

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

FAO No.4483 of 2002 (O&M)

Date of decision: 05.08.2015

Jas Kumar @ Yash Pal

....Appellant

Versus

Narinder Singh and others

....Respondents

2) FAO No.4484 of 2002 (O&M)

Santosh Rani and others

....Appellant

Versus

Narinder Singh and others

....Respondents

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

Present: Ms. Gurnam Kaur Turka, Advocate
for the appellant(s) in both the appeals.

Mr. R.C. Kapoor, Advocate
for respondent No.5 in both the appeals.

K.C. PURI J. (Oral)

By this judgment I intend to dispose of two appeals i.e.

FAO No.4483 of 2010 titled as "*Jas Kumar @ Yash Pal vs Narinder Singh and others*" and FAO No.4484 of 2002 titled as "*Santosh Rani and others vs Narinder Singh and others*" as both these appeals have arisen out of the same award dated 08.05.2002.

Santosh Rani, Yash Pal, Neeraj minor son and Neetika

minor daughter of Ramesh Kumar, filed claim petition No.51 of 2000, claiming compensation on account of death of Ramesh Kumar in a motor vehicular accident on 29.12.1999, whereas Jas Kumar @ Yash Pal, filed claim petition No.52 of 2000, claiming compensation on account of injuries sustained by him in the same accident on 29.12.1999.

Both these claim petitions were decided by Sh. S.N. Aggarwal, the then, Motor Accident Claims Tribunal, Patiala vide award dated 08.05.2002.

The facts as gathered from both the appeals are that on 29.12.1999 at 02:30 a.m. Hakam Kumar Chand, Daler Singh along with his family members, Ramesh Kumar and his family members including Jas Kumar @ Yash Pal were going in Tata Sumo bearing registration No.HR-1D-9857 to Radha Soami, Dera Beas from Samana. At about 05:00 a.m., they reached near Doraha Canal and crossed the bridge, Tata Sumo bearing registration No.HR-1D-9857 was being driven by Narinder Singh (respondent No.1). It was a foggy morning, but Narinder Singh was driving the said Tata Sumo at a very high speed rashly and negligently. The occupants of the Tata Sumo asked him to drive the vehicle at a slow speed. A truck was parked which was out of order and the driver of the Tata Sumo by driving the said vehicle rashly and negligently struck the Tata Sumo on the back side of the truck. As a result of this accident, all the occupants of the Tata Sumo

received multiple injuries. Ramesh Kumar who was sitting on the front seat received serious injuries and he was shifted to Ludhiana Hospital, but he succumbed to his injuries on the way. Jas Kumar @ Yash Pal also received injuries in the accident.

It was pleaded that Ramesh Kumar was 35 years of age and was working as a Mechanic of televisions and was also doing job of installation of invertors/electric goods. He was earning Rs.10,000/- per month.

The claimants-Santosh Rani being widow, Yash Pal and Neeraj Kumar being minor sons and Neetika being minor daughter have claimed a sum of Rs.15,00,000/- as compensation.

Jas Kumar @ Yash Pal minor son has claimed Rs.10,00,000/- in respect of injuries sustained by him in a motor vehicular accident.

Respondents No.1 to 4 filed a joint written statement contesting the claim of the claimants. It was denied that Ramesh Kumar was earning Rs.10,000/- per month. However, it is admitted that accident had taken place on the intervening night of 29.12.1999 at Doraha Bridge, District Ludhiana. It was also pleaded that accident has taken place due to foggy morning. The said vehicle was insured with the New India Insurance Company Limited, therefore, it was denied that respondents No.1 to 4 were liable to pay any amount of compensation.

Respondent No.5 i.e. New India Insurance Company

Limited, also filed written statement contesting the case of the claimants. Preliminary objections regarding driving licence of respondent No.1 was taken and secondly the claim petition is bad for non-joinder of necessary parties as the owner, driver and insurance company of truck bearing registration No. DIL-3809 have not been impleaded as parties.

