IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4368 of 2014 (O&M)
Date of decision 03.07. 2015.

Hemant Chopra ...... Appellant.

versus

Subhash Chopra and others ...... Respondents.

<u>FAO No. 4481 of 2014</u>

Meenakshi Chopra and others ...... Appellants.

versus

Subhash Chopra and another ...... Respondents.

<u>FAO No. 4906 of 2014</u>

Meenakshi Chopra and others ...... Appellants.

versus

Subhash Chopra and others ...... Respondents.

Present : Mr. Ashwani Arora, Advocate for the appellant(s) in all above appeals.
Mr. Sandeep Suri, Advocate for respondent No. 2, in all above appeals. .
None for respondent No.1.

<u>FAO No. 5824 of 2014</u>

National Insurance Company Ltd. ...... Appellant.

versus

Meenakshi Chopra and others ...... Respondents.

Present : Mr. Sandeep Suri, Advocate for the appellant.
Mr. Ashwani Arora, Advocate for respondents No.1 and 2.
None for respondent No.3.

FAO No. 5825 of 2014

National Insurance Company Ltd.
...... Appellant.

versus

Meenakshi Chopra and others
...... Respondents.

Present : Mr. Sandeep Suri, Advocate for the appellant.
Mr. Ashwani Arora, Advocate for respondents No.1.
None for respondent No.2.

FAO No. 5826 of 2014

National Insurance Company Ltd.
...... Appellant.

versus

Hemant Chopra and another
...... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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. Sandeep Suri, Advocate for the appellant.
Mr. Ashwani Arora, Advocate for respondents No.1.
None for respondent No.2.

K.C.PURI, J.

Vide this common judgment, I intend to dispose of six appeals comprising of FAO No. 4368 of 2014 titled as Hemant Chopra vs

Subhash Chopra ; FAO No. 4481 of 2014 titled as Meenakshi Chopra vs Subhash Chopra ; FAO No. 4906 of 2014 titled as Meenakshi Chopra vs Subhash Chopra and FAO No. 5824 of 2014 titled as National Insurance Company Ltd. versus Meenakshi Chopra and others ; FAO No. 5825 of 2014 titled as National Insurance Company Ltd. versus Meenakshi Chopra and others and FAO No. 5826 of 2014 titled as National Insurance Company Ltd. versus Hemant Chopra and others as all these appeals have arisen out of one accident.

2. Briefly stated Hemant Chopra filed MACT Petition No.968 of 2013 claiming compensation on account of death of his mother Madhu Chopra in a motor vehicular accident. Meenakshi Chopra and Hemant Chopra also filed claim petition No.966 of 2013 under Section 166 of the Motor Vehicles Act claiming compensation on account of death of Ms Kashish Chopra child of Meenakshi Chopra in a motor vehicular accident. Meenakshi Chopra also filed another claim petition No.967 of 2013 claiming compensation on account of injuries sustained by her in a motor vehicular accident. Although the above noted three claim petitions were preferred separately but all these claim petitions relate to one accident occurred on 6.6.2011. The case of the claimant is that at about 6.00a.m., Ms Kashish Chopra minor along with others were travelling on 6.6.2011 in a car bearing registration No.HR-03J-1395 driven by Subhash Chopra in a rash and negligent manner. It is alleged that said car over turned due to burst of left front tyre and could not be controlled by respondent No.1 due to high speed by Subhash Chopra. The said car has caused fracture in the

spinal cord and fracture right clavicle and other serious injuries.

3. Respondent No.1 filed written statement admitting the factum of accident but has pleaded that he was holding a valid driving licence. Registration certificate and Insurance policy of the car were placed on the file. Denying other averments, respondent prayed for dismissal of the claim petitions.

