

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

1) **FAO No.1951 of 2003**
Date of Decision:04.03.2016

Kamlesh Kumari and others Appellants

Versus

Dalip Singh and Others Respondents

2) **FAO No.1952 of 2003**

Ajay Jain and another Appellants

Versus

Dalip Singh and Others Respondents

Coram: Hon'ble Mr. Justice Amol Rattan Singh.

Present: Mr.Harsh Manocha, Advocate,
for the appellants.

Mr. J.S.Cooner, Advocate,
for respondents No.1 and 3.

AMOL RATTAN SINGH, J.

1. These two appeals have been filed by the claimants before the learned Motor Accident Claims Tribunal, Chandigarh, seeking enhancement of the compensation awarded in two claim petitions decided by a common Award, on 13.01.2003. A single Award was passed, in view of the fact that both the claim petitions (MACT Case No.91 of 13.06.2000 and MACT Case No.92 of 13.06.2000) arose out of the same accident. In the said accident, unfortunately two persons died and two were injured. MACT Case No.92 (out of which

presently FAO No.1951 of 2003 arises) was filed by the widow, two minor sons and mother of the late Prithvi Singh, whereas MACT Case No.91 (out of which FAO No.1952 of 2003 arises) was filed by Ajay Jain and Rahat Jain, who had sustained injuries in the said accident. No claim petition with regard to the death of the 2nd person, Hemant Jain, has been brought to the notice of this Court.

2. The facts, as taken from the Award of the Tribunal, are that on 17.04.2000, Prithvi Singh was driving a Maruti Zen car bearing registration No.CH-01-Z-3448, with Ajay Jain (claimant-appellant in the connected appeal) sitting on the front seat with him whereas Hemant Jain and Rahat Jain were sitting in the rear seat of the car, with all of them coming to Chandigarh from Faridabad. When the car reached near village Dappar and had crossed the bus-stand, a truck bearing registration No.PH-08-J-9682 came from the side of Chandigarh, driven by respondent No.1 Dalip Singh, allegedly in a rash and negligent manner, at a high speed, on the wrong side of the road. It struck against the car so hard that the car turned towards the opposite side and was completely damaged. Respondent No.1 is stated to have run away from the spot, leaving the truck behind. Prithvi Singh and Hemant Jain are stated to have died on the spot, whereas Ajay Jain and Rahat Jain were injured in the accident.

3. Upon notice being issued in the claim petitions, other than the Insurance Company (presently respondent No.4), the three other respondents, i.e. the driver, Dalip Singh, Mohinder Singh and Gurdev Singh, did not appear before the Tribunal and were proceeded against *ex parte*. Gurdev Singh (presently respondent No.3) is stated to be the owner of the truck. The status of Mohinder Singh (respondent No.2), is not known to either counsel appearing

before this Court.

Respondent No.4 is the insurance company that insured the “offending vehicle”.

These respondents are common to both the appeals.

Respondent No.5 in FAO No.1951 of 2003, is the mother-in-law of appellant No.1 and is a proforma respondent here, being one of the claimants before the MACT.

The Insurance Company filed its written statements in both the claim petitions and other than usual preliminary objections, including the fact that respondent No.1 was not holding a valid driving licence, further submitted that no copy of the insurance policy had been supplied and therefore, it reserved its right to take its defence accordingly.

4. Upon issues being framed, the first issue with regard to the negligence of respondent No.1, in driving truck bearing registration No.PB-08-9682, was decided against the respondents, against which no appeal has been filed. Hence, the negligence in causing the accident, is no longer in doubt.

As regards the compensation to be paid, the Award of the Tribunal in respect of the compensation to the claimants in Prithvi Singhs' case (FAO No.1951 of 2003), is being taken up first.

FAO No.1951 of 2003

5. Before that, it is necessary to notice that these are some of those cases, the records of which were burnt in the fire incident that took place in the record-room of this Court, in January 2011. Consequently, the record was reconstructed, presumably from the brief of learned counsel for the appellants, but without the order sheets of the years between 2003 and 2014. Not knowing the status of service upon the respondents, fresh notices were issued in both the

appeals to all the respondents, vide order dated March 11, 2014.

