



**FAO-449-2016(O&M)
and other connected cases**

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

1.FAO-449-2016(O&M)

M/s Surinder Kumar Rajan Kumar

..Appellant

Versus

HDFC Ergo General Insurance Company Ltd. And others

..Respondents

2.FAO-288-2016(O&M)

HDFC Ergo General Insurance Company Ltd

..Appellant

Versus

Sunehra Ram And others

..Respondents

3. FAO-715-2016(O&M)

Sunehra Ram

..Appellant

Versus

Rakesh and others

..Respondents

Date of decision: 08.01.2025

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Gupta, Advocate for the appellant
in FAO-449-2016

Mr. Pradeep Kumar, Advocate for appellant
in FAO-288-2016

Mr. Sagar Aggarwal, Advocate for the appellants
in FAO-715-2016



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Mr. Wazir Singh, Advocate
for respondent no.1 in FAO-288-2016
and for respondent no.2 in FAO-449-2016

ANIL KSHETARPAL, J. (Oral)

1. With the consent of the learned counsel representing the parties, three connected First Appeals against the order passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal') shall stand disposed of by this common order.
2. FAO-449-2016 has been filed by the owner of the offending tractor and trolley bearing registration no.PB-37C-8954. FAO-715-2016 has been filed by the claimant seeking enhancement in the compensation awarded by the Tribunal whereas FAO-288-2016 has been filed by the Insurance Company. The Tribunal assessed Rs.6,59,200/- as compensation payable to the claimant on account of death of his son with provision for recovery rights against the owner.
3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.
4. Learned counsel representing the owner submits that the Tribunal has erred in giving recovery rights to the Insurance Company as the driver was possessing a valid driving licence to drive light motor vehicle, which includes goods carriage vehicle. He submits that there is no evidence to prove that the tractor and trolley was being used for commercial purpose and not for agricultural purpose. He submits that tractor and trolley were insured. Hence, recovery rights given to the Insurance Company to recover the amount from owner is wrong.



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5. Learned counsel representing the claimant submits that the Tribunal has erred in assessing the compensation on the following grounds:-

i) age of the dependent has been taken into consideration while choosing the multiplier, whereas the multiplier is dependent upon the deceased's age.

ii) escalation of the income due to future prospects has been awarded at the rate of 50%, which should be 40%. He admits that for loss of filial consortium Rs.50,000/- has been awarded whereas it should be Rs.48,000/-. Similarly, on account of expenses for last rites Rs.25,000/- has been awarded whereas it should be Rs.18,000/-. However, for loss of estate, Rs.10,000/- has been awarded whereas it should be Rs.18,000/-.

6. Learned counsel representing the Insurance Company submits that the Insurance Company is not liable as the vehicle was being used in violation of the terms of the insurance policy.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. Even if it is held that Driver was entitled to drive goods carriage vehicle, still as per the finding of fact, the tractor and trolley was being used for commercial purpose i.e for transportation of bricks. The appellant does not claim that they are agriculturists and transporting the bricks for their own use. The tractor and trolley has been registered for agricultural purpose only. The owner did not disclose to the Insurance Company that the tractor and trolley has been used for commercial purpose. The appellant before this Court is a Firm and it has not led any evidence. Hence, the finding of the Tribunal to the effect that the vehicle was being used for commercial



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purpose does not require any interference. Once it is established that the tractor and trolley was being used for commercial purpose i.e transportation of bricks, there is no occasion for this Court to absolve the owner and driver of the tractor.

9. There is substance in the argument of the learned counsel representing the claimant. The age of the deceased was 22 years. He was drawing salary of Rs.5800/- per month from the owner of the vehicle i.e appellant in FAO-449-2016. Hence, multiplier of 18 should be applied instead of 11 as the claimant is father of the deceased. Thereafter, deduction of 50% shall have to be applied as the deceased was a bachelor. Hence, dependency comes to Rs.2900/-. The claimant shall also be entitled to escalation in income on account of future prospects at the rate of 40% and not 50%. Similarly, for loss of consortium, he shall be entitled to Rs.48,000/-, for loss of estate Rs.18,000/- and for expenses on last rites Rs.18,000/- are awarded. Accordingly, the total compensation is re-assessed as under:-

Sr.No.	Head	Compensation awarded by Tribunal	Compensation awarded by High Court
1.	Income	5800/- pm	5800/- pm
2.	Future prospects	50%	40%
3.	Dependency	1/2	1/2 i.e 2900
4.	Multiplier	11	18
5.	Compensation	5,74,200/-	8,76,960/-
6.	Loss of filial and parental consortium	50,000/-	48,000/-
7.	Last rites	25,000/-	18,000/-
8.	Loss of estate	10,000/-	18,000/-
9.	Grand total	6,59,200/-	9,60,960/-



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10. In the appeal filed by the Insurance Company, there is no merit because the Insurance Company has only examined court official of a criminal court where criminal trial arising out of FIR is pending. The Insurance Company has not produced any evidence to prove that the Insurance Company cannot be directed to first pay and then recover from the owner.

11. Keeping in view the aforesaid facts and discussion, FAO-449-2016 and FAO-288-2016 shall stand dismissed whereas FAO-715-2016 shall stand allowed. The claimant shall be entitled to difference in amount of compensation alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till its payment. The Insurance Company shall be entitled to recover the amount from the owner of the tractor and trolley.

12. All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)
JUDGE**

08.01.2025

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No