

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **FAO No.1617 of 2015 (O&M)**

The Oriental Insurance Company Limited
...Appellant

Versus

Manju Sharma and others
...Respondents

(2) **FAO No.1618 of 2015 (O&M)**

The Oriental Insurance Company Limited
...Appellant

Versus

Sandeep Kumar and others
...Respondents

(3) **FAO No.1619 of 2015 (O&M)**

The Oriental Insurance Company Limited
...Appellant

Versus

Anjali and others
...Respondents

Date of Decision: March 09, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Manjari Nehru Kaul, Advocate
for the appellant.

INDERJIT SINGH, J.

All the above-mentioned FAOs are taken up together being
arisen from same Award.

All the above-mentioned FAOs have been filed by The Oriental Insurance Company Limited against respondents-claimants, driver and owner of the offending vehicle challenging the impugned Award dated 17.11.2014 passed by learned Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'Tribunal') vide which ₹1,38,675/- to claimant Manju Sharma (in MACP No.677 of 2013), ₹45,552/- to claimant Sandeep (in MACP No.678 of 2013) and ₹22,65,000/- to claimants Anjali, Sonam and Labh Kaur (in MACP No.679 of 2013) along with interest of 7% per annum from the date of filing of the petition till date of realization have been awarded.

From the record, I find that claim petitions filed by Manju Sharma, aged about 30 years, Sandeep, aged about 17 years for their injuries and claim petition filed by Anjali, Sonam and Labh Kaur against Nachhatar Singh (driver), Director General of Police, Haryana (owner) and The Oriental Insurance Company Limited (Insurer) of the offending Tata Sumo bearing registration No.HR-68-6079, are disposed of by one Award by learned Tribunal on 17.11.2014.

The brief facts of all the claim petitions are that on 17.08.2012 at about 8.45 P.M, Manju Sharma along with her son Sandeep and husband Ravinder Sharma was going to Panchkula from Ramgarh in a three-wheeler bearing registration No.HR-68A-4144 being driven by its driver Gurmeet Singh at a very normal speed on the extreme left side of the road. When they reached near ITBP Camp, in the meantime, a Tata Sumo bearing registration No.HR-68-6079 came from Panchkula side being driven by its driver at a very

high speed and in a rash and negligent manner and directly hit the three-wheeler, as a result of which, all the occupants of the three-wheeler including three-wheeler driver received multiple injuries. Manju Sharma, Sandeep and Gurmeet Singh were taken to General Hospital, Sector-6 Panchkula by Ravinder Sharma (husband of Manju Sharma) and Ram Karan with the help of other persons, where doctors declared injured Gurmeet Singh as brought dead and referred Manju and Sandeep to PGI for further treatment. Post mortem examination of Gurmeet Singh was conducted. FIR was got registered against Nachhatar Singh.

In the first claim petition, claimant Manju Sharma claimed ₹ 10 lacs on account of injuries, permanent disability, treatment etc. In the second claim petition, claimant Sandeep claimed ₹7 lacs on account of injuries, treatment etc. In the third claim petition, it was averred that deceased Gurmeet Singh was about 29 years of age at the time of accident. He was an auto-rickshaw driver by profession and was also doing the work of agriculture and dairy business. He was earning ₹14,000/- per month. The claimants were totally dependent upon him and ₹30 lacs were claimed on account of death, transportation, funeral, loss of estate etc.

In the written statement, respondent Driver took plea that accident took place due to rash and negligent driving on the part of driver of three-wheeler, who was driving the three-wheeler at a very high speed. It has been admitted that FIR has been registered against respondent-driver and that respondent-Director General of

Police, Haryana is owner of the offending vehicle. It is also stated that the offending vehicle is duly insured with The Oriental Insurance Company Limited (present appellant). Respondent-owner in separate written statement also took same plea.

Insurance Company stated that offending vehicle was not insured with them at the time of alleged accident. The claim petition have been filed by the claimants in collusion with respondents-driver and owner.

