IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 4312 of 2013 (O&M)
Date of decision: August 10, 2015

Reliance General Insurance Co. Ltd.
...Appellant
Versus
Wakila and others
...Respondents

(2) FAO No. 6350 of 2013 (O&M)

Wakila and others
...Appellants
Versus
Kamal Kishore and others
...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. RK Bashamboo, Advocate,
for the insurance company.

Mr. Randeep Singh, Advocate, for
the appellants in FAO No. 6350 of 2013 and
respondents No. 1 to 3 in FAO No. 4312 of 2014.

Mr. Sumit Gupta, Advocate,
for respondents No. 4 and 5 in FAO No. 4312 of 2014 and
for respondents No. 1 and 2 in FAO No. 6350 of 2013.

K. KANNAN, J. (Oral)
CM No. 25910 CII of 2013 in
FAO No. 6350 of 2013

For the reasons stated in the application, delay of 26 days in filing the appeal is condoned.

Main cases

1. Both the appeals relate to assessment of compensation for the

death of a male aged 22 years. The accident took place on 9.12.2010 when the deceased was working on a parked vehicle against which the insured's vehicle dashed and he succumbed to the injuries. There were two persons who gave evidence about the fact that the deceased was working as a mechanic. There was no documentary evidence produced other than a certificate issued by one Shanti Automobile. The Tribunal took the income at Rs. 9,000/-, applied for 1/3rd deduction for personal expenses and awarded compensation at Rs. 13,60,000/- to the parents.

2. The appeal by the insurance company in FAO No. 4312 of 20013 is for reduction of the amount on a plea that the Tribunal had adopted unrealistically high amount for his income in the absence of the documentary proof. He would also object to the deduction made at 1/3rd being contrary to the law laid down in Sarla Verma and others V. Delhi Transport Corporation and another 2009 ACJ 1298 and argued for reduction of the overall compensation.

3. The claimants have come on appeal in FAO No. 6350 of 2013 seeking for enhancement on a plea that the Tribunal has not properly considered the prospects of increase of income and also not provided for loss of love and affection to the parents and loss to the estate and funeral expenses adequately.

4. It is a fact that the deceased actually met with his death when he was in the course of his occupation as a mechanic. The employment status as a mechanic, therefore, cannot be doubted. I would expect a person to be reasonably rewarded as a skilled worker and provide for a prospect increase in future as well and take the average income with increase Rs. 12,000/- per month. I will make deduction of ½ towards personal expenses

is the manner suggested in Sarla Verma's case (supra) and provide for also loss of love and affection, loss to estate and funeral expenses and relatively high scale in the manner contemplated in Muna Lal Jain and another Versus Vipin Kumar Sharma and others 2015 (6) SCC 347. I will re-work the compensation in the manner referred to above and tabulate the compensation as under:-

Fatal Accident		***Date of accident***	
Age	22	9.12.2010	
Occupation	Mechanic		
Claimants:	Parents		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1	Income	9,000	8,000
2	Add, % of increase		12,000
3	Deduction	1/3	1/2
4	Multiplicand		6,000 x 12
5	Multiplier	18	18
6	Loss of dependence	12,96,000	12,96,000
7	Medical expenses		
8	Loss of Consortium		
9.	Loss of love and affection.		1,00,000
10	Loss to estate	10,000	1,00,000
11	Funeral Expenses Transportation		25,000
	Total	13,06,000	15,21,000

5. The compensation payable will be Rs. 15,21,000/-. The additional compensation over what has already been determined shall attract @ 9% from the date of petition. The liability shall be on the insurance company. The amounts shall be distributed equally amongst the claimants and paid forthwith.

6. It is stated by the learned counsel for the insurance company that the accident has resulted only on account of the negligent parking of the vehicle on the middle of the road and the insurance company must have the

benefit of recoveries to the extent possible from the owner insurer of the parked vehicle. I must observe that in the case of composite negligence, the claimants have a right to proceed against any one of the tort feasors. The petition, therefore, cannot fail for non-impleadment of yet other person. It will not be possible for me to determine any negligence now in the absence of the parties, namely, the owner insurer of the other vehicle and any observation will become irrelevant as far as the other parties are concerned. I will give, therefore, liberty to the insurance company to work out its own remedy for contribution in an independent action by filing a suit, taking the determination now made as constituting the cause of action for claiming apportionment. In such action, it shall not be necessary to make the claimants as parties and they shall not be affected by any adjudication between the insurance company and the parties proposed to be sued against.

8. The award is enhanced and the appeal by the insurance company is dismissed and the appeal by the claimants is allowed to the above extent.

August 10, 2015 **(K.KANNAN)**
prem **JUDGE**