IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

FAO-1601-2004 and

XOBJC-47-CII-2005 (O&M)

Date of Decision: August 5, 2015

Sandeep Kaur and others

...Appellants

Versus

Amandeep Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. M.S. Khaira, Senior Advocate, with
Mr. D.S. Randhawa, Advocate,
for the appellants.

Mr. Deepak Bhardwaj, Advocate,
for respondent Nos. 1 and 2/Cross objectors.

Mr. R.C. Kapoor, Advocate,
for respondent No. 3-National Insurance Co. Ltd.

1. Whether Reporters of local papers may be allowed to see the judgment? ***YES***

2. To be referred to the Reporters or not? ***YES***

3. Whether the judgment should be reported in the Digest? ***YES***

NARESH KUMAR SANGHI, J (Oral)

Present first appeal against order (FAO) has been filed by Sandeep Kaur (widow), Arush Sandhu (minor daughter), Sukham Sandhu (minor daughter), and Vishav Deep Singh Sandhu (minor son) of Jasbir Singh (since deceased), challenging the award dated 3.2.2004, passed by learned Motor Accidents Claims Tribunal, Sangrur (for brevity, 'the Tribunal').

Cross-objections, bearing No. XOBJC-47-CII-2005, have been filed by Amandeep Singh (owner) and Amarjit Singh (driver) of Lancer car, bearing Registration No. PB-11-N-5235 (for brevity, 'the offending vehicle'), challenging the liability to pay ₹3,00,000/- (Rupees three lacs only) each, as per the finding recorded by learned Tribunal in para No. 18 of the impugned award.

Mr. M.S. Khaira, learned senior counsel for the claimant-appellants submits that the calculations carried out by learned Tribunal while assessing the just compensation to be awarded to the claimant-appellants were on lower side, inasmuch as, learned Tribunal has assessed the monthly income of Jasbir Singh (since deceased) as ₹24,000/- (Rupees twenty-four thousand only) while from the salary certificate it was abundantly clear that his monthly salary was ₹24,610/- (Rupees twenty-four thousand, six hundred and ten only); learned Tribunal failed to add 30% monthly income as future prospects while calculating the award; learned Tribunal has also gone wrong in deducting 1/3rd monthly income as personal expenses of Jasbir Singh (since deceased); learned Tribunal has failed to award adequate compensation under the head "consortium" to the widow (appellant No. 1) and under the head "love and affection" to three minor children (appellant Nos. 2 to 4); and that a meagre sum of ₹10,000/- (Rupees ten thousand only) has been awarded under the head "funeral expenses", against the settled norms of ₹25,000/- (Rupees twenty-five thousand only).

To elaborate his arguments, learned senior counsel submits that there were four claimants and in that eventuality personal expenses of the deceased could at best be 1/4th of the monthly income. He further points out that learned Tribunal has gone wrong in fixing the liability of payment of Rupees six lacs (rupees three lacs each) on the owner and driver of the offending vehicle despite the fact that the offending vehicle was insured with respondent No. 3-National Insurance Company Limited. The findings recorded in para No. 18 of the impugned award to the extent of fixing the liability on the owner and the driver of the offending vehicle are contrary to the legal proposition. He also points out that learned Tribunal has also gone wrong in awarding interest @ 9% provided the respondents failed to deposit the amount within two months of passing of the award. In fact, the interest should have been awarded from the date of filing of the petition till realization.

Mr. Deepak Bhardwaj, learned counsel for respondent Nos. 1 and 2 very fairly submits that in view of the material available on record he would confine his submissions with regard to the liability fixed on the owner and driver of the offending vehicle. To elaborate his arguments, he submitted that while deciding Issue No. 2, learned Tribunal held that the onus to prove the said issue was on respondent No. 3-insurance company and the said Company utterly failed to prove that the driver of the offending vehicle was not holding a valid driving licence, therefore, the liability fixed on the driver and owner of the offending vehicle is not legally sustainable.

Mr. R.C. Kapoor, learned counsel for respondent No. 3-insurance company, submits that owner and driver of the offending vehicle deliberately did not appear before learned Tribunal and due to their absence they have failed to substantiate that driver of the offending vehicle was holding a valid and effective driving licence on the fateful day, hence, the insurance company should be exonerated from paying the awarded amount or in alternative the insurance company should be authorized to recover the amount from owner and driver of the offending vehicle after satisfying the award.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

Though death of Jasbir Singh in a motor vehicular accident, which occurred on 25.1.2002, is not in dispute, yet to give a clear picture of facts it is suffice to say that on 25.1.2002, at 11:15 p.m., while driving Maruti Zen car, bearing Registration No. PB-11-K-5102, Jasbir Singh (since deceased) was coming from Chandigarh. Jatinder Singh Sarao, Advocate, was following him in his Maruti Car, bearing Registration No. HR-25-9225. When the said Maruti cars reached near railway bridge within the revenue estate of Sirhind, then the offending vehicle driven by respondent No. 2-Amarjit Singh in a rash or negligent manner, emerged from opposite side and hit against the car being driven by Jasbir Singh (since deceased). As a result thereof, Jasbir Singh sustained fatal injuries and died at the spot. The corpus was taken to the Civil Hospital, Fatehgarh Sahib, where the doctors declared Jasbir Singh dead. The matter was reported to the police. Investigation was carried out and the charge-sheet (report under Section 173, Cr.P.C.) was presented for prosecution of Amarjit Singh, driver of the offending vehicle.

