

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1.

FAO No. 5284 of 2015(O&M)

Date of Decision: September 3, 2015.

National Insurance Company Ltd.

..... APPELLANT(s)

Versus

Farajana and others

..... RESPONDENT (s)

2.

FAO No. 5294 of 2015(O&M).

National Insurance Company Ltd.

..... APPELLANT(s)

Versus

Sheela and others

..... RESPONDENT (s)

3.

FAO No. 5295 of 2015(O&M).

National Insurance Company Ltd.

..... APPELLANT(s)

Versus

Urmila and others

..... RESPONDENT (s)

4.

FAO No. 5312 of 2015(O&M).

National Insurance Company Ltd.

..... APPELLANT(s)

Versus

Juspina Kujur and others

..... RESPONDENT (s)

5.

FAO No. 5291 of 2015(O&M).

National Insurance Company Ltd.

..... APPELLANT(s)

Versus

Rajneesh Kaur and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Pardeep Goyal, Advocate
for the appellant – Insurance Company.

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?

LISA GILL, J.

This order shall dispose of FAO No.5284 of 2015 (National Insurance Company Ltd. v. Farajana and others), FAO No.5294 of 2015 (National Insurance Company Ltd. v. Sheela and others), FAO No.5295 of 2015 (National Insurance Company Ltd. v. Urmila and others), FAO No.5312 of 2015 (National Insurance Company Ltd. v. Juspina Kujur and others) and FAO No.5291 of 2015 (National Insurance Company Ltd. v. Rajneesh Kaur and others).

Though all the claim petitions in question arise on account of the same vehicular accident which took place on 08.12.2013, the claim petitions have been decided while passing separate awards by the Tribunal. Four of the claim petitions have been decided by the Motor Accident Claims Tribunal, SAS Nagar (Mohali) (hereinafter referred to as, the 'Tribunal at SAS Nagar, Mohali') vide award dated 01.04.2015 i.e., subject matter of FAO No.5284 of 2015, FAO No.5294 of 2015, FAO No.5295 of 2015, FAO No. 5312 of 2015. Impugned award dated 08.12.2014 subject matter of FAO No.5291 of 2015 has been passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as, the 'Tribunal at Fatehgarh Sahib'). It is to be noted that in all the impugned awards, it has been held that the accident in question has been caused due to the

rash and negligent driving of truck bearing registration No. HR-64-6729 by its driver – Kamaljit Singh, who also lost his life in the said accident. For convenience, facts are being taken from FAO No.5284 of 2015.

Present appeals have been filed by the National Insurance Company Limited on two counts i.e.,

- (i) contributory negligence on the part of the driver of truck No. HR-64-6729 is alleged thereby contesting the liability of the Insurance Company as held by the MACT, SAS Nagar (Mohali); and
- (ii) compensation awarded on account of future prospects of the deceased has been challenged.

Case of all the claimants is that the deceased alongwith members of the catering team of Pali Catering, Chandigarh had gone to Bathinda for catering in a wedding party on 06.12.2013. They were returning to Chandigarh on 08.12.2013. At about 7.45 a.m. when they were about one kilometer ahead of Sirhind side from village Phagan Majra, a truck bearing registration No. HR-64-6729 driven by Kamaljit Singh came from Sirhind towards Patiala and struck the mini bus from the driver side. As a result of this collision, the truck turned turtle and fell into the ditch. Driver of the bus as well as four or five persons sitting on front side of the bus sustained serious injuries and died at the spot. Other 30/32 occupants also received injuries. The vehicles of police and Highway Patrol came at the spot. Injured were shifted to Rajindra Hospital, Patiala in Van 108 and dead bodies of deceased were taken to Civil Hospital, Fatehgarh Sahib for post-mortem examination. FIR No.101 was registered against the driver of the offending truck No.HR-64-6729 on 08.12.2013 at Police Station Mulepur.

Claim petitions were preferred by the claimants on account of death

of various persons as detailed hereunder.

MACT Case No.RT-39 which is subject matter of FAO No.5284 of 2015 was filed by the legal representatives of deceased – Waseem Khan.

MACT Case No.RT-40 which is subject matter of FAO No.5294 of 2015 was filed by the legal representatives of deceased – Fateh Chand.

