

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

1. FAO No.3530 of 2012 (O&M)

Lella Devi and others

... Appellants

Versus

Budh Ram and others

... Respondents

2. FAO No.5046 of 2010 (O&M)

Naresh Kumar

... Appellant

Versus

Lella Devi and others

... Respondents

3. FAO No.5047 of 2010 (O&M)

Naresh Kumar

... Appellant

Versus

Ram Avtar and others

... Respondents

Date of decision: 15th January, 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. Sandeep Kotla, Advocate
 for the claimants/appellants in FAO No.3530 of 2012
 respondents No.1 to 4 in FAO No.5046 of 2010;
 respondent No.1 in FAO No.5047 of 2010.

Mr. Ravinder Arora, Advocate
for the insurer/respondent No.3 in FAO No.3530 of 2012;
respondent No.6 in FAO No.5046 of 2010;
respondent No.3 in FAO No.5047 of 2010.

Mr. Sandeep Punchhi, Advocate
for the owner/appellant in FAO Nos.5046 & 5047 of 2010;
and respondent No.2 in FAO No.3530 of 2012.

None for the remaining respondents.

FATEH DEEP SINGH, J.

Challenge in all these appeals is against a consolidated Award dated 19.12.2009 passed by learned Motor Accident Claims Tribunal, Hisar allowing the claim petitions of different claimants. FAO No.3530 of 2012 has arisen from MACT Case No.65 of 2008 seeking enhancement of compensation on account of death of Raju @ Rajesh and FAO No.5046 of 2010 arising from the same very MACT Case is by the owner of offending vehicle; whereas FAO No.5047 of 2010 is again preferred by the owner of offending vehicle challenging the Award passed in MACT Case No.63 of 2008.

Since all these matters have factual and legal consanguinity and for the sake of brevity are being disposed off together.

The brief facts essential to highlight as to what led to filing of these different claim petitions is that on 23.05.2006 Ram Avtar along with his friends Anil and Raju (since deceased) boarded TATA-407 owned and being driven by Ashok Kumar bearing registration No.HR-39A-2136 and when the vehicle reached near Kuleri turning a tanker bearing No.HR-17-0151 owned by Naresh Kumar and being driven by respondent Budh Ram rashly and negligently came from Fatehabad side and hit the ill-fated vehicle leading to injuries and resultant death regarding which an FIR was also registered.

In the case of Lella Devi and others FAO No.3530 of 2012, the claimant/appellants Lella Devi mother, Mainpal @ Mahipal father, Subhash minor brother as well as Shakeela minor sister are seeking compensation for the death of Raju @ Rajesh.

It is not disputed and is writ large on the records that deceased Raju @ Rajesh was 20 years of age, a bachelor working as a Band Master. Though on behalf of the appellant/claimants learned counsel had laid much stress on the fact that learned Tribunal has not awarded compensation commensurate with the law when even findings on issue No.1 went against the driver of the offending vehicle. Based on the FIR Ex.P9 and statements of PW1 Ram Avtar whose cross-examination could not bring about anything adverse to the stand of the claimants, the learned Tribunal has taken earnings of the deceased to be ₹3,000 per month which is a reasonable amount keeping in view his age, avocation and being a bachelor. In the light of ratio laid down in '**New India Assurance Company Ltd. v. Gopali and others**' reported in **2012(3) RCR (Civil) 818**, he must be spending 1/2 of this earning on his own upkeep and maintenance and must be contributing ₹1,500 per month to the running of the household and therefore, in view of the admitted stand of the inter-se relationship the annual dependency comes to ₹18,000 and in view of the age of the deceased multiplier of 18 needs to be applied in view of '**Sarla Verma & others v. Delhi Transport Corporation & another**' reported in **2009(6) SCC 121**. Therefore, compensation comes to ₹3,24,000.