Upon notice being issued in the present appeal, it is seen that respondents No.2 and 5 were never served.

However, it is also seen that respondents No.1, 2 and 3 were also proceeded against *ex parte* before the learned Tribunal. Respondent No.5 is actually the mother of deceased Prithvi Singh and was one of the claimants before the Tribunal in MACT Case No.92, as already noticed. Hence, despite non-service, her interest would obviously be necessary to be looked at by this Court, in the present appeal.

Respondents No.1 and 3, i.e. the driver and owner respectively, of the “offending vehicle”, are represented by counsel, but the Insurance Company, which was given recovery rights by the Tribunal, and was the only respondent who had contested the claim petitions, did not appear before this Court, despite having been served with fresh notice also, almost two years back. Consequently, it is proceeded against *ex parte*.

6. Coming to the compensation awarded by the Tribunal, it was stated that Prithvi Singh was 30 years of age and was working as a permanent driver with M/s A.P.Jain and Brothers, drawing a salary of Rs.2200/- per month and that another Rs.1000/- per month was being paid to him by way of bonus, in addition to travelling allowance and dearness allowance. He was also given rent free accommodation on the top floor of House No.294, Sector 21-B, Chandigarh and that therefore, his total monthly emoluments were Rs.3600/- per month. Appellant No.1, i.e. the widow of Prithvi Singh, stepped into the witness box and stated firstly to the above effect and then stated that she now has to pay Rs.1000/- rent and further, that her mother-in-law (respondent No.5), was also a claimant and was alive and living in Prithvi Singhs' village in

Himachal Pradesh.

7. One Harsharan Singh appeared as PW2 and produced the record of M/s A.P.Jain and Brothers, showing that Prithvi Singh was earning a salary of Rs.2200/- per month, before which he was engaged as a Labourer in Ammonia and Liquor Ammonia Gas, (after which he was employed as a driver).

In the absence of any proof of bonus, travelling allowance, dearness allowance and provision of rent free accommodation being paid, Rs.2200/- was taken to be the monthly income of the late Prithvi Singh, out of which he was taken to have spent 1/3rd upon himself, thereby bringing the monthly dependency of the claimants to Rs.1500/- per month or Rs.18,000/- per annum.

A multiplier of 15 was applied, taking Prithvi Singhs' age to be 35 years, as per the post mortem report, in the absence of any other proof of age. Thus, a total sum of Rs.2,70,000/- was awarded, alongwith interest @ 9% per annum, running from the date of filing of the claim petition till the actual payment of the amount.

This was the total compensation awarded by the Tribunal.

8. Mr. Manocha, learned counsel appearing for the appellants, submitted with regard to the compensation paid for the death of Prithvi Singh, to his widow, two minor sons and widowed mother, that firstly, the income assessed was wholly incorrect, inasmuch as, Prithvi Singh was also given incentives and leave salary to the extent of Rs.1300/- per month, thereby bringing his total monthly salary to be Rs.3592/-. He submitted that as regards the incentives of Rs.1300/- per month and leave salary, it was also shown in the accounts books of the deceased, which the learned Tribunal did not appreciate

properly.

He next submitted that a cut of 1/3rd towards the personal living expenses of the deceased has been wrongly applied, whereas, in view of the fact that he was on a very low salary, a cut of 1/4th should have been applied, seeing that he had four dependents, which is also as per the ratio of the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121.

Learned counsel next submitted that no amount whatsoever has been awarded towards expenses for his funeral and last rites, loss of consortium to appellant No.1 and loss of love and affection to appellants No.2 and 3, or to respondent No.5. He, thus, submitted that a sum of Rs.1,00,000/- each under these heads and Rs.25,000/- towards funeral and last rites expenses, needs to be awarded.

Yet further, learned counsel submitted that no amount has been awarded towards loss of future prospects of income, even though the deceased was a salaried person. Even though he was in a 'private job', but the fact that it was proved before the Tribunal that he was earlier working as a labourer and progressed to become a driver, showed that he was improving his prospects of income constantly and as such, such loss needs to be added to the compensation.

