IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.5206 of 2013 (O&M)
Date of decision: 30.07.2015

National Insurance Company

….. Appellant

versus

Manjit Kaur and others

……Respondents

FAO No.5790 of 2013 (O&M)

Manjit Kaur and others

….. Appellant

versus

Darshan Singh and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Rajbir Wasu, Advocate for the appellant in FAO No.5206 of 2013 and for respondent No.3 in FAO No.5790 of 2013

Mr.Rakesh Kumar, Advocate for respondent Nos.1 to 3 in FAO No.5206 of 2013 and for the appellants in FAO No.5790 of 2013

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?

Kuldip Singh, J. (Oral)

This order of mine will dispose of FAO-5206-2013 and FAO-5790-2013. Both the appeals are directed against the same award dated 27.5.2013, passed by the Motor Accident Claims Tribunal, Kapurthala (in short, 'the Tribunal').

In this case, ASI Harmit Singh, aged 54 years, who was

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working in IRB 4th Batt. Police Lines, Jalandhar Cantt and was Punjab Government employee, was going on his motorcycle bearing registration no.PB-08-A-6307 on 31.3.2012. When he reached just ahead of village Kheeranwali on Jalandhar Kapurthala road, then a Reno Car bearing registration no.PB-09-J-7791, being driven by respondent-driver in a rash and negligent manner, came from Kapurthala side and struck against the motorcycle. As a result of the accident, ASI Harmit Singh received multiple injuries and was removed to Civil Hospital, Kapurthala, where he succumbed to injuries. FIR No.18 dated 1.4.2012 was registered under Sections 279/304-A/ 427 IPC at PS Fattu Dhinga against the respondent driver on the statement of Amarjit Singh, who also happened to be following the ASI Harmit Singh on a separate motorcycle.

It was stated that the deceased was getting monthly salary of Rs.46,692/-. He was also having agricultural income amounting to Rs.75,000/- per annum.

In the written reply, respondent Nos.1 and 2 denied the employment and income of the deceased. It was stated that the car was insured with the respondent-insurance company. Plea was taken that the deceased himself was negligent in driving the motorcycle as he was talking on mobile phone at the time of accident. Respondent-insurance company also denied the accident and took all the legal objections. Income and manner of the accident was also denied. From the pleadings, following issues were framed:-

1. *Whether Harmit Singh died in a Motor Vehicle Accident, which took place on 31.3.2012 with Reno Car*

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bearing registration No.PB-09-J-7791 being driven by respondent No.1 Darshan Singh in rash and negligent way? OPA

2. *Whether respondent No.1 Darshan Singh was not holding a valid and effective driving license at the time of accident? OPR-3*
3. *Whether the claim petition is bad for non-joinder and mis-joinder of necessary parties? OPR-3*
4. *Whether the said accident has taken place because of the contributory negligence of the driver (now deceased) of the motorcycle bearing registration No. PB-08-A-6307? OPR-3*
5. *Whether the car bearing registration No.PB-09-J-7791 was not under the control and possession of the insured at the time of the alleged accident? OPR-3*
6. *Whether the car bearing registration No.PB-09-J-7791 was being plied without proper documents, i.e., registration book and fitness certificate at the time of the alleged accident? OPR-3*
7. *Whether the claimants are entitled to the compensation? If so, to what amount and from whom? OPA*
8. *Relief.*

The Tribunal held that the respondent -driver was driving the offending car rashly and negligently. While calculating the quantum of compensation, the Tribunal held that the deceased was getting salary of Rs.46,692/-. 1/3rd i.e. Rs.16,692/- were deducted as personal expenses. The annual dependency was calculated at Rs.3,60,000/-. The multiplier of 5 was applied on the ground that the deceased was to retire in next five years. Therefore, compensation was calculated at Rs.18,00,000/-. Rs.5,000/- for loss of consortium

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and Rs.2,000/- as cremation charges were also allowed. Total amount of compensation was determined at Rs.18,07,000/-. It was further ordered that the compensation be paid within two months form the day of award, failing which, the respondents were liable to pay interest on the amount @ 9% per annum from the date of the petition till its realization. Out of the compensation, Rs.12,00,000/- were ordered to be paid to widow of the deceased and remaining Rs.6,07,000/- were ordered to be paid to son of the deceased.