Following issues were framed:-

“(1) Whether Manju, Sandeep sustained injuries and Gurmeet Singh died on account of injuries sustained in the accident in question which took place due to rash and negligent driving of Tata Sumo bearing registration No.HR6-6079 by respondent No.1?OPP

(2) If issue no.1 is proved, whether the claimants are entitled to compensation, if so to what effect?OPP

(3) Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident in question, if so to what effect?OPR-3

(4) Relief.”

Claimants examined PW-1 Manju Sharma, PW-2 Anjali, PW-3 Ram Karan, eye witness, PW-4 Ravinder Sharma, PW-5 Sandeep Kumar, PW-6 Ashok Tiwari and PW-7 Dr.Umesh Modi, SMO, General Hospital, Panchkula and tendered various documents.

On the other hand, respondents (in claim petition) examined RW-1 Head Constable Harinder Kumar and tendered into evidence certain documents.

Learned Tribunal after discussing the evidence produced

by the parties, decided issue No.1 in favour of the claimants. Issue No.2 is also decided in favour of the claimants by holding that Manju Sharma is entitled to ₹1,38,675/- and Sandeep is entitled to ₹45,552/-. In the third claim petition, the Tribunal held that the claimants are entitled to ₹22,65,000/-.

At the time of argument, learned counsel for the appellant argued that excess amount has been awarded by the learned Tribunal. Respondent-driver of the offending vehicle was not rash and negligent. He further argued that 50% as future prospects has been wrongly given to the L.Rs of the deceased.

I have heard learned counsel for the appellant and have gone through the record.

The perusal of the record shows that learned Tribunal has discussed the evidence on issue No.1 and correctly relied upon the eye witnesses/injured i.e. PW-1 Manju Sharma, PW-4 Ram Karan, PW-3 Ravinder Sharma and PW-5 Sandeep. Respondent-driver has not come to the witness box to rebut the evidence of all these witnesses. The mere statement of RW-1 Head Constable Harinder Kumar, who proved the FIR, which was recommended to be cancelled vide report Ex.RW1/A, is insufficient to rebut the evidence of the eye witnesses, especially when, respondent-driver has not come to the witness box to depose that he was not negligent and accident occurred due to rash and negligent driving of driver of three-wheeler. The findings given by the Tribunal regarding rash and negligent driving of Nachhatar Singh, due to which the accident occurred, are

correct, as per law and do not require interference from this Court.

As regarding the compensations of ₹45,552/- given to injured Sandeep and ₹1,38,675/- given to Manju Sharma, I find that, in no way, these can be held as excessive. Manju Sharma has been awarded ₹2000/- for loss of income, ₹5000/- as transportation, ₹5000/- as attendant charges, ₹5000/- as diet and nutrition, ₹57675/- as medical expenses, ₹10,000/- as pain sufferings and ₹54,000/- as percentage of loss of earning capacity in relation to disability and Sandeep has been awarded transportation to hospital @ ₹5000/-, ₹5000/- as attendant charges, ₹5000/- as diet and nutrition, ₹20,552/- as medical expenses and ₹10000/- for pain and sufferings. In no way, it can be held that any excess amount has been given by the Tribunal.

As regarding the compensation given to the claimants regarding driver Gurmeet Singh, I find that Tribunal has taken his income being auto-rickshaw driver and semi-skilled worker as ₹10,000/- per month and assessed his income as ₹1,20,000/- per year. Rather, the Tribunal has applied deduction @ 1/3rd whereas the claimants are four. So, in no way, the amount assessed can be held as excessive. Similarly, as regarding future prospects, the Tribunal has relied upon the law laid down by the Hon'ble Supreme Court , which has been duly discussed by the Tribunal.

In view of the above discussion, I find that the findings given by the learned Tribunal are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in all three FAOs, i.e FAO

No.1617 of 2015, FAO No.1618 of 2015 and FAO No.1619 of 2015,
the same are dismissed.

March 09, 2015
Vgulati

(INDERJIT SINGH)
JUDGE