4. Respondent-Insurance Co. filed separate written statement contesting the claim petition by taking objections of maintainability and cause of action. It is pleaded that it is a case of DDR whereas neither any negligence nor any attribution thereof has been attributed. The claim is thus liable to be dismissed on this score alone. No intimation of any accident has been received by the answering respondent from the owner of the vehicle allegedly insured with it, hence claim petition is not maintainable and respondent No.2 is entitled to be absolved from the responsibility. It is further alleged that the vehicle in question was driven in violation of terms and conditions of policy of the insurance, if any, held at the relevant time and the driver of vehicle was not holding a valid and effective licence. Moreover, owner of vehicle is father-in-law of claimant No.1 and a concocted story has been put up to grab money from respondent insurance company in collusion with each other. On merits, all the averments were denied and prayer for dismissal of the claim petition had been made.

5. In MACT No.968/2013 (4368 of 2014) following issues were framed :-

1 Whether deceased Madhu Chopra died as a result of injuries suffered in a motor vehicular accident which was caused due to rash and negligent driving of Car No.HR03-J-1395 which was being driven by respondent No.1 ? OPP

2 Whether claimant is entitled to compensation on account of death of deceased Madhu Chopra in a motor vehicular accident ? OPP

3 Whether the respondent No.1 was not holding a valid driving licence at the time of accident ? OPR

4 Relief.

6. In MACT No. 967/2013 (FAO No. 4906 of 2014) following issues were framed :-

1 Whether claimant received injuries in a motor vehicular accident which was caused due to rash and negligent driving of Car No.HR03-J-1395 which was being driven by respondent No.1 ? OPP

2 Whether claimant is entitled to compensation on account of injuries received by him in a motor vehicular accident ? OPP

3 Whether the respondent No.1 was not holding a valid driving licence at the time of accident ? OPR

4 Relief.

7. In MACT No. 966 of 2013 (FAO No.4481 of 2014) following issues were framed :-

1 Whether deceased Kashish Chopra died as a result of injuries suffered in a motor vehicular accident which was caused due to rash and negligent driving of Car No.HR03-J-1395 which was being driven by respondent No.1 ? OPP

2 Whether claimant is entitled to compensation on account of death of deceased Madhu Chopra in a motor vehicular accident ? OPP

3 Whether the respondent No.1 was not holding a valid

driving licence at the time of accident ? OPR

4 Relief.

8. The learned Tribunal has returned the finding on issue No.1 in favour of the claimants in all the three claim petitions. Claim petition filed by Hemant Chopra was partly accepted. A sum of Rs.9,40,460/- was granted to the claimants on account of death of Madhu Chopra whereas claimants of claim petition No.966 were granted a sum of Rs.1,27,000/- on account of death of Miss Kashish Chopra in the motor vehicular accident. Meenakshi Chopra was allowed a sum of Rs.55,000/- in respect of injuries sustained by her in motor vehicular accident. The claimants before the Tribunal have directed three appeals for enhancement whereas the Insurance Company has directed three appeals for dismissing the claim petitions.

9. Since all these appeals have arisen out of the same accident and as such are being disposed of with the common judgment.

10. First of all, FAO No. 5824 of 2014, FAO No. 5825 of 2014 and FAO No. 5826 of 2014 are taken for decision.

11. Learned counsel for the Insurance Company has submitted that claimants of all the three sets have failed to prove the factum of negligence. It is submitted that there is no FIR in the present case. The DDR has been recorded at the instance of Subhash Chopra in which it has been mentioned that accident has taken place due to puncture of tyre of offending vehicle. It is submitted that in petition under Section 166 of the Motor Vehicles Act, the claimants are required to prove the factum of negligence. The puncture of tyre is a natural act and as such claimants are

failed to prove the factum of negligence. So, the Tribunal in all the three claim petitions have wrongly accepted the claim petitions. Otherwise also, the respondent is near relative of claimants and as such the claimants are not entitled to claim compensation.

12. Counsel for the appellant has further submitted that previously the application under Section 163-A of the Act was filed and that application was dismissed as withdrawn without seeking permission. Therefore, the present petition is not maintainable in view of Order 2 Rule 2 of the CPC.