MACT Case No. RT-61 which is subject matter of FAO No.5295 of 2015 was filed by the legal representatives of deceased – Sahib Singh.

MACT Case No.RT-55 which is subject matter of FAO No.5312 of 2015 was filed by the legal representatives of deceased – Robert Kujur.

MACT No.56 which is subject matter of FAO No.5291 of 2015 was filed by the legal representatives of deceased – Charanjit Singh.

Claims were resisted by the respondents. Owner of the offending truck averred that the accident had taken place due to the rash and careless driving of the driver of mini bus, which was driven at a high speed. Driver was drunk. Insurance Company took an alternate plea that in case the occurrence is proved to be involving the offending truck, the Insurance Company would not be liable as driver of the truck was not at fault.

Learned Tribunal at SAS Nagar (Mohali) as well as Fatehgarh Sahib on perusal of the records specifically concluded in all the cases that the accident in question had occurred on account of the rash and negligent driving on the part of the driver of the offending truck.

Learned counsel for appellant – Insurance Company vehemently argues that once it has come on to the record that there is a head on collision and the driver of truck himself passed away in the accident, it is indicative of contributory negligence. Furthermore, the Tribunal at SAS Nagar (Mohali) as

well as Fatehgarh Sahib have not even discussed this aspect in the impugned awards.

Having heard learned counsel for the appellant and going through the files, I do not find any merit in this argument. Entire evidence has been considered which is reflected in the finding returned on this issue by the Tribunal at SAS Nagar in its award dated 01.04.2015. It has been specifically observed as under:-

“12. Beside the testimony of PW-3, an FIR No.101 dated 8.12.2013 (copy of which is proved as Ex.PW-3/B), was registered against Kamaljit Singh son of Inder Singh the driver of offending Truck bearing No. HR-64-6729, at the instance of Pawan Bansal son of Jai Narayan, Manager of M/s Palli Catering. Undisputedly complainant Pawan Bansal had not stepped into the witness box, but merely on that account, the FIR cannot be thrown away, as PW-3 Pappu Yadav one of the member of catering team had specifically stated regarding the accident. There is no an iota of evidence that the driver of the bus bearing No. PB- 12-G-5798 was under the effect of liquor, so as to draw inference, that he was also driving the vehicle in rash and negligent manner or he had gone dozed off, therefore, the contention of the Learned counsel for the respondent no.2 is no tenable at all. The FIR Ex.PW-3/B was also registered against the driver of the truck bearing No.HR-64-6729, that he while driving the offending truck in rash and negligent had struck the bus bearing No.PB-12-G-5798. Even if, the driver of the truck and bus had died, that does not mean that it is a case of composite negligence.”

Learned counsel for the appellant is unable to point out any infirmity, illegality or perversity in the said finding returned by the learned Tribunal with reference to the evidence on record. Merely because there is a head on collision cannot lead to a presumption that there is negligence on the part of the other driver. Specific evidence has to be led/pointed out to reflect the same. Such evidence is conspicuous by its absence in the present case. This plea on behalf of the appellants is devoid of any merit.

In respect to the question of award of compensation on account of future prospects, it cannot be denied that the Hon'ble Supreme Court has specifically held in **Rajesh and others v. Rajbir Singh and others, 2013(3) RCR(Civil)170(SC)** as well as **Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347** that there should be an addition in the income on account of future prospects as per the age of the deceased even in case of self-employed/ privately employed persons. Though a reference is made to order dated 02.07.2014 of the Hon'ble Supreme Court in SLP CC No.8058 of 2014 (**National Insurance Company Ltd. v. Pushpa and others**) to submit that the matter in respect to addition in income on account of future prospects of self-employed persons etc. stands referred to a larger Bench, it is not disputed that operation of the decision in **Rajesh and others v. Rajbir Singh's** case (supra) has not been stayed. Decision in **Munna Lal Jain's** case (supra) has been rendered subsequent to the reference. Therefore, there is no illegality or infirmity in award of compensation on this count.

No other argument has been raised.

All the four appeal are consequently dismissed.

(LISA GILL)
JUDGE

September 3, 2015.