

FAO-4502-2012 (O&M)
FAO-5083-2012 (O&M)

REFER TO REPORTER
-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO-4502-2012 (O&M)

Reliance General Insurance Company Ltd.

.....Appellant

vs

Bala Devi and others

.....Respondents

2. FAO-5083-2012 (O&M)

Bala Devi and another

.....Appellants

vs

Naresh Kumar and others

.....Respondents.

Date of Decision: May 14, 2015

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Tajender Joshi, Advocate
for the appellant in FAO-4502-2012 and
for respondent No.3 in FAO-5083-2012

Mr.Mukesh Yadav, Advocate
for the appellants in FAO-5083-2012 and
for respondent Nos.1 and 2 in FAO-4502-2012.

.....

NARESH KUMAR SANGHI, J.(ORAL)

CM-19455-CII-2012 in
FAO-4502-2012

Prayer in this application is for condonation of delay

of 44 days in refiling the appeal.

After hearing the learned counsel for the parties and going through the contents of the application, which is duly supported by an affidavit, delay of 44 days in refiling the appeal is condoned.

CM disposed of.

FAOs-4502 and 5083-2012

This order shall dispose of both the aforesaid appeals bearing FAO Nos.4502 and 5083 of 2012, since both of them are arising out of the same impugned award.

FAO-4502-2012 has been filed by Reliance General Insurance Company Limited challenging the award on the premise that the claimants have failed to prove the involvement of the offending vehicle in the accident in question while FAO-5083-2012 has been filed by Smt.Bala Devi and Munshi Ram, parents of Sonu (since deceased) aged about 14 years for modification and enhancement of the award, dated 28.02.2012, passed by learned Motor Accident Claims Tribunal, Narnaul (for brevity, the 'learned Tribunal').

Mr.Tajender Joshi, Advocate, learned counsel for the appellant in FAO-4502-2012 has raised the sole argument that

FIR was lodged by Chhotte Lal, uncle of Sonu (since deceased) but the number and description of the offending vehicle were not disclosed at that time. Said Chhotte Lal was not produced by the claimants to prove the involvement of the offending vehicle in the accident in question, therefore, the claimants have miserably failed to connect the offending vehicle in the accident in question.

Mr. Mukesh Yadav, learned counsel for Bala Devi and Munshi Ram, claimant-appellants in FAO-5083-2012 submits that Sonu (since deceased) was aged about 15 years at the time of his death and the learned Tribunal without assigning cogent reasons awarded paltry amount of ₹2,50,000/- (Rupees two lacs and fifty thousand only). He further submits that the rate of interest @ 7.5% per annum was also against the settled norms of 9% per annum. In support of his contention he has placed reliance on **Kishan Gopal and another vs Lala and others**, 2013 ACJ 2594 (SC).

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

As per the claimants' case, on 20.01.2010 there was marriage of the daughter of Rattan Singh son of Mattu Ram, resident of village Sirohi Bahali. At about 9.30/10.00 p.m., the marriage procession was proceeding from the main road to the house of Rattan Singh. Many persons including Sonu (since deceased) had gathered nearby the marriage procession to witness the marriage party. In the meantime, an Indica car bearing registration No.HR-27A-5755, being driven rashly or negligently and at a fast speed by Naresh Kumar arrived at the spot and straight-way hit Sonu. As a result thereof, Sonu received serious injuries and thereafter he died. The occurrence was witnessed by Manoj son of Om Parkash (PW3). It was further averred that Sonu was a young boy of 15 years and a student at Government High School, Sirohi Bahali. He was the only son of his parents. ₹20,00,000/- (Rupees twenty lacs only) were claimed for the death of Sonu by his parents.

Respondent No.1, i.e. the driver of the offending vehicle, appeared before the learned Tribunal and filed his reply, wherein he denied the involvement of Indica car bearing registration No.HR-27A-5755 in the accident.

Respondent No.2, i.e., the owner of the offending vehicle, did not appear and, as such, he was proceeded against ex parte.

Respondent No.3, i.e. Reliance General Insurance Company Limited also appeared and filed its reply alleging that the claim petition was filed by Smt.Bala Devi and Munshi Ram in collusion with driver and owner of the offending vehicle. It was further averred that no accident as alleged had taken place.

On the basis of the pleadings of the parties, the following issues were framed:-

- “1. Whether Sonu son of Munshi Ram died in a road accident which took place on 20.01.2010 near hospital in the area of village Sirohi Bahali (Police Station Nangal Chaudhary) due to rash and negligent driving on the part of respondent No.1, the driver of vehicle No.HR-27A-5755? OPP
2. Whether respondent No.1 did not hold a valid driving licence, if so to what effect? OPR-3
3. Whether the petitioners are entitled to award of compensation and if so, how much and from whom? OPP
4. Relief.”

In order to substantiate their case, the claimants

examined the following witnesses:-

- PW1- Smt.Bala Devi (Claimant)
- PW2- Daya Ram, Ahlmad of the Court of learned
Judicial Magistrate Ist Class, Narnaul.
- PW3 - Manoj son of Om Parkash. (Eye witness of
the occurrence).

Certain documents were tendered in evidence and
thereafter the evidence of the claimants was closed.