13. First of all, the maintainability of the present petition in view of Order 2 Rule 2 of the CPC has to be decided.

14. Admittedly, petition under Section 163-A of the Act has not been decided on merits. The claimants i.e. road victim has the remedy to choose the course between under Section 163-A and 166 of the Motor Vehicles Act. In case, the road victim has chosen one remedy and the claim of the party is adjudicated upon, thereafter the claimants are debarred from filing the claim petition under the other provisions of law. There is difference between two remedies. This Court in **FAO No.4907 of 2010 decided on 31.07.2014 titled as Ajay @ Bunty vs. Rajinder Kumar and anothe**r held that in case the petition under Section 163-A of the Act is withdrawn and petition under Section 166 of the Act is filed, the same is not barred by principles of Order 2 Rule 2 of the CPC. Similar view was taken by this Court in **Civil Revision No.2846 of 2011 decided on 09.09.2013 titled as Smt. Suresh Devi and others vs. Jasbir Singh and**

others. So, I have no hesitation in holding that petition under Section 166 of the Act are maintainable even in spite of the fact that earlier petition under Section 163-A of the Act have been withdrawn.

15. The arguments advanced by the counsel for the appellant to the effect that since the parties are near relatives and as such the claim petition was not maintainable, do not carry weight. This aspect of the case has been dealt with in FAO No.1009 of 2000 titled as the **Oriental insurance Co. Ltd vs. Umrao Singh and others decided on February 23, 2011**. In the said case it has been held that in case of comprehensive policy the husband died while driving the scooter and wife was travelling on the same scooter, was held entitled to claim the compensation on account of death of her husband. However, during the course of arguments, it is not disputed that policy covers the payment of compensation in respect of passengers travelling in the car in question as the same was comprehensively insured.

16. So far as reliance placed on DDR lodged by the respondents No.1 is concerned, respondent No.1 has admitted the factum of accident. It is the duty of the owner/driver to keep the vehicle in a fit condition. The Insurance Company is liable to indemnify the act of owner.

17. So, in view of the above discussion, all the appeals preferred by the Insurance Company FAO No. 5824 of 2014, FAO No. 5825 of 2014 and FAO No.5826 of 2014 are without any merit and the same stand dismissed.

18. Now reverting to **FAO No.4368 of 2014**.

19. Claimant Hemant Chopra has directed this petition claiming

compensation on account of death of Mrs. Madhu Chopra. Monthly income of Mrs. Madhu Chopra has been proved on record as Rs.33,831/- as she was working in the office of Executive Engineer, Civil Construction Division, Uttar Haryana Bijli Vitran Nigam, Limited, Panchkula. She was drawing salary of Rs.33,831/- and at the time of accident she was 56 years old. The Tribunal has deducted 50% in respect of personal expenses. Dependency has been taken as Rs.16,915/- for two years. The amount calculated was Rs.4,05,960/-, for the remaining period of five years, the dependency has been taken as Rs.8500/- and the amount calculated was Rs.5,10,000/- (Rs.8500x12 x5). Another sum of Rs.25,000/- was allowed in respect of funeral expenses. No amount in respect of loss of love and affection has been granted.

20. The learned counsel for the claimant/appellant has submitted that the claimant is suffering from nervous disease. 50% amount has been wrongly deducted in respect of death of deceased Madhu Chopra. It is further submitted that multiplier of 7 has been wrongly applied as the deceased was 56 years of age and as per authority **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr 2009 (3) R.C.R.(Civil) 77** the multiplier applicable at the age of 56 is 9.

21. On the other hand, in respect to the above noted submissions, learned counsel for the Insurance Company has submitted that deceased was employe of Haryana Government. As per the policy prevalent in Haryana, the claimant is entitled to get the fully amount of salary till the retirement, which was after two years of the death of Madhu Chopra and the amount

50% has been rightly deducted in respect of personal expenses. So, prayer has been made for dismissal of the appeal.