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

1. Whether Ramesh Kumar has died and Jas Kumar suffered injuries in a motor vehicular accident caused by Narinder Singh respondent No.1 while driving Tata Sumo bearing registration No.HR-1D-9857 rashly and negligently in the jurisdiction of P.P. Doraha Distt. Ludhiana? OPP.

2. Whether the claimants are entitled to compensation? If so to what amount and from whom? OPA.

3. Whether Narinder Singh respondent No.1 was not holding a valid driving licence at the relevant time? If so, its effect? OPR.

4. Relief.

The claimants examined Daler Singh as AW-1, Constable Daljit Singh as AW-2, Santosh Rani (claimant) as AW-3, Yash Pal (claimant) as AW-4 and closed the evidence by producing certain documents.

In rebuttal, respondents tendered into evidence, the policy of insurance company and closed the evidence.

The learned Tribunal while deciding Issue No.1 held that it is a case of contributory negligence by respondent No.1- Narinder Singh and the amount calculated in respect of death of Ramesh Kumar was Rs.2,65,200/-, whereas Rs.100,000/- was allowed in respect of injuries sustained by Yash Pal in the accident.

Jas Kumar @ Yash Pal has directed FAO No.4483 of 2002, whereas legal heirs of Ramesh Kumar has directed FAO No.4484 of 2002, for enhancement of compensation praying that 50% amount has been wrongly deducted from the amount of compensation.

Learned counsel for the appellant of both the FAOs has submitted that from the facts of the case, it emerges that accident has taken place due to rash and negligent driving of Tata Sumo bearing registration No.HR-1D-9857 and on account of negligence of owner/driver of the truck bearing registration No.DL-I-3809. It is submitted that Ramesh Kumar and Jas Kumar @ Yash Pal were simply traveling in Tata Sumo in question and they have not contributed anything in the accident. It is further submitted that it is a case of composite negligence and in view of recent authority of Apex Court in *“Khenyei vs New India Assurance Company Limited and others”* reported in 2015(3) R.A.J. 356, the claimant can claim the amount of compensation from any of the tort feasons.

On the other hand, learned counsel for the insurance company has not disputed the said legal position, but has submitted that the insurance company be given the right to recover the amount from owner, driver and insurance company of the offending truck bearing registration No.DIL-3809.

So, in view of abovesaid legal position, the finding of the Tribunal to the fact that claimants of claim petition are entitled to 50% amount only does not sustain the test of legal scrutiny. Consequently in view of the authority Khenyei's case (supra) that finding stands set-aside and it is held that both the sets of claimants can claim the amount of compensation from any of the tort feasons. However, the respondents shall be at liberty to claim the amount from the joint tort feasons i.e. owner, driver and insurance company of truck bearing registration No.DIL-3809.

So, the issue stands decided, accordingly.

FAO No.4483 of 2002

In this case, the amount of Rs.1,00,000/- was granted to injured-claimant. Rs.60,000/- has been allowed in respect of actual expenses paid by the claimants in Dayanand Medical College and Hospital, Ludhiana. Another sum of Rs.25,000/- was allowed in respect of purchasing medicines, attendant charges, loss of study @ Rs.1,000/- per day. The claimant remain admitted in Dayanand Medical College and Hospital, Ludhiana from 29.12.1999 to 22.01.2000 and on that account Rs.25,000/- was

allowed to Jas Kumar @ Yash Pal and another sum of Rs.15,000/- was allowed in respect of pain and sufferings and in this manner, the total amount was calculated as Rs.1,00,000/-.

Learned counsel for the appellant has submitted that bills amounting to Rs.16,159/- have been placed on the file and these have been dis-allowed on the ground that they have not been proved in accordance with law and no prescription slip has been proved. However, that finding does not sustain the test of legal scrutiny. It is not the case of the respondents that the said bills of Rs.16,159/- have been manipulated. These bill are issued by Dayanand Medical College and Hospital, Ludhiana. So, these bills should also be allowed. It is further submitted that the amount in respect of pain and sufferings and other heads are on lower side.

