

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

(1) **FAO No. 2362 of 2002 (O&M)**
Decided on: 11.5.2015.

Ravinder Kaur and another

... Appellants

Versus

Manjit Singh and others

... Respondents

(2) **FAO No. 2046 of 2002 (O&M)**
Decided on: 11.5.2015.

Manjit Kaur and another

... Appellants

Versus

Manjit Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Harinder Sharma, Advocate,
for the appellants in FAO No.2362 of 2002.

Mr. R.S. Mamli, Advocate,
for the appellants in FAO No.2046 of 2002.

Mr. R.C. Kapoor, Advocate,
for respondent No.3 in FAO No.2362 of 2002.

Mr. Abhishek Goyal, Advocate for
Mr. Pardeep Goyal, Advocate,
for respondent No.3 in FAO No.2046 of 2002.

K.C.PURI.J.(ORAL)

Vide this judgment, I intend to dispose of afore-

mentioned two FAOs bearing FAO No. 2362 of 2002 titled as Ravinder

Kaur and another vs. Manjit Singh and others and FAO No. 2046 of 2002 titled as Manjit Kaur and another vs. Manjit Singh and others arising out of the same Award dated 5.1.2002 passed by Motor Accident Claims Tribunal, Yamunanagar at Jagadhri (for short “the Tribunal”).

Briefly stated, Ravinder Kaur, Master Jaspreet Singh minor son, Gurmit Singh father and Manjit Kaur step mother of Paramjit Singh filed claim petition claiming compensation on account of death of Paramjit Singh in a motor vehicular accident. The case of the claimants set forth in the claim petition is that on 21.1.2000 at about 8.30 P.M., Paramjit Singh son of Gurmit Singh along with his sister Kamaljit Kaur and sister's husband Baldev Singh and his three children, namely, Sukhwinder Singh @ Rajan, Jaswinder Singh and Arvinder Singh was going in car No. HR-02-A-9733 from village Mehlanwali to their village Kharwan. The car was being driven by Baldev Singh. When the car reached Jarodi Chowk near Chakki on Pabni road, at that time a tractor trolley bearing registration No. HR-02-E-5673 being driven by Manjit Singh in a rash and negligent manner came from Jagadhri side and struck against the car. As a impact of the accident, Paramjit Singh, Baldev Singh, his wife Kamaljit Kaur and children suffered multiple grievous injuries on their person. The injured were taken from the place of accident to Civil Hospital, Jagadhri, where the doctor declared Baldev Singh, Paramjit Singh and Rajan brought dead whereas injured Kamaljit Kaur was referred to

PGI, Chandigarh for treatment. The accident has taken place due to rash and negligent driving of tractor trolley by its driver Manjit Singh i.e respondent No.1. The said tractor was owned by Avinash Singh respondent No.2 and was insured with respondent No.3 insurance company.

The claim petition was resisted by the respondents. The respondents No.1 and 2 in their joint written statement have denied the factum of accident. However, ownership of tractor was admitted.

The respondent No.3 insurance company filed separate written statement and admitted the fact that tractor No. HR-02-E-5673 was insured with it in the name of P.N.B. Christian Hospital Branch, Jagadhri through Shri Avinash Singh-respondent No.2. All other allegations made in the claim petition were denied. Objections have been taken that respondent No.1 was not holding a valid driving licence.

Another claim petition in respect of damage to the car was also filed and both the claim petitions were consolidated.

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

1. Whether the accident resulting into deaths of Paramjit Singh, Baldev Singh and Sukhwinder Singh and injuries to Kamaljit Kaur and damages to car No. HR-02-A-9733 was caused by rash and negligent driving of tractor No. HR-02-E-5673 by respondent

NO.1 ?OPP

2. Whether the claimants are the legal heirs of deceased Paramjit Singh, Baldev Singh and Sukhwinder Singh. If so, they are entitled to compensation, how much and from whom ?OPP

3. Whether the claimants Kamaljit Kaur and Sarwan Singh are entitled to compensation. If so, how much and from whom ?OPP

4. Whether the respondent No.1 was not holding a valid driving licence at the time of the accident ?OPR

5. Whether the claimants have no locus standi to file the present claim petitions ?OPR

6. Whether the claim petitions are bad for mis-joinder of parties and non-joinder of necessary parties ?OPR

7. Whether the claim petitions are not maintainable ?
OPR

8. Relief.

Learned Tribunal after appraisal of the evidence reached to the conclusion that respondent No.1 was driving the tractor rashly and negligently and has held that Baldev Singh was contributory negligent to the extent of 33%. Regarding issue No.2, it was held that except Manjit Kaur, all the claimants were entitled for compensation.