22. I have considered the submissions made by both the sides and have gone through the records of the case.

23. The proved income of the deceased is Rs.33,831/- and age of the deceased has been taken as 56 years. The multiplier applied by the Tribunal is 7. The multiplier applicable at the age of 56, as per **Smt. Sarla Verma and others' case (supra)** is 9.

24. However, in the present case, admittedly, the deceased was employee of Haryana Government. There is a policy in Haryana Government to give the amount of last drawn salary to the legal heirs of the deceased till the date of retirement. So, on the facts of the present case, till the date of retirement, the claimant would be getting the salary of the deceased and as such they are not loser for remaining two years. However, for the rest of the period, i.e., after two years, the claimant would suffer. Though, the multiplier as per **Smt. Sarla Verma and others' case (supra)** is 9 but since two years the claimant would have been getting the full pay of deceased and as such the multiplier of 7 is being applied. So, monthly dependency is taken as Rs.16,915/-. The yearly dependency in this manner comes to Rs.2,02,980/-. By applying multiplier of 7, the amount of compensation comes to Rs.14,20,902/-. The claimant is also held entitled to claim Rs.1,00,000/- in respect of loss of love and affection and expenses on last rites and transportation of dead body of Madhu Chopra in all. So, in this manner, the claimant is held entitled to Rs.15,20,000/-. The enhanced

amount shall carry interest @ 7½% per annum from the date of claim petition before the Tribunal till the date of realization.

25. Now reverting to **FAO No.4481 of 2014**.

26. Meenakshi Chpora and Hemant Chopra claimants have directed the present appeal for enhancement in respect of death of Miss Kashish Chopra. The Tribunal has allowed a sum of Rs.1,27,000/- as compenation. Counsel for the claimant has submitted that a sum of Rs.1,27,000/- as compenation is on lower side. He has further submitted that Hon'ble the Apex Court in authority **National Insurnace Company Ltd. vs. Kusuma & Anr. Reported in 2011 Legal Eagles (SC) page 707** allowed a sum of Rs1.80,000/- in respect of child in a womb.

27. I have considered the said submission which carries weight. Hon'ble apex Colurt has upheld the decision of High Court in enhancing the compensation amount from Rs.50,000/- to Rs.1,80,000/- in a case of death of foetus aged 30 weeks in the womb. So, the amount of Rs.1,27,000/- in respect of death of nine months child is on lower side. So, keeping in view all the circumstances, the claimant is held entitled to claim Rs.2,50,000/- in all respects regarding death of Kashish Chopra including love and affection and last rites etc. The enhanced amount shall carry interest @ 7½% per annum from the date of claim petition before the Tribunal till the date of realization.

28. In the manner indicated above, the appeal stands partly accepted.

29 Now reverting to **FAO No.4906 of 2014**.

30. This appeal relates to injuries sustained by Meenakshi Chpora in a motor vehicular accident. The Tribunal allowed a sum of Rs.59,738/- out of which Rs.25,000/- for pain and suffering and Rs.25,000/- as compensation for special diet. Rs.7338/- was allowed in respect of expenses on medicine. Rs.2000/- as costs to the claimant Meenakshi Chopra as per evidence on the file.

31. Learned counsel for the appellant could not make out a case for enhancement of compensation amount in respect of injuries sustained by Meenakshi Chopra in the motor vehicular accident. Rs.25,000/- for pain and suffering and Rs.25,000/- as compensation for better diet have already been allowed by the Tribunal.

32. So, no case for enhamcement is made out.

33. Consequently, **FAO No.4906 of 2014** is without any merit and the same stands dismised.

34. In the manner indicated above, all other appeals stand disposed of accordingly.

35. A copy of this judgment be sent to the Tribunal for strict compliance.

(K.C.PURI)
JUDGE

July 03 , 2015
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