Widow and three minor children of Jasbir Singh (since deceased) filed the claim petition before learned Tribunal alleging that Jasbir Singh, aged about 47 years, was a Sub Divisional Officer in the Public Works Department (Buildings & Roads), Government of Punjab, and posted at Muktsar Sahib on the fateful day. The claimants were wholly dependent upon the salary being drawn by Jasbir Singh (since deceased).

Notice of the claim petition was issued to owner, driver and insurance company of the offending vehicle. Owner and driver did not appear before learned Tribunal and, as such, they were proceeded against *ex parte*. The insurance company of the offending vehicle did appear and filed its written statement denying the factum of accident and also took the objection that the driver of the offending vehicle had no valid and effective driving licence at the time of accident.

On the basis of pleadings of the parties, learned Tribunal framed the following issues:

> *"1. Whether the motor vehicle accident which was caused by respondent No. 2 while driving Car No. PB-11-N/5235 in rash and negligent manner, on 25.1.2002? OPA.*
>
> *2. Whether at the time of accident respondent No. 2*

was not holding valid and effective driving licence, if so its effect? OPR.

3. Whether the claimants are entitled to get compensation, if so to what extent and from whom? OPA.

4. Relief."

Learned Tribunal jointly discussed Issue Nos. 1 and 3 and both the issues were decided in favour of the claimant-appellants holding that the accident in question had occurred due to rash or negligent driving of the offending car by respondent No. 2-Amarjit Singh and further held that the claimants were entitled to get compensation and awarded a total sum of ₹21,22,000/- (Rupees twenty-one lacs and twenty-two thousand only) to the claimants. It was further held that if the awarded amount was not paid within two months of passing of the award, then the respondents would be liable to pay interest @ 9% per annum from the date of filing of the claim petition till realization of the amount.

While deciding Issue No. 2 against respondent No. 3-insurance company, it was held that in the absence of any evidence having been led and in the absence of arguments having been advanced, the insurance company had failed to prove that the driver of the offending vehicle was not holding a valid driving licence.

From the material available on record, this Court is satisfied that the accident in question in which Jasbir Singh lost his life, had occurred due to rash or negligent driving of the offending vehicle by respondent No. 2-Amarjit Singh, hence, the findings in this regard recorded by learned Tribunal are upheld.

While dealing with the issue of just compensation, this Court finds substance in the submissions raised by learned Senior counsel representing the appellants. He was right in his submissions that Jasbir Singh (since deceased) was getting salary of ₹24610/- (Rupees twenty-four thousand, six hundred and ten only) per month and there was no issue before learned Tribunal to assess the monthly income @ ₹24,000/- (Rupees twenty-four thousand only). Therefore, this Court holds that Jasbir Singh (since deceased) was getting a salary of ₹24,610/- (Rupees twenty-four thousand, six hundred and ten only) per month. This Court propose to re-calculate/re-assess just compensation in view of judgments passed by Hon'ble the Supreme Court in the matters of **Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121; Rajesh v. Rajbir Singh, (2013) 9 SCC 54**; and **Munna Lal Jain and another v. Vipin Kumar Sharma and others, JT 2015 (5) 1.**

Since the monthly income of Jasbir Singh (since deceased) was ₹24,610/- (Rupees twenty-four thousand, six hundred and ten only), therefore, his annual income would come to

₹2,95,320/- (Rupees two lacs, ninety-five thousand, three hundred and twenty only). Since Jasbir Singh was 47 years old at the time of his death, therefore, his 30% monthly income can be added as 'future prospects' while assessing just compensation. 30% of ₹2,95,320/- (Rupees two lacs, ninety-five thousand, three hundred and twenty only) would be ₹88,596/- (Rupees eighty-eight thousand, five hundred and ninety-six only). If the same is added in the annual income, then it would come to ₹3,83,916/- and after rounding it off it comes to ₹3,84,000/- (Rupees three lacs and eighty-four thousand only). ₹25,000/- (Rupees twenty-five thousand only) can be deducted for income tax to be paid by Jasbir Singh (since deceased) and thereafter the figure would arrive to ₹3,59,000/- (Rupees three lacs and fifty-nine thousand only). After deducting 1/4th from the annual income of Jasbir Singh (since deceased) on account of his personal expenses, the amount comes to ₹2,69,250/- (Rupees two lacs, sixty-nine thousand, two hundred and fifty only). In view of the age of Jasbir Singh, the appropriate multiplier of 13 can be applied and if the annual income is multiplied by 13, then the figure would come to ₹35,00,250/- (Rupees thirty-five lacs, two hundred and fifty only). Appellant No. 1 (widow) can be awarded ₹1,00,000/- (Rupees one lac only) under the head 'consortium'. There appears to be substance in the argument of learned senior counsel for the appellants that nothing has been awarded to the minor children under the head 'love and affection'. Thus, each minor child of Jasbir Singh (since deceased) is entitled to ₹50,000/- (Rupees fifty thousand only) under the said head. There were three children, therefore, the total amount under that head would come to ₹1,50,000/- (Rupees one lac and fifty thousand only). This Court is also of the considered view that meagre amount of ₹10,000/- (Rupees ten thousand only) has been awarded for the last rites etc., whereas appropriate amount under this head would be ₹25,000/- (Rupees twenty-five thousand only).