The ends of justice would be met in case, Rs.50,000/- more is allowed to injured-claimant on account of injuries sustained by him in the accident. Keeping in view the period of hospitalization and other attending circumstances. The appeal stands partly accepted. The respondents are jointly and severally liable to make the payment of Rs.50,000/- more in addition to the amount awarded by the Tribunal along with interest @ 7.5% per annum from the date of application till payment.

FAO No.4484 of 2002

The Tribunal has allowed a sum of Rs.2,65,200/- in respect of death of Ramesh Kumar in a motor vehicular accident.

The Tribunal has taken the age of the deceased as 38 years. The income has been taken as Rs.2,500/- per month and 1/3rd amount has been deducted in respect of personal expenses. The monthly dependency has been taken as Rs.1,700/-. The multiplier of 13 was applied, however ½ of the amount was ordered to be deducted due to contributory negligence of driver of Tata Sumo.

After hearing both the parties, the amount required to be re-assessed as number of facts like future prospects, consortium, funeral expenses, loss of love and affection, have not been taken into account. The multiplier applied by the Tribunal is on lower side and dependency has also not been calculated in accordance with rules.

The learned Tribunal has rejected the income-tax return on the ground that they have been manipulated. However, from the perusal of income-tax return for the year 1999-2000, it is revealed that the same was filed on 12.07.2001 by Santosh Rani-claimant i.e. after the death of deceased and as such, the said return has rightly been rejected by the Tribunal. However, the income-tax return for the year 1998-1999 has been wrongly ignored. The said income-tax return is required to be taken into consideration. From the perusal of the said income-tax return, it is revealed that income of the deceased has been shown as Rs.69,721/- and income-tax of Rs.2,940/- has been stated to be paid. From the scrutiny of the said return, it is revealed that the

amount of Rs.23,200/- has been shown under the head of house property. So, the deceased has not to contribute anything regarding the income from house property as the income shall remain even after the death of Ramesh Kumar. The income from the business has been shown as Rs.37,800/- and the total tax paid has been shown to be Rs.2,940/-. So, after deducting the tax, the income of deceased can be safely taken as Rs.36,000/- per annum as per return. The deceased was 38 years as per the finding given by the Tribunal. So, 50% amount has to be added in respect of future prospects. So, by adding 50% amount in respect of future prospects, the income of the deceased comes to Rs.54,000/- per annum. The claimants are four in number and as such, the deduction in respect of personal expenses has to be made to the extent of 1/4th share. So, the dependency of the claimants after deducting 1/4th in respect of personal expenses comes to Rs.40,500/-. At the age of 38 years, the multiplier applicable as per ***“Smt. Sarla Verma and others vs. Delhi Transport Corporation and another”*** reported in **2009(3) R.C.R. (Civil) 77**, is 15. So, by applying that multiplier the amount of compensation comes to Rs.6,07,500/-. Keeping in view the price index of 2000, a sum of Rs.15,000/- stands allowed in respect of expenses on last rites and transportation. Another sum of Rs.40,000/- stands allowed in respect of consortium to widow. Another sum of Rs.40,000/- stands allowed in respect of loss of love and affection to the

claimants. So, in this manner, the claimants are held entitled to claim Rs.7,02,500/- on account of death of Ramesh Kumar in the accident. Out of the enhanced amount Rs.2,00,000/- shall be paid to the widow and the remaining amount shall be shared equally between the remaining claimants. The liability to pay the enhanced amount shall be jointly and severally upon all the respondents in view of the discussions made above. However, in case any tortfeasors pay the amount in excess, the amount awarded by the Tribunal including the enhanced amount that tortfeasors shall have right to recover the same from the other tortfeasors.

Appeal stands disposed of, accordingly.

A copy of this order be sent to the Tribunal for compliance.

05.08.2015

yakub

(K.C. PURI)
JUDGE