9. Mr. Cooner, learned counsel appearing for respondents No.1 and 3, i.e. the driver and the owner of the “offending vehicle”, submitted that though the first liability to pay compensation has been fastened on respondent No.4, i.e. the Insurance Company, rights of recovery have been awarded in view of the fact that the driving licence of respondent No.1 was held to be renewed only w.e.f. 01.05.2000 and not from its last date of expiry, i.e.

17.10.1998. Hence, on the date of accident (17.04.2000), respondent No.1 was held to be not carrying a valid driving licence and therefore, recovery rights were given to the Insurance Company.

Learned counsel admitted that no appeal against the above finding has been filed.

Mr. Cooner further submitted that compensation having been adequately assessed, no further enhancement needs to be awarded by this Court.

10. Having heard learned counsel, it is obvious that actually liability is to be fastened on respondents No.1 and 3 only, especially with the Insurance Company not having appeared before this Court, it would be pointless to first direct the Company to pay the compensation and then recover it from respondents No.1 and 3, at this stage.

11. I am in agreement with the contentions of learned counsel for the appellant, inasmuch as firstly, undoubtedly, no amount whatsoever has been awarded towards loss of consortium to the widow of the deceased, for loss of love and affection, care and guidance to the minor children and for loss of love and affection, to the mother of the deceased. Further, no amount has been even awarded towards funeral expenses and last rites.

Accordingly, Rs.25,000/- is now awarded to the appellants towards funeral expenses and last rites of the deceased, as per the ratio of the law laid down in **Rajesh and others vs. Rajbir Singh and others** (2013)(9) SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013)(7) SCC 476. A sum of Rs.1,00,000/- is awarded towards loss of consortium to appellant No.1, i.e. the widow of the deceased; and Rs.1,00,000/- each is also awarded to the two minor children of the deceased who, though

their ages are not given, were obviously not of much age, considering that the deceased himself was taken to be 35 years old when he died. Though in *Vimal Kanwars' case* (supra), Rs.2,00,000/- were awarded to the daughter of the deceased, and on the other hand, in *Rajesh v. Rajbirs' case* (supra), a total sum of Rs.1,00,000/- was awarded to the children, this Court has therefore been awarding Rs.1,00,000/- each to minor children of the deceased, though that amount is obviously inadequate, considering that they lost their father, due to someones' negligence, at a very young age.

As regards respondent No.5, i.e. the mother of the deceased, Rs.50,000/- is awarded to her for the loss of love and affection of her son.

12. Coming to the issue of compensation for loss of future prospects of income. I see no reason to disagree with the learned counsel for the appellant, that the deceased Prithvi Singh, even being in a job with a private Company/firm, had obviously been improving his prospects and rose from being a labourer to a driver, as proved before the Tribunal.

However, in the absence of any proof now, with the records being burnt, that Prithvi Singh was earning Rs.3500/-, the finding of the Tribunal is accepted and accordingly in terms of the ratio of the law laid down in the aforesaid cases, 50% is added to his income of Rs.2200/- per month, by way of loss of future prospects of income, he being less than 40 years of age at the time of his death. Thus, the loss of future prospects of income, to the deceased, would be Rs.1100/- per month, from which 1/4th is deducted towards his personal living expenses had he remained alive, thereby bringing the dependent monthly income of the appellant and respondent No.5, under this head, to be Rs.825/=, or Rs.9900/= per year. To this, a multiplier of 16 is to be applied, in terms of the judgment in *Sarla Vermas' case*, thereby bringing the

total loss of future prospects of income of the appellants and respondent No.5, to be Rs.1,58,400/-.

The same is accordingly awarded.

13. Similarly, instead of a multiplier of 15, a multiplier of 16 is to be applied to the loss of actual income assessed by the Tribunal, with a deduction of 1/4th, instead of 1/3rd, of the income of Prithvi Singh. Thus, the loss of dependent income of the appellants and respondent No.5 would be Rs.1650/- per month. The loss of annual income thus comes to Rs.19800/-, which when multiplied with a multiplier of 16, comes to Rs.3,16,800/- and is accordingly awarded.