As per above calculations, the total amount of just compensation would arrive at ₹37,75,250/- (Rupees thirty-seven lacs, seventy-five thousand, two hundred and fifty only). This Court also deems it necessary to mention that the finding of learned Tribunal that interest would be payable only if the amount is not paid within two months from the date of passing of the award, is also against the settled norms. In fact, the claimants would be entitled to interest @ 9% per annum from the date of filing of the claim petition till full and final amount is paid to them.

The arguments of learned counsel for respondent No. 3-insurance company that owner and driver of the offending vehicle had deliberately not appeared before learned Tribunal and, as such, it should be presumed that driver of the offending vehicle was not holding a valid and effective driving licence on the fateful day of accident in question, does not appear to be correct. While deciding Issue No. 2, learned Tribunal has rightly held that the onus to prove that driver of the offending vehicle was not holding a valid and effective driving licence was on insurance company, i.e. respondent No. 3. This Court is also of the considered view that onus to prove the fact that the driver of the offending vehicle was not holding a valid and effective driving licence was on the insurance company and it totally failed to discharge its burden.

Despite the finding that insurance company had failed to discharge its burden with regard to validity of the driving licence being held by driver of the offending vehicle, learned Tribunal had burdened owner and driver of the offending vehicle to pay rupees six lacs (rupees three lacs each) to the claimants out of the awarded amount. This finding appears to be unjustified. Without any discussion or logic, owner and driver of the offending vehicle could not have been burdened to pay the said amount. Therefore, the said finding of learned Tribunal is set aside. This Court holds that the accident in question had taken place due to rash or negligent driving on the part of respondent No. 2-Amarjit

Singh and, as such, owner and driver of the offending vehicle were jointly and severally liable to satisfy the award. However, the registered owner of the offending vehicle had got his vehicle insured with respondent No. 3-National Insurance Company Limited, therefore, the said insurance company shall indemnify owner and driver of the offending vehicle to satisfy the award. To be more clear, the award re-assessed by this Court shall be paid to the claimants by respondent No. 3-National Insurance Company Limited.

The amount assessed by this Court under various heads can be shown in a tabular form as under:-

Sr. No.	Description	Detail of calculation	Amount (in ₹)
1.	Annual income of the deceased	₹24,610/- X 12	2,95,320/-
2.	Future prospects	30% of annual income	88,596/-
3.	Income of the deceased after adding future prospects	₹2,95,320/- + ₹88,596/- = ₹3,83,916/-	3,84,000/- (rounded)
4.	Less income-tax payable	₹3,84,000/- - ₹25,000/-	3,59,000/-
5.	Deduction on account of personal expenses of the deceased	@ 1/4th of the income ₹3,59,000/- - ₹89,750/-	2,69,250/-
6.	Amount after applying the multiplier of 13	₹2,69,250/- X 13	35,00,250/-

7.	Consortium to appellant No. 1 (widow)		1,00,000/-
8.	Love and affection to each minor child	₹50,000/- X 3	1,50,000/-
9.	Funeral expenses		25,000/-
10.	Total compensation	Total of Sr. Nos. 6 to 9	37,75,250/-

CONCLUSION

As a sequel to above discussion, FAO No. 1601 of 2004, filed by claimant/appellants is partly allowed and the claimants are awarded ₹37,75,250/- (Rupees thirty-seven lacs, seventy-five thousand, two hundred and fifty only) alongwith interest @ 9% per annum from the date of filing of the claim petition till full and final amount is paid to them. The amount, if any, already paid to them shall be deducted from the modified award passed by this Court. The amount shall be disbursed to the claimant/appellants in the ratio as defined in the award passed by learned Tribunal.

Cross-objections, bearing XOBJC No. 47-CII of 2005, filed by respondent Nos. 2 and 3 (owner and driver of the offending vehicle) are allowed and it is held that they are not liable to make the payment since the offending vehicle was insured with respondent No. 3-National Insurance Company Limited and the said company has failed to discharge its burden to prove that driver of the offending vehicle was not holding a valid and effective driving licence on the fateful day.

Statutory amount of ₹25,000/- (Rupees twenty-five thousand) deposited by respondent Nos. 2 and 3 in this Court at the time of filing of cross-objections, vide Bank Draft No. 107332, dated 25.2.2005, against Diary No. 1329, dated 26.2.2005/PO No. 472, dated 2.12.2005, be returned to them as per norms.

(NARESH KUMAR SANGHI)
JUDGE

August 5, 2015
Pkapoor