

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

Date of Decision: July 10, 2015

1. FAO No. 2593 of 2011 (O&M)

Bajaj Allianz General Insurance Company Limited

.....Appellant

Versus

Smt. Suman Devi and others

.....Respondents

2. FAO No. 5648 of 2011 (O&M)

Krishna and others

.....Appellants

Versus

Anwar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest? Yes**

**Present:- Mr. Nitin Mittal, Advocate for
 Mr. Subhash Goyal, Advocate
 for the appellant in FAO No. 2593 of 2011 and
 for the respondents in FAO No. 5648 of 2011.**

**Mr. Divay Sarup, Advocate
for respondents No. 2 to 4 in FAO No. 2593 of 2011 and
for the appellants in FAO No. 5648 of 2011.**

SHEKHER DHAWAN, J

These two separate appeals have been filed against the award dated 27.09.2010 passed by Motor Accident Claims Tribunal, Hisar (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation to the tune of ₹ 5,96,000/- on account of death of Vikas. One appeal has been filed by the claimants for enhancement of the compensation and the other by the Insurance Company challenging the validity of the award.

2. Facts relevant for the purpose of decision of these two appeals

that a motor vehicle accident took place on 30.09.2009 at about 10 p.m.

Vikas (since deceased) was going on motor cycle bearing registration No. HR-20Q-2594 and at about 11 P.M. when he reached near village Kabrela, Eicher Canter bearing registration No. UP-14AH/9912 hit against the motor cycle. Vikas sustained injuries and died. The driver of the Canter fled away from the spot. The accident was seen by Ramesh Kumar. FIR No. 331 was got recorded on 1.10.2009 at Police Station Adampur. The victim was of the age of 22 years and was self employed, engaged with Punjab Seed Bhandar Mandi Adampur and was earning ₹ 10,000/- per month. Claimants in this case are widow, minor son and parents of the deceased.

3. Respondents contested the claim petition. 'The Tribunal' after considering the material and evidence available on file, passed the award for compensation of ₹ 5,96,000/- and liability was determined to be joint and several of the respondents.

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4. Appellant- Insurance Company challenged the said award mainly on the ground that the accident was not seen by anybody and 'the Tribunal' fell in error while passing the award and fixing the responsibility of the Insurance Company to make the payment of compensation. The accident had taken place on 30.09.2009 and FIR was recorded on 1.10.2009 and that too against unknown vehicle and unknown driver. There was no eye witness of the occurrence. The police had not joined anybody during investigation as eye witnesses. PW-3 (Ramesh Kumar), who was examined by the claimants, had come with the plea that he had left the spot before the police reached, and as such police had not recorded his statement. Vehicle has been falsely implicated in order to grab the amount of compensation.

The offending vehicle was seized by the police after 12 days of the accident and the accused was arrested after 25 days of the accident. These facts established that the offending vehicle was implicated with the motive of grabbing compensation. Cross-examination of PW3 (Ramesh Kumar) also established that in fact he had not seen the accident and he had stepped into the witness box on the asking of the claimants to seek compensation.

5. Learned counsel for the appellant- Insurance Company also took the plea that an application under Section 170 of the Motor Vehicle Act was filed before the 'the Tribunal' and the same was allowed. Hence, the Insurance Company is not liable to pay the amount of compensation as claimants failed to establish that accident had taken place because of rash and negligent driving of respondent No.1 (driver) and the alleged accident was not seen by anybody. So, the appeal be accepted and award dated 27.09.2010 be set aside.

6. While arguing on these points learned counsel for the claimants took the plea that the accident had actually taken place involving canter No. UP-14AH/9912 which was duly insured with the appellant-Insurance Company on the date of accident. The matter was immediately reported to the police vide FIR No. 331 dated 1.10.2009. The police had investigated the matter and recovered the offending vehicle and arrested the driver of the offending vehicle. There was a little delay in arrest of the accused-driver as driver of the offending vehicle fled away from the spot after causing accident. There was no reason for the author of the FIR to falsely implicate anybody while allowing the real culprit to go scot free. The Tribunal has already discussed all these facts while awarding the compensation and

allowing the claim petition, so the appeal is without merit and the same be dismissed.

