

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

FAO No.397 of 2013 (O&M)

Neeru Sethi

...Appellant

Versus

Jitender Singh and others

...Respondents

(2)

FAO No.398 of 2013 (O&M)

Neeru Sethi and another

...Appellants

Versus

Jitender Singh and others

...Respondents

(3)

FAO No.399 of 2013 (O&M)

Krishan

...Appellant

Versus

Jitender Singh and others

...Respondents

(4)

FAO No.1356 of 2013 (O&M)

Reliance General Insurance Company Ltd.

...Appellant

Versus

Neeru Sethi and others

...Respondents

(5)

FAO No.1357 of 2013 (O&M)

Reliance General Insurance Company Ltd.

...Appellant

Versus

Krishan and others

...Respondents

(6)

CR No.2800 of 2013 (O&M)

Reliance General Insurance Company Ltd.

...Petitioner

Versus

Neeru Sethi and others

...Respondents

Date of Decision: July 29, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Mamli, Advocate for the appellants
(in FAOs No.397, 398 and 399 of 2013),
for respondents No.1 and 2 (in FAO No.1356 of 2013),
for respondent No.1 in (FAO No. 1357 of 2013),
and (in CR No.2800 of 2013).

None for respondents No.1 and 2
(in FAOs No.397, 398 and 399 of 2013),
for respondents No.3 and 4 (in FAO No.1356 of 2013),
for respondents No.2 and 3 (in FAO No.1357 of 2013),
and for respondent No.2 and 3 (in CR No.2800 of 2013).

Mr.Suman Jain, Advocate for respondent No.3
(in FAOs No.397, 398 and 399 of 2013),
for appellant (in FAOs No.1356 and 1357 of 2013) and
for petitioner (in CR No.2800 of 2013).

INDERJIT SINGH, J.

All the above-mentioned FAOs are taken up together for disposal being arisen from same occurrence and the points involved for determination are also the same.

FAOs No.397, 398 and 399 of 2013 have been filed by the claimants-appellants Neeru Sethi and Krishan against Jitender Singh, driver, Daya Nand Dagar, owner and Reliance General Insurance Company, Insurer of truck No.HR-55J-7584 (offending vehicle), challenging the impugned Award dated 17.11.2012 passed by learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'Tribunal'), whereby compensation to the tune of ₹5,000/- to claimant-injured Neeru Sethi (in MACT No.88), ₹20,000/- to claimant-injured Kirshan (in MACT No.129) and ₹20,12,200/- to claimants-appellants Neeru Sethi and Krishan on account of death of Raj Kumar Sethi (in

MACT No.130), have been awarded along with interest @ 7.5% per annum from the date of filing of claim petitions till realization. The appeals have been filed for enhancement of the compensation.

FAOs No.1356, 1357 of 2013 and CR No.2800 of 2013 (being compensation of ₹5000/-) have been filed by appellant-Reliance General Insurance Company Ltd., challenging the above-said impugned Award dated 17.11.2012.

The brief facts of the case are that three claim petitions arising from the same motor vehicular accident involving Honda Activa bearing registration No.HR-26Q-5019 and the Eicher Truck being registration No.HR-55J-7584 brought by Smt.Neeru Sethi and Krishan on account of injuries sustained by them and for seeking claim on account of death of Raj Kumar Sethi, in the accident which had occurred on 10.07.2010 at about 6.00 A.M. on service road of National Highway No.8. All these claim petitions were decided together by the Tribunal.

As per the case of the claimants-appellants, they along with Raj Kumar Sethi were going to Leisure Valley Park, Sector-29, Gurgaon on 10.07.2010 for morning walk at about 6.00 A.M. on Honda Activa. The Activa was being driven by Raj Kumar Sethi, husband of Neeru Sethi, at a moderate speed. In the meantime, the offending vehicle came from behind being driven by Jitender Singh driver in a rash, negligent and zig zag manner and hit their scooter. Due to mishap, Neeru Sethi, Krishan and Raj Kumar Sethi fell down on the road and sustained multiple grievous injuries. They were

immediately shifted to Paras Hospital, Gurgaon and the driver of the offending vehicle fled away from the spot. FIR was got registered on the same day. It is stated in the claim petition that Neeru Sethi is a young Advocate of 44 years and at the time of accident, she had been practising for more than fifteen years and earning ₹25,000/- per month. Due to the accident, she suffered disability both physical and mental. Raj Kumar Sethi died due to the injuries sustained by him. Krishan who was 18 years of age at that time, also sustained injuries. Raj Kumar Sethi was young man of 44 years and was earning ₹40,000/- per month. It is further stated that his future was bright and there were bright prospects of his increments and promotions from his banking job.