The amount of compensation was assessed as Rs.3,69,000/- but deduction in respect of 1/3rd was made and a sum of Rs.2,46,000/- was

allowed to the claimants except Manjit Kaur.

Feeling dis-satisfied with the said Award dated 5.1.2002 passed by the Tribunal, Manjit Kaur and Gurmit Singh filed FAO No.2046 of 2002 whereas widow Ravinder Kaur and Jaspreet Singh have directed FAO No.2362 of 2002.

Learned counsel for the appellants in both set of appeals have challenged the Award in respect of contributory negligence of Baldev Singh. It is submitted that the case of the claimants as set forth in the claim petition is that the accident has taken place due to rash and negligent driving of tractor No. HR-02-E-5673 by its driver Manjit Singh respondent No.1. It is submitted that the case set forth by the respondent Manjit Singh and Avinash Singh before the Tribunal is that no accident has taken place.

Learned counsel for both set of appellants have submitted that claimants have examined PW-4 Kamaljit Kaur injured witness who has deposed in terms of claim petition that the accident has taken place due to rash and negligent driving of tractor No. HR-02-E-5673. It is submitted that her testimony goes un-rebutted as driver of the offending vehicle has not stepped into the witness box. It is further submitted that it is nobody's case that the accident has taken place due to contributory negligence. It is submitted that the Tribunal has travelled beyond pleadings in holding that the accident has taken place due to contributory negligence of driver of the car.

On the other hand, learned counsel for insurance

company has submitted that it is a case of head on collision and as such, the Tribunal has rightly reached to the conclusion that the accident has taken place due to contributory negligence of the driver of the car. In fact, it should be a case of composite negligence.

I have considered the submissions made by learned counsel for both the sides and have gone through the record.

If the argument advanced by learned counsel for the insurance company to the extent that it is a case of composite negligence is accepted, in that case, the claimants can claim the amount from any of the tort-feasors and the insurance company would have been liable to pay the whole of the compensation as the deceased was simply a third party and was not driving the vehicle. However, on the facts of the case, the finding of the Tribunal that the accident has taken place due to contributory negligence is wrong on the face of it. It was not the case of the respondents that it is a case of contributory negligence. On the basis of mere fact that it is a head on collision, the Tribunal cannot reach to the conclusion that the accident has taken place due to contributory negligence unless the circumstances show the principle of res-ipsa loquitur. There is no such circumstance brought on the record which shows that it is a case of contributory negligence. The claimants have examined injured witness Kamaljit Kaur whose presence cannot be doubted. She has categorically stated that the accident has taken place due to rash and negligent driving of tractor.

So, in view of above discussion, the finding of the

Tribunal to the extent that it is a case of contributory negligence stands set aside and it is held that the accident has taken place due to rash and negligent driving of tractor by its driver respondent No.1.

The other point raised by learned counsel for both set of appellants is that the amount of compensation is on lower side. It is submitted that as per evidence on record, the income of the deceased was Rs.3000/- per month and claimants have examined PW-7 Amrik Singh who deposed that the deceased was driver on his truck and he used to pay Rs.3000/- per month as salary and in addition to said amount, Rs.100/- were to be given when he used to go out of station. It is submitted that the Tribunal has taken the income of the deceased as Rs.2500/- per month which is on lower side. The income should have been taken as Rs.3000/- per month.

I have considered the said submissions and have gone the file.

