, but there is no reason to doubt his testimony in view of the clinching documentary evidence on the record. A perusal of the copy of the post mortem report, Ex.P-2, shows that Balkesh had suffered injuries on chest and limbs. Cause and manner of death has been described as “due to shock and hemorrhage as a result of antemortem injuries”. Upon investigating the allegations levelled in the FIR, Ex.P-1, the Investigating Agency filed a final report under Section 173 Cr.P.C. Ex.P-1/A, and it came to the conclusion that Shahanud Ali was driving the offending truck in a rash manner and collided with the vehicle driven by the deceased. Shahanud Ali is facing charges in criminal trial. In ***Ravi Versus Badrinarayan and others, (2011) 4 SCC 693***, Supreme Court has held that lodging of an FIR proves the factum of accident so as to enable a victim to lodge a case for compensation under the MV Act. In motor accident claim cases, preponderance of probability is the test to arrive at the conclusion regarding negligence. A cumulative reading of entire evidence leads to an irresistible conclusion that death of Balkesh has occurred due to injuries sustained by him in an accident caused by the driver of the offending vehicle. This Court, therefore, does not find any



***FAO-1196-2022 (O&M) &
FAO-3819-2022 (O&M)***

-5-

reason to interfere in the finding recorded by the Tribunal under issue No.1.

13. Savita Kumari-PW2, widow of the deceased deposed that her husband was working as a driver with M/s Mahendera Transport Company and was also doing agriculture work. There is no documentary evidence in respect of the agricultural work undertaken by the deceased, although, his widow had stated that he was tilling 2.5 acres of land and making an earning from it. Claimants have not produced any witness from M/s Mahendra Transport Company to establish the employment of the deceased. A perusal of the bank account opening form Ex. PW-3/A, which was opened by the deceased on 28.04.2017 shows that he had declared that he is getting a salary and his annual income was between "0-2 Lacs". The bank account statement of the deceased from 22.09.2017 to 03.09.2018 Ex.PW3/B produced in evidence shows that he was getting a monthly salary of Rs.13,000/- from April, 2017 to November, 2017 and he received a consolidated salary of Rs. 16,387/- for the month of January, 2018. The subsequent entries in the bank account show that he had withdrawn the entire amount and his bank account had practically become non-operational. There is no evidence on record to show as to whether the deceased was employed on the date of the accident. The Tribunal is, therefore, justified in assessing income of the deceased on the basis of minimum wage notified by the Government of Haryana for the year 2018 for a highly skilled labour as Rs.10,901.52/- p.m. (rounded off to Rs.11,000/-).

14. Tribunal has applied a deduction of $\frac{1}{4}$ th towards personal expenses from the monthly income as the deceased had five dependents.



***FAO-1196-2022 (O&M) &
FAO-3819-2022 (O&M)***

-6-

Tribunal has correctly applied a multiplier of 17, which does not require any modification. Tribunal has considered future prospects of the deceased as 25% and has awarded Rs.15,000/- each for funeral expenses and loss of estate. An award of Rs.40,000/- has been granted on the account of loss of consortium to the claimants. These figures deserve to be enhanced.

15. In the light of the guidelines laid down by the Supreme Court in *Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*, *National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680* and *Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130*, claimants are entitled to an increase under conventional heads. This court is of the view that head-wise computation of compensation deserves to be modified as below:-

Sr. No.	Heads	Compensation Awards
1	Monthly Income	Rs.11,000/-
2	Future prospects	Rs.4,400/- (40% of Rs.11,000/-)
3	Deduction towards personal expenditure 1/4th	Rs.3,850/- (Rs.15,400/- x 1/4)
4	Total Monthly Income	Rs.11,550/- (Rs.15,400 /- subtract Rs.3,850/-)
5	Multiplier	17
6	Annual dependency	Rs.23,56,200/- (Rs.11,550/- x 12 x 17)
7	Loss of Consortium	Rs.2,40,000/- (48,000/- x 5)



***FAO-1196-2022 (O&M) &
FAO-3819-2022 (O&M)***

-7-

8	Funeral expenses	Rs.18,000/-
9	Loss of Estate	Rs.18,000/-
10	Total compensation	Rs.26,32,200/-
11	Less: Award by MACT	Rs.24,26,200/-
12	Enhancement	Rs.2,06,000/-

16. Accordingly, the claimants are held to an additional compensation of Rs.2,06,000/-, which shall be payable to them with interest at the rate of 7.5% p.a., from the date of the filing of the claim petition.

17. Accordingly, FAO-1196-2022 is dismissed and FAO-3819-2022 is disposed off.

18. As the main appeals have been decided, pending application(s), if any, is/are disposed off.

28.04.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No