Besides this, the family must have spent money on the last rites and ceremonies of the deceased, aged parents and the minor siblings have lost their source of bread-earning, a source of love and affection as well as protection and under all these conventional heads a sum of ₹2.00 lacs is awarded which the learned Tribunal has failed

to take note of and therefore, total compensation comes to ₹5,24,000 (rupees five lacs twenty four thousand).

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 minor claimants has attained the age of majority, his/her share shall not be resorted to by way of FDR. Rest of the stipulations laid down by the Tribunal need not be disturbed.

Learned Tribunal has misinterpreted the term 'legal representative' and has denied compensation to the father and siblings of the deceased when the definition of 'legal representative' given in Section 2 CPC includes all persons entitled to intermeddle in the estate of the deceased and it cannot be taken that by this unfortunate loss, father and the siblings have not suffered in any manner. Thus, keeping in view the relative requirements of the parents which are on the higher side than that of the minor siblings, both mother and father of the deceased shall be entitled to 30% each of the total compensation whereas the brother and sister of the deceased shall be entitled to 20% each of the total compensation so awarded.

Thus, the Award of the learned Tribunal is certainly on the lower side as it failed to give any compensation under the conventional heads commensurate with the settled law and therefore, in view of these discussions, the impugned Award is modified by way of acceptance of appeal filed by claimants Lella Devi and others.

FAO No.5047 of 2010 in respect of Award passed in MACT Case No.65 of 2008 and FAO No.5046 of 2010 with regard to

MACT Case No.63 of 2008 are challenge by the owner of the offending vehicle Naresh Kumar challenging the compensation awarded to Lella Devi and others as well as regarding injuries suffered by Ram Avtar who has been awarded compensation to the tune of ₹25,000. The only contention that has been raised by the learned counsel for the appellant/owner of the offending vehicle Naresh Kumar is that the learned Tribunal has awarded compensation jointly and severally against the driver, owner and the insurer of the vehicle however, has given recovery rights to the insurer to recover the amount from the owner and driver jointly and severally holding that the driver did not have legal and valid driving license.

After going through the arguments raised before this Court, issue No.3 pertaining to this aspect of the matter is very essential. It is undisputedly proved that by virtue of insurance police Ex.R10, the offending vehicle was insured with the insurer on the day of accident i.e. 23.05.2006 and the insurance policy was valid from 26.09.2005 to 25.09.2006. The driving license of the driver brought on the record by way of Ex.R9 as per the evidence according to RW2 Registration Clerk of Regional Transport Authority, Hisar was issued in the name of Budh Ram son of Daulat Ram resident of House No.10, Durga Colony, Hisar and was renewed and valid upto 29.01.2012 and the driver did not testify regarding this validity and rather RW1 Vinod Jindal, Advocate was appointed as Local Commissioner who after visiting Hyderabad gave his report Ex.R1 and after giving notice by way of Ex.R2 and recording statements of the witnesses by way of Ex.R3 to Ex.R7 has found out that driving license No.13/7695/83 of Budh

Ram was not issued by any licensing authority of Hyderabad rather it was a forged and fake driving license and therefore, the driver at the time of accident was not holding a valid and effective driving license issued in original and it was a fake driving license which was subsequently legitimately renewed and in view of the ratio laid down in **‘New India Assurance Company Ltd. v. Kamla and others’ 2001 (1) PLR 830 SC**, the same cannot be clothed with validity and legality. Even the owner much less the driver have not stepped into the witness box to refute this aspect of the case though much is sought to be argued on this aspect. However, one thing is undoubtedly established that the driving license so relied upon by the owner and the driver was never issued in the name of respondent driver and this is what the learned Tribunal has concluded it so and therefore, nothing can be found fault with in these findings so arrived at by the learned Tribunal.

In view of the foregoing discussion, FAO No.3530 of 2012 filed by the claimants Lella Devi and others stand allowed whereas both the appeals filed by the owner Naresh Kumar i.e. FAO Nos.5046 and 5047 of 2010 deserve dismissal and are dismissed.

(FATEH DEEP SINGH)
JUDGE

January 15, 2015

rps