No witness was produced by the respondents,
however, respondent No.1 (driver) produced the driving
licence and registration certificate, Exs.P6 and P7 and closed his
evidence.

After hearing the learned counsel for the parties, the
learned Tribunal decided issue No.1 in favour of the claimants
holding that the accident had taken place due to rash or
negligent driving on the part of the driver of the offending
vehicle.

Learned Tribunal while dealing with issue No.2 held
that driver of the offending vehicle was holding a valid driving
licence and, as such, issue No.2 was decided against
respondent No.3.

While dealing with issue No.3, the learned Tribunal

held that the claimants were entitled to ₹2,50,000/- (Rupees two lacs fifty thousand only) as compensation.

While dealing with issue No.4, the learned Tribunal held that the claimants were entitled to interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the compensation.

The only argument of Mr.Tajender Joshi, learned counsel for Reliance General Insurance Company Limited, that Indica car bearing registration No.HR-27A-5755 was not involved in the accident, has no legs to stand.

PW3 Manoj was very clear in his deposition that on 20.01.2010 at about 9.30/10.00 p.m., Sonu (since deceased) was amongst the gathering assembled at the road to see the playing of the band of the marriage party and in the meantime, Indica car bearing registration No.HR-27A-5755 being driven rashly or negligently and at a fast speed, by Naresh Kumar, arrived at the spot and hit Sonu, due to which he (Sonu) sustained multiple injuries and died thereafter. The matter was reported to the police on the basis of which FIR No.11, dated 21.01.2010 for the offences punishable under Sections 279, 304A and 337, IPC, was

registered at Police Station, Nangal Chaudhari, District Mahendergarh.

After thorough investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented before learned Area Judicial Magistrate at Narnaul for prosecution of Naresh Kumar, the driver of the offending Indica car. There is no doubt that the FIR was lodged by one Chhotte Lal and the number and description of Indica car were not mentioned therein. It is also correct that the said Chhotte Lal has not been examined by the claimants but the said fact would not, in any manner, diminish the findings of the learned Tribunal that the accident had occurred due to rash or negligent driving of Indica car by Naresh Kumar respondent. If the Insurance Company had to take the benefit from non-examination of Chhotte Lal informant, in that eventuality it was open for the Insurance Company or the driver and registered owner of the vehicle to summon Chhotte Lal in the respondents' evidence. They have failed to do so. Therefore, they cannot get the benefit of the fact that Chhotte Lal was not produced by the claimants. The material available on record would clearly spell out that the

accident had taken place due to the sole negligence on the part of Naresh Kumar, the driver of the Indica car bearing registration No.HR-27A-5755.

There appears to be substance in the submissions of the learned counsel for the claimants, i.e., the parents of Sonu (since deceased) when he submitted that the learned Tribunal has not assigned good reasons for awarding a paltry sum of ₹2,50,000/- (Rupees two lacs fifty thousand only).

In the matter of **Kishan Gopal**' (supra), Hon'ble the Supreme Court while dealing with a case of the death of a child of ten years held that notional income of the child could be taken as ₹30,000/- (Rupees thirty thousand only) per annum and keeping in view the age of his parents to be 36 years, multiplier of 15 was appropriate. Hon'ble the Supreme Court further held that the parents of the deceased child were further entitled to ₹50,000/-(Rupees fifty thousand only), under conventional heads, i.e. 'loss of love and affection' and 'funeral expenses' etc. and, as such, a sum of ₹5,00,000/- (Rupees five lacs only) was awarded.

In the case in hand, the age of Sonu (since deceased)

was approximately 15 years and he was the only son of his parents. Hence, his notional income is taken at ₹30,000/- (Rupees thirty thousand only) per annum.

Learned counsel for the claimant-appellants has pointed out that at the time of death of Sonu, the age of his parents was approximately 35 years, therefore, the appropriate multiplier of 15 can be applied. A sum of ₹50,000/- (Rupees fifty thousand only) can be awarded for 'loss of love and affection' and 'funeral expenses' etc. and, as such, the claimant-appellants are entitled to ₹5,00,000/- (Rupees five lacs only) for the death of their son Sonu.

There also appears to be substance in the submissions of the learned counsel for the claimant-appellants when he submitted that the interest awarded @ 7.5% was also on the lower side. In the matters of **Neeta and others vs Divisional Manager, Maharashtra State Road Transport Corporation**, 2015 ACJ 598, and **Jitendra Khim Shankar Trivedi vs Kasam Daud Kumbhar**, 2015 ACJ 708, Hon'ble the Supreme Court has awarded interest @ 9% per annum. Therefore, it is held that the claimants are entitled to interest @

FAO-4502-2012 (O&M)
FAO-5083-2012 (O&M)

REFER TO REPORTER
-11-

9% per annum on the amount awarded by this Court from the date of filing of claim petition till realization.

The amount awarded by this Court along with interest shall be disbursed to the claimant-appellants as per the directions of the learned Tribunal.

As a result of the above discussion, FAO-4502-2012 is hereby dismissed while FAO-5083-2012 is partly allowed.

May 14, 2015
meenu

(NARESH KUMAR SANGHI)
JUDGE