7. Having considered the rival contentions raised by learned counsel for both the parties, this Court is of the considered view that 'The Tribunal' examined these aspects in detail while recording findings on issues No.1 & 2. The Tribunal has relied upon the testimony of PW-3 (Ramesh Kumar) who had stated before the Tribunal that the accident had taken place because of rash and negligent driving of respondent No.1 (Anwar) driver of the offending vehicle. The Tribunal had also recorded a finding that mere fact that the police had not associated PW3 Ramesh Kumar during investigation, cannot be treated as a bar for the claimants to raise their claim of compensation. Nothing is on file so as to discard the testimony of PW3 Ramesh Kumar on account of the fact that he was interested witness though there is nothing on that account. The delay in seizure of offending vehicle by the police or arrest of the accused after 25 days is no ground to throw the claim petition and this aspect has also been duly discussed by the Tribunal. Even though while recording the FIR, the name of the offending driver was not disclosed, the same is no ground to deny the compensation amount to the victims because FIR is just first information to the police and it is not expected to disclose the complete and detailed facts of the case. Rather it is for the police to investigate the entire matter. Victims in such like road accident cases are not expected to know the name of the offending drivers as the same is not practical. The Tribunal has rightly recorded the finding that on the basis of statement of PW3 Ramesh Kumar claimants have been able to prove that accident had taken

place because of rash and negligent driving by the driver of vehicle bearing registration No. UP-14AH/9912 and claimants are entitled to compensation. Hence, the appeal filed by the Insurance Company is not maintainable and dismissed.

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8. Claimants have preferred this appeal to seek enhancement of compensation amount mainly on the ground that there were four claimants in this case and the Tribunal has deducted 1/3rd amount on account of the deceased's dependency, whereas it should have been 1/4th as per the law laid down by Hon'ble Supreme Court in case **Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77**. The Tribunal has also not taken into account the future prospectus of enhanced earnings because Vikas was just of the age of 22 years and his earnings were to grow with the passage of time. 50% of the amount is to be enhanced on account of future earnings. Learned counsel for the appellants also took the plea that the Tribunal has not awarded adequate amount on account of loss of consortium for the widow and loss of love and affection of one minor child and parents and funeral expenses. They are entitled to enhancement as per the law laid down by Hon'ble Supreme Court in case **Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra)**.

9. While arguing on all these points, learned counsel for the respondent-Insurance Company took the plea that the Tribunal has already awarded just compensation and there are no grounds for further enhancement. So appeal be dismissed.

10. Having considered the rival contentions raised by learned counsel for both the parties this Court is of the considered view that 'The Tribunal' has not considered the fact regarding future earnings of the deceased as he was of the age of 22 years and was doing private job. His income has been rightly taken to be ₹ 4,000/- per month. However, the Tribunal has completely ignored the fact regarding enhancement of earnings on account of future prospectus though deceased was of the age of 22 years. Nothing has been awarded on account of loss of love and affection and only a meager amount has been ordered on account of loss of consortium and funeral expenses. The dependency has also been taken incorrectly as there were four claimants in this case and it should have been $\frac{1}{4}^{\text{th}}$ as per the law laid down by Hon'ble Supreme Court in case **Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra)**. Accordingly the amount of compensation is being re-assessed as under:

Monthly income	₹4,000/-
Annual income	₹48,000/-
Less $\frac{1}{4}^{\text{th}}$ on account of dependency	₹12,000/-
Total	₹36,000/-
Add 50% on account of future earnings	₹18,000/-
Multiplier of 18 (₹54,000/- x 18)	₹9,72,000/-
Loss of consortium for wife	₹1,00,000/-
Funeral expenses	₹25,000/-
Loss of love and affection for minor child	₹1,00,000/-
Total compensation	₹11,97,000/-
Compensation already awarded	₹5,96,000/-
Total enhanced compensation	₹6,01,000/-

11. The appeal is partly allowed accordingly and the awarded amount is enhanced by ₹6,01,000/- and the said amount will be payable from the date of claim petition. Appellants shall be entitled to interest

@ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till its realization. However, remaining conditions regarding apportionment and disbursal of amount shall remain unaltered.

12. Resultantly FAO No. 2593 of 2011 filed by the Insurance Company stands dismissed and appeal filed by the petitioners-claimants and others (FAO No. 5648 of 2011) partly accepted.

**(SHEKHER DHAWAN)
JUDGE**

July 10, 2015
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