

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

1. FAO No.613 of 2001

Kala Devi and others

... Appellants

Versus

Suresh and others

... Respondents

2. FAO No.2374 of 2001

National Insurance Co. Ltd.

... Appellant

Versus

Kala Devi and others

... Respondents

Date of decision: 2nd February, 2015

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashit Malik, Advocate
 for the claimants/
 Appellants in FAO No.613 of 2001;
 Respondents No.1 to 6 in FAO No.2374 of 2001.

Mr. L.M. Suri, Senior Advocate with
Mr. Neeraj Khanna, Advocate
for the insurer/
Respondent No.3 in FAO No.613 of 2001;
Appellant in FAO No.2374 of 2001.

Respondents No.1 & 2 in FAO No.613 of 2001; and
Respondents No.7 & 8 in FAO No.2374 of 2001 – ex parte;

FATEH DEEP SINGH, J.

These appeals, FAO No.613 of 2001 by the claimants for enhancement and FAO No.2374 of 2001 by the insurer have arisen out of the same very Award dated 31.07.2000 of the learned Motor

Accident Claims Tribunal, Karnal allowing the claim petition against all the respondents jointly and severally, and thus, are being disposed off together for the sake of brevity.

Heard Mr. Ashit Malik, Advocate for the claimants and Mr.L.M. Suri, Senior Advocate assisted by Mr. Neeraj Khanna, Advocate representing the insurer.

During the course of arguments, the dual challenge that has been laid by the contesting parties is over the quantum of compensation as well as identity and registration of the vehicle, whether it was vehicle bearing registration No.DL-4CD-1786 or DL-4CE-1786 which on 25.12.1999 in the area of G.T. road, Karnal caused accident when the deceased Lehna Singh was going on foot.

It is not at all questionable that the deceased was working as a Government Sweeper in 5th Battalion of Haryana Armed Police, Madhuban and was aged around 38 years and so the inter-se relationship of the claimants with the deceased who is proved to be earning ₹5,337 per month as per the salary certificate Ex.P1 as well as the testimonies of claimant Kala Devi PW2 and Constable Rajinder Singh PW3. The learned Tribunal after deducting the expenses incurred on his own upkeep and maintenance, has applied multiplier of 16 and has calculated compensation to the tune of ₹5,20,000, when the date of birth of the deceased so shown and by that analogy his age is around 40 years and therefore, taking his age between 38-40 years, multiplier of 15 needs to be applied. In view of the number of family members, it would be appropriate in the light of **‘New India Assurance Company Ltd. v. Gopali and others’** reported in **2012**

(3) RCR (Civil) 818, to make deduction of 1/4 for the expenses of his own upkeep and maintenance and therefore, in all likelihood the deceased must be contributing ₹4,000 per month to the running of the household, and thus, the annual dependency comes to ₹48,000 and so the amount of compensation to the tune of ₹7,20,000.

The Tribunal has awarded only ₹5,000 under the conventional heads which certainly is on the lower side and so has affected the total compensation. It is natural consequence that the family must have spent money on the last rites and ceremonies of the deceased, wife has lost her husband, a life companion; children their father, a source of love, affection and protection and all the claimants thus, needs to be compensated for this and under all these conventional heads by some amount of guess work and hypothetical assessment they are awarded ₹2,00,000. Thus, the total compensation comes to ₹9,20,000 (rupees nine lacs twenty thousand).

Besides this, the claimants are also entitled to interest @7.5% p.a. on the enhanced amount from the date of filing of the appeal till realization. Interim compensation paid, if any, shall be adjusted. If any of the claimants are minor, his/her share shall be put up by way of FDR till he/she attains the age of majority. Rest of the stipulations laid down by the Tribunal need not be disturbed.

Coming to the second contention of the arguments, in view of the settled law as has been laid down in '**Virat Sama v. Mohan Lal**' **1994(1) PLR 82**, and other catena of cases it is the evidence led before the Tribunal that has to be gone into and the eye-witness

account spelled out by PW4 Mohinder Kumar shows that it was vehicle No.DL-4CD-1786 coming from the side of Delhi being driven rashly and negligently which caused accident and there is no worthwhile cross-examination of this witness to put to doubt his credentials. As per the findings of the Tribunal even the insurance policy proved on the record shows that the vehicle number is DL-4CE-1786.

Though not much can be appreciated by way of evidence as remnants of the destroyed record has considerably restricted this appreciation but as has been observed by the Tribunal and even the FIR which though not a substantive piece of evidence by way of Ex.P2 and report under Section 173 Cr.P.C. carries the vehicle number as DL-4CD-1786 and the fact that it is the own case of the driver that a criminal case arising out of this accident was registered against him and further the owner of the vehicle respondent Suresh has taken this vehicle on sapurdari and which was released by virtue of orders of the Court Ex.P7.

To the specific query of the Court, none of the counsel could convince that since the vehicle in question is owned by respondent Suresh Kumar son of Gopal Dass resident of Gharaunda, Karnal and it could not be shown either by the owner or driver that he had any other vehicle bearing registration No.DL-4CE-1786 as well as DL-4CD-1786 clearly bears out that there is only a bonafide mistake over the alphabet 'E' and 'D'. Rather what is apparent, the driver in his own stand has taken the plea that it was due to the fault of the deceased who had suddenly rushed out of the gates of Haryana

Armed Police complex and hit against his vehicle, leaves no scope to doubt over the identity of the driver of the vehicle. Merely as is sought to be projected on behalf of the insurer by Mr.Suri that it is earlier recorded as TATA-407 and is in fact the Matador Wagon has not much solace to hold for the insurer. The Motor Vehicles Act, 1988 being a welfare Statute has to be interpreted for achieving the object of the Act and its approach cannot be restricted by such constricted interpretation.

Learned Tribunal has rightly interpreted the evidence and given a wider import holding that involvement of the offending vehicle and so its driver cannot be put to doubt. In the light of the same, findings of the learned Tribunal qua this aspect of the matter need to be upheld.

In view of the foregoing discussions, FAO No.613 of 2001 filed by the claimants is allowed modifying the impugned Award in those terms and FAO No.2374 of 2001 preferred by the insurer is dismissed holding that the owner, driver and insurer shall be jointly and severally liable to pay the amount of compensation.

(FATEH DEEP SINGH)
JUDGE

February 2, 2015
rps