In FAO No.5206 of 2013 filed by the insurance company, it has been argued that there was a contributory negligence on the part of the deceased and that the income tax has not been deducted from the salary, whereas in the appeal of the claimants, it has been argued that the calculation of 1/3rd deduction is wrongly made. It is further contended that future prospectus were not awarded. Nothing was awarded on account of love and affection to the son. Funeral expenses and loss of consortium is grossly inadequate.

I have heard learned counsel for the parties and have also carefully gone through the file.

So far as plea of the insurance company regarding the contributory negligence is concerned, it is stated by the respondent Nos.1 and 2 that at the time of accident, the deceased was driving the motorcycle in rash and negligent manner and was also using the mobile. It is further contended that it is head on collision. It is further argued that head on collision is apparent from the fact that in the FIR itself it is stated that car came from the opposite Kapurthala side. I am of the view that the plea of the insurance company regarding

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contributory negligence is not proved from the record. There was an eye witness Amarjit Singh who in his statement has clearly stated that it was the car which came rashly and negligently from the Kapurthala side and struck against the motorcycle. The mere fact that car came from the opposite direction is no ground to presume that there was a contributory negligence on the part of the deceased also. The driver of the offending car appeared and stated his case of contributory negligence. However, the material evidence in the form of the site plan was not produced to show as to what was the actual position of both the vehicles after the accident. Report of mechanic prepared by the police during investigation was also not placed on file to see whether plea of contributory negligence is substantiated. Similarly, the recovery memo prepared by the police and the site plan was not produced to show that whether any mobile was recovered from the place of accident. It being so, the oral statement in this regard cannot be relied upon. Therefore, the plea of contributory negligence raised by the insurance company is rejected.

So far as deduction of income tax is concerned, counsel for the claimants has no objection to the same. It being so, compensation has to be re-calculated.

The income of the deceased as per his salary certificate is Rs.46,692/-. 15% is to be added towards future prospectus which comes to Rs.7004/-. The total incomes would thus come to Rs.53,696/-. Out of which is 1/3rd amount i.e. Rs.17,899/- is to be deducted towards personal expenses. The actual dependency of the claimants comes to Rs.35,797/- . Keeping in view the age of the

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deceased 54 years, multiplier of 11 as per authority of Hon'ble Supreme Court in *Sarla Verma and others v. Delhi Transport Corporation and others, 2009 ACJ 1298 (SC)* is to be applied. The annual dependency comes to Rs.4,29,564/-. As pleaded by learned counsel for the insurance company, at that time, there was no income tax on first Rs.1,80,000/- and on the remaining amount upto Rs.5 lac, 10% income tax plus surcharge @ 3% was payable. In this way, the income tax is calculated at Rs.25,705/-. Total compensation comes to Rs.4,29,564 x 11 = 47,25,204/- - Rs.25,705/- = 46,99,499/-.

I am of view the view that compensation granted on account of loss of consortium and funeral is not in accordance with law. Therefore, Rs.one lac for loss of consortium to the wife and keeping in view age of son of the deceased i.e. 27 years, another sum of Rs.50,000/- for loss of love and affection to the son is allowed. Rs.25,000/- towards funeral expenses are also allowed. The total compensation comes to Rs.48,74,499/-. Interest is payable from the date of filing of claim petition. Therefore, the award is also amended to the effect that interest @ 7.5% per annum shall be payable from the date of filing of claim petition till its realization.

In view of the foregoing discussions, FAO filed by the claimants is allowed and that of the insurance company is dismissed.

30.07.2015 **(Kuldip Singh)**
gk **Judge**

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