14. Totalling the above, the compensation now awarded to the appellants in FAO No.1951 of 2003, together with respondent No.5 therein, is as follows:-

i) Loss of income	: Rs.3,16,800/-
ii) Loss of future prospects of income	: Rs.1,58,400/-
iii) Loss of consortium to appellant No.1	: Rs.1,00,000/-
iv) For funeral and last rites (to appellant No.1)	: Rs.25,000/-
v) For loss of love & affection, care and guidance to appellants No.2 & 3	: Rs.1,00,000/- each =Rs.2,00,000/-
vi) For loss of love and affection to respondent No.5	: Rs.50,000/-

Total	: Rs.8,50,200/-

Thus, a sum of Rs.5,80,200/- (Rs.8,50,200 – Rs.2,70,000/=) is awarded over and above what was awarded by the Tribunal. The enhanced component of loss of income (actual and future = Rs.2,05,200/-), would be equally divided amongst the three appellants and respondent No.5, i.e. they would be paid Rs.51,300/- each under that head.

Hence, of the enhanced sum of Rs.5,80,200/-, Rs.1,76,300/-; (including loss of income, loss of consortium and last rites) shall be paid to appellant No.1; appellants No.2 and 3 shall be paid Rs.1,51,300/- each and respondent No.5, Rs.1,01,300/- (This is over and above the sums already awarded by the Tribunal).

15. As the enhanced amount of compensation is considerable, the interest payable thereupon, from the date of the filing of the claim petition till the realization thereof, is kept down to 7% per annum.

The appeal is thus partly allowed, with no order as to costs.

FAO No.1952 of 2003

16. As regards the compensation for the injuries stated to have been suffered by the appellants in this case, Ajay Jain and his daughter, Rahat Jain, Ajay Jain appeared as PW3 and other than deposing with regard to the manner of the accident, stated that he sustained injuries on the right side of his eye, due to which three stitches were applied and that he also received injuries on the left side of his ribs. He stated that he remained in hospital for two days.

His daughter, Rahat Jain, was stated to have received injuries on her forehead and chin, and her teeth were dislocated and as such, she too remained admitted in hospital for two days.

An amount of Rs.20,000/- to Rs.22,000/- was stated to have been spent on the treatment but no evidence, in the form of bills, was produced.

As per the Award, the only evidence produced were three documents, Exs.PA, PB and PC, which showed that Ajay Jain was admitted to Room No.3316 and that he had undergone an x-ray which showed no abnormality and no disability was detected.

17. Accordingly, the Tribunal, on conjecture, presumed that an

approximate amount of Rs.2000/- may have been spent on each of the patients for the two days that each of them remained in hospital and as such, awarded a sum of Rs.4000/- as total compensation to them, alongwith 9% interest per annum.

18. Though learned counsel for the appellants submitted that Rs.20,000/- were actually spent by them on treatment, he obviously could not deny that no bills in that regard were presented to the Tribunal by way of evidence and further, other than the three exhibits showing that they were admitted to hospital and had undergone x-rays, nothing-else was proved with regard to the nature of the injuries. No documentary proof was given and no doctor was examined. Hence, as regards the amount that may have been spent by them by just admission to the hospital, I see no error in the Award of the Tribunal, by which they awarded a sum of Rs.2000/- each, for the two days that each of them remained in hospital.

However, I agree with the learned counsel that obviously since they were involved in the accident, the trauma of suffering the accident itself, with two passengers having died, needs to be compensated and as such, a consolidated amount of Rs.50,000/- is awarded (Rs.25,000/- each), on account of the suffering that such trauma would have necessarily involved, alongwith two days period of hospitalization.

As in the other appeal, the aforesaid amount shall carry an interest @ 7% per annum, running from the date of filing of the claim petition, till realization thereof.

This appeal is also partly allowed, again with no order as to costs.

04.03.2016
dinesh

(Amol Rattan Singh)
Judge