On the other hand, the case of respondents driver and owner is that accident in question was not caused due to rash and negligent driving of Jitender Singh. It is stated that Raj Kumar Sethi was driving the vehicle in violation of traffic rules in complete zig zag manner. Three persons were sitting on the scooter in complete violation of traffic rules. It is further stated that deceased himself lost control over his scooter and dashed into the offending vehicle and therefore, the accident was solely result of rash and negligent driving of the deceased. Insurance Company (respondent No.3 in claim petitions) mainly took the plea that contents of the FIR lodged qua the accident are fabricated due to various obvious reasons.

After framing issues and after the parties led the evidence, the Tribunal awarded the compensation to claimants as detailed

above vide Award dated 17.11.2012.

Aggrieved from the above-said impugned Award, two appeals and one revision have been filed by the Insurance Company mainly on the ground that the offending vehicle has been falsely involved in the accident and the owner and driver have connived with the claimants. No argument has been addressed regarding the quantum by learned counsel for the Insurance Company.

On the other hand, learned counsel for the appellants-claimants contested the appeals and revision and argued that findings given by the Tribunal are correct and as per law. He further argued that just and adequate compensation has not been awarded to the claimants by the Tribunal. No compensation has been given on any of the grounds to Krishan and Smt.Neeru Sethi except the medical expenses, which were rounded off. Regarding the enhancement of compensation on account of death of Raj Kumar Sethi, he argued that the Tribunal has wrongly deducted 50% amount on the ground of family pension and no amount has been awarded for loss of love and affection, loss of consortium, loss of estate.

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

First of all, as regarding the appeals and revision filed by the Insurance Company, I find that the accident has been admitted by driver and owner of the offending vehicle. They have not disputed that Jitender Singh was not driving the offending vehicle or the offending vehicle is not involved in the accident. Only pleading of the

respondents is that Raj Kumar Sethi, who was driving the Honda Activa was negligent.

Further, I find that driver and owner of the offending vehicle are admitting the accident and there is no dispute regarding offending vehicle's number and name of its driver. Learned counsel for the appellant-Insurance Company argued in minute detail by reading the statements of the witnesses to show that claimants have not proved as how the offending vehicle is involved in the accident and there is no cogent evidence that it was driven by Jitender Singh. To prove the accident, the claimants have examined so many witnesses including claimants Neeru Sethi and one Sushil Kumar eye witness to the occurrence. Further, the claimants have also examined Criminal Ahlmad as well as the Investigating Officer of this case. The challan has already been presented against Jitender Singh driver of the offending vehicle under Section 304-A IPC etc. and the trial is going on. When there are statements of eye witness, Investigating Officer and the injured-claimant Neeru Sethi and the accident involving the vehicle in question driven by Jitender Singh is not disputed and further, neither the driver nor the owner has come to the witness box to rebut the evidence of the claimants, then the minor discrepancies as pointed out by learned counsel for the Insurance Company are of no value. The mere fact that one witness stated truck was of closed body, I find that the fact whether the truck was of closed body or open body, is not material. Similarly, the fact that how the offending vehicle and accused are nominated in this case during

investigation of the FIR, also will not show that accident has not taken place due to rash and negligent driving of offending vehicle by Jitender Singh.

The argument of learned counsel for the Insurance Company that statement of Sushil Kumar, eye witness is not reliable or the discrepancy in the statement whether he was stopped by the police or he himself disclosed regarding the accident after about 18 days of the accident, does not create any doubt or makes the version of the claimants false. It will not itself prove that the offending vehicle has been falsely involved or the driver has been falsely involved in the criminal proceedings. The argument of learned counsel for the Insurance Company that no mechanical report has been produced before the criminal Court or the copy of the statement of Sushil Kumar under Section 161 Cr.P.C. is a photocopy in the criminal case, are not material facts to disbelieve the whole version of the eye witness as well as Investigating Officer.

The argument of learned counsel for the Insurance Company that driver and owner connived with the claimants is also having no merit. There is no evidence on the record to show how the driver and owner of the offending vehicle connived with the claimants. Nothing has been produced on record to show whether the driver or owner, in any way, related to the claimants. The driver of the offending vehicle will not take risk by conniving with the claimants to get conviction and sentence in a criminal case. The next argument of learned counsel for the Insurance Company is regarding the report of

their investigator, in which there is second accident of the offending vehicle, which had taken place at Mumbai. Admittedly, that accident was after the present accident and the offending vehicle was taken into police possession in the month of September 2010 in this case. There is no cogent evidence on record nor any question has been asked to criminal Ahlmad regarding taking over the possession of the offending vehicle in the FIR of present case and when it was released on sapurdari. There is no evidence on record that offending vehicle was not in a position to move on the road etc.