The accident has taken place on 21.1.2000 and as such, the income of the deceased as Rs.2500/- per month cannot be said to be on lower side. The bald statement made by Amrik Singh PW-7 in the absence of any corroborative evidence has rightly been rejected by the Tribunal. So, the income of the deceased is taken as Rs.2500/- per month.

Learned counsel for both set of the appellants have further submitted that future prospects has not been taken into account.

No amount in respect of consortium, loss of estate, loss of love and

affection and in respect of last rites and transportation has been allowed. That amount should be allowed keeping in view the authorities **Rajesh and others vs. Rajbir Singh and others 2013 ACJ 1403 and Vimal Kanwar and others vs. Kishore Dan and others 2013 ACJ 1441.**

On the other hand, learned for the insurance company has submitted that age of the deceased was 27 years and as such the multiplier applicable is 17 and not 18 as applied by the Tribunal. It is submitted that the claimants have been adequately compensated.

I have considered the submissions made by both sides and have gone through the record of the case.

The age of the deceased taken by the Tribunal is 27 years. So, the Tribunal should have added 50% in the income in respect of future prospects. So, the income of the deceased has to be taken as Rs.3750/- (2500+1250).

The next argument raised by learned counsel for Manjit Kaur and Gurmit Singh is that 1/4th amount should have been deducted in respect of personal expenses as the claimants are four in number. It is submitted that Manjit Kaur was step mother who is also entitled to claim the compensation as she was receiving amount from the deceased during his life time. It is submitted that Manjit Kaur was providing love and affection from the date of her marriage with Gurmit Singh one of the appellants. It is further contended that Manjit Kaur

should have also been provided compensation in respect of death of

Paramjit Singh deceased.

The said argument has been opposed by learned counsel for Ravinder Kaur and counsel for the respondents. They have submitted that Manjit Kaur has not come into the witness box to state that she was dependent upon the deceased. Otherwise also, her husband Gurmit Singh is a pensioner and she is dependent upon Gurmit Singh and not on the deceased Paramjit Singh.

I have considered the said submissions made by both sides and have gone through the record.

Manjit Kaur has not been held entitled to claim compensation being step mother. The Tribunal has rightly held that she is dependent upon Gurmit Singh. So, in these circumstances, the claim of Manjit Kaur has rightly been rejected by the Tribunal. So, the deduction has to be made to the extent of 1/3rd in respect of personal expenses of the deceased.

As discussed above, the income of the deceased was Rs.3750/- per month. So, the dependency of appellants Ravinder Kaur, Jaspreet Singh and Gurmit Singh comes to Rs.2500/- per month by deducting 1/3rd in respect of personal expenses of the deceased. The yearly dependency comes to Rs.30,000/-. The multiplier applicable at the age of 27 years, as per Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(6) SCC 121 was 17. So, by applying that multiplier, the amount of compensation comes to Rs.5,10,000/-.

The amount in respect of last rites, transportation, loss of love and affection and consortium etc. has to be assessed keeping in view the price index prevailing in the year 2000. So, the claimants are also held entitled to Rs.10,000/- on account of last rites and transportation, widow Ravinder Kaur is held entitled to claim Rs.25,000/- in respect of consortium. The claimants except Manjit Kaur are also held entitled to claim Rs.25,000/- in respect of loss of love and affection. So, in this manner, the claimants are held entitled to claim Rs.5,70,000/-. Out of the enhanced amount of Rs.3,24,000/- Rs.50,000/- shall be paid to the father Gurmit Singh and Rs.1 lac shall be paid to the minor Jaspreet Singh. The remaining amount be paid to the widow. The claimants Ravinder Kaur, Jaspreet Singh and Gurmit Singh are also held entitled to claim interest @ 7.5% per annum from the date of petition till payment on the enhanced amount. The liability to pay the amount shall be the same as ordered by the Tribunal.

In case Jaspreet Singh is still minor, the amount of his share shall be deposited in the shape of FDR in a Nationalized Bank in such a manner that he will get maximum rate of interest. The said amount be paid to him on attaining the age of majority.

Both the appeals stand disposed of in the manner indicated above.

11.5.2015.
SN

(K.C.PURI)
JUDGE