So, from the evidence on record, I find that the appellant-Insurance Company has failed to prove from any cogent evidence that there is connivance of respondents driver and owner with the claimants. Rather, the claimants have led cogent oral as well as documentary evidence to prove that accident had taken place due to rash and negligent driving of the offending vehicle by Jitender Singh.

Therefore, from the above, I find that there is no merit in the arguments of learned counsel for the appellant-Insurance Company. Nothing has been argued regarding quantum by the learned counsel for Insurance Company.

Resultantly, FAOs No.1356, 1357 of 2013 and CR No.2800 of 2013 filed by the appellant-Insurance Company stand dismissed.

As regarding the FAO No.399 of 2013 filed by claimant-injured Krishan, I find that the Tribunal on the basis of evidence on record held that the medical bills have been proved by Krishan for a sum of ₹17,194/- and the Tribunal awarded total compensation of

₹20,000/- including the amount spent on special diet, pain and suffering etc. The Tribunal has not awarded specific amount separately on account of special diet, pain and suffering, attendant charges and transportation charges. Admittedly, injured-claimant Krishan, at that time was 8 years old and as per evidence of PW-4 Dr.D.K.Malik, Ortho Surgeon, injured was having fracture of left clavicle bone with multiple abrasions. In cross-examination, this witness deposed that patient has not turned up for any follow up treatment and his condition was satisfactory.

Keeping in view the injuries sustained by the minor, he required special diet and compensation should have been granted under this head along with transportation charges and attendant charges.

In view of the above, I find merit in the appeal filed by Krishan and he is entitled to the compensation as under:-

Medical expenses	₹20,000/-
Pain and suffering	₹10,000/-
Special diet	₹10,000/-
Transportation charges	₹5,000/-
Attendant charges	₹5,000/-
Total compensation	₹50,000/-

As regarding FAO No.397 of 2013 filed by injured-claimant Neeru Sethi, I find that as per the evidence on record, Neeru Sethi sustained injuries in the accident. PW-4 Dr.D.K.Malik, Ortho Surgeon deposed that on 20.07.2010, patient Smt.Neeru Sethi was attended to by him in OPD with the alleged history of road side accident ten days

ago. She has having arthalagias right hip thigh and leg and he prescribed medicines thereof.

From the evidence on record, I find that Smt.Neeru Sethi received injuries in the accident. Only ₹5000/- has been awarded by the Tribunal, which includes medical bill of ₹2886/- and also the compensation regarding special diet, pain and sufferings etc. Further, I find that no permanent disability has been suffered by the claimant-injured Neeru Sethi.

In view of the above, I find merit in the appeal filed by Neeru Sethi and she is entitled to the compensation as under:-

Medical expenses	₹5,000/-
Pain and suffering	₹10,000/-
Special diet	₹5,000/-
Transportation charges	₹5,000/-
Total compensation	₹25,000/-

As regarding FAO No.398 of 2013 filed by claimants Neeru Sethi and Krishan on account of death of Raj Kumar Sethi, I find that the Tribunal, on the basis of the evidence, took the income of the deceased as ₹27,493/-, which was carry home salary of the deceased. The Tribunal deducted ₹700/- from the income towards income tax and took the actual salary as ₹26,793/- per month.

The actual salary of ₹26,793/- is rounded off to ₹26,800/- per month. The Tribunal has wrongly deducted the amount of family pension from this salary. The pension cannot be deducted as per settled law. Therefore, as argued by learned counsel for the

claimants-appellants, the salary of deceased is taken as ₹26,800/- per month. As the age of the deceased was 43 years at the time of accident, therefore, claimants are entitled to enhancement of 30% on the ground of future prospects. Accordingly, monthly income comes to ₹26,800/-+ ₹8040/-= ₹34,840/-. The annual income comes to ₹34,840 x 12= ₹4,18,080/- and by making 1/3rd deductions, the dependency comes to ₹2,78,720/-. By applying the multiplier of 14 as per the age of the deceased, the compensation comes to ₹2,78,720 x 14= ₹39,02,080/-. Further, the claimant-wife is entitled ₹1 lac as loss of consortium and minor is entitled to ₹1 lac for loss of love and affection. The claimants are further entitled to ₹25,000/- as funeral expenses and ₹5000/- as loss of estate. Therefore, the claimants-appellants are entitled to total compensation of ₹41,32,080/-.

In view of above, the appellants-claimants are entitled to total compensation as mentioned above in each case, along with the same interest on the enhanced amount as awarded by the Tribunal. The enhanced amount be disbursed to the claimants proportionately as per Award passed by the Tribunal.

Therefore, finding merit in FAO Nos.397, 398 and 399 of 2013 filed by the claimants-appellants, the same are allowed accordingly.

July 29, 2015
Vgulati

(INDERJIT SINGH)
JUDGE