IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

(1) **FAO No.1411 of 2004**
Date of decision : 31.05.2016

National Insurance Company Ltd.

......Appellant

Versus

Madan Lal Gupta and others

...Respondents

(2) **FAO No.126 of 2004**

S.N. Aggarwal and others

......Appellants

Versus

Gurcharan Singh and others

...Respondents

(3) **FAO No.127 of 2004**

Smt. Mohini Gupta and another

......Appellants

Versus

Gurcharan Singh and others

...Respondents

(4) **FAO No.128 of 2004**

Kamla Garg and others

......Appellants

Versus

Gurcharan Singh and others

...Respondents

(5) **FAO No.129 of 2004**

Rajesh Aggarwal

......Appellant

Versus

Gurcharan Singh and others

...Respondents

(6) **FAO No.1409 of 2004**

National Insurance Company Ltd.

......Appellant

Versus

Smt. Kamla Garg and others

...Respondents

(7) **FAO No.1410 of 2004**

National Insurance Company Ltd.

......Appellant

Versus

S.N. Aggarwal and others

...Respondents

(8) **FAO No.1412 of 2004**

National Insurance Company Ltd.

......Appellant

Versus

Rajesh Aggarwal and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Neeraj Khanna, Advocate for appellants
in FAOs No.1409 to 1412 of 2004 and for respondent No.3
in FAOs No.126 to 129 of 2004.

Mr. B.R. Gupta, Advocate for respondents No.2 & 4
in FAOs No.1409 to 1411 of 2004, for respondent No.1
in FAO No.1412 of 2004 and for appellants
in FAOs No.126 to 129 of 2004.

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DARSHAN SINGH, J.

This judgment shall dispose of all the eight appeals mentioned above, which have arisen out of the same award dated 16.09.2003, passed by the learned Motor Accidents Claims Tribunal, Hisar (hereinafter called the 'Tribunal').

2. FAOs No.126, 127, 128 and 129 of 2004 have been filed by the respective claimants for enhancement of the amount of compensation. FAOs No.1409 to 1412 of 2004 have been filed by the National Insurance Company (respondent No.3 in the claim petition) to assail the award and its liability.

3. In FAO No.126 of 2004, appellant-claimant S.N. Aggarwal and others have been awarded compensation to the tune of Rs.2,03,600/- on account of death of Smt. Nirmala Devi. In FAO No.127 of 2004, appellants-claimants Madan Lal Gupta and others have been awarded compensation to the tune of Rs.4,22,000/- on account of death of Naresh Kumar. In FAO No.128 of 2004, appellants-claimants Smt. Kamla Garg and others have been awarded compensation to the tune of Rs.11,60,800/- on account of death of Devi Dayal in the motor vehicular accident, which took place on the night intervening 18/19.11.1998. FAO No.129 of 2004 is filed by

appellant Rajesh Aggarwal, who has been awarded compensation to the tune of Rs.1,57,397/- as a result of injuries suffered by him in this accident.

4. I have heard learned counsel for the parties and gone through the paper-books carefully.

5. Learned counsel for the appellants-claimants contended that in FAO No.126 of 2004, the learned Tribunal has wrongly deducted 1/3rd of the notional income which is not permissible under law. He further contended that no amount towards loss of consortium have been awarded to the husband and funeral expenses have been awarded less.

6. He further contended that in FAO No.127 of 2004, Naresh Kumar aged about 24 years has died. Learned Tribunal has not awarded any future prospects towards the income of the deceased. No amount has been awarded towards loss of love and affection to the parents and less amount has been awarded towards funeral expenses.

7. He contended that in FAO No.128 Devi Dayal aged about 43 years, the employee of State Bank of India has died. No future prospects have been added to the income of the deceased. The deduction has also been wrongly applied towards living and personal expenses. Multiplier applied is also wrong. Less amount has been awarded under the conventional heads.

8. Learned counsel for the appellant-claimant fairly contended that he does not challenge the amount of compensation awarded by learned Tribunal to appellant-claimant Rajesh in FAO No.129 of 2004 on account of the injuries suffered by him.

9. On the other hand, learned counsel for Insurance Company

contended that no future prospects were required to be added to the income of the deceased persons. He contended that the learned Tribunal was required to deduct the income tax from the income of deceased Devi Dayal while computing the compensation. But no such deduction has been made. He further contended that learned Tribunal has taken into consideration all the conventional heads also for awarding the compensation to the claimants. Thus, he contended that just amount of compensation has been awarded to the claimants.

10. He further contended that the appellant-Insurance Company was not liable for payment of the amount of compensation. He contended that the driving licence produced by respondents was not connected to Suresh Kumar driver. He contended that father's name of driver Suresh Kumar was Bhajna Ram as per the claim petitions, but in the record of Licensing Authority, the father's name of Suresh Kumar has been mentioned as Babu Ram. Thus, the driving licence of driver Suresh Kumar cannot be taken into consideration and the Insurance Company cannot be fastened with the liability.

11. I have duly considered the aforesaid contentions.

12. FAO No.126 of 2004 has been filed by appellant-claimant No.1 S.N. Aggarwal, the husband, appellants-claimants No.2 to 4 Rajesh Aggarwal, Rajiv Aggarwal and Deepak Aggarwal, the sons of deceased Smt. Nirmala Devi, who has died in this accident. She was a house wife. The learned Tribunal has taken Rs.2100/- per month as notional income of the deceased but the learned Tribunal has deducted 1/3rd of her notional

income towards her personal and living expenses. As the law laid down by the Division Bench of this Court in case ***Paramjit Singh and another Vs. Dilbag Singh alias Bagga and others 2014(4) RCR (Civil) 895***, 1/3rd deduction is not permissible in case of notional income of the housewife. So, the entire notional income of deceased Nirmala Devi shall be taken into consideration. The learned Tribunal has determined the income of the deceased to be Rs.2100/- per month *i.e.* Rs.25,200/- per annum. The age of deceased Nirmala Devi was 50 years at the time of the accident. As per the law laid down by Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121***, the multiplier of 13 shall be applicable. The loss of dependency comes to Rs.3,27,600/-. In addition to that, appellant-claimant No.1 S.N. Aggarwal, the husband of deceased shall be entitled to Rs.1,00,000/- towards loss of consortium. The appellants-claimants shall also be entitled to Rs.25,000/- towards funeral and transportation charges. Thus, the total amount of compensation to the appellants-claimants in FAO No.126 of 2004 comes to Rs.4,52,600/-. Consequently, the amount of compensation payable to appellants-claimants S.N. Aggarwal and others in FAO No.126 of 2004 is hereby enhanced from Rs.2,03,600/- to Rs.4,52,600/-.

13. In FAO No.127 of 2004 Madan Lal and others the appellants-claimants have filed the claim petition for grant of compensation on account of death of Naresh Kumar. Madan Lal Gupta claimant No.1 is the father, Smt.Moni Gupta claimant No.2 is the mother, claimant No.3 Suresh Kumar Gupta is the brother and claimant No.4 Bhawna Gupta is the

sister of deceased Naresh Kumar. The learned Tribunal on appreciation of evidence and material available on record has determined the annual income of deceased to be Rs.60,000/-, which has not been challenged by either of the parties. Deceased Naresh Kumar was carrying the business of iron and was a young man of 23 years of age. The learned Tribunal has not awarded any amount towards the future prospects. Keeping in view the age of the deceased, 50% of his income is required to be added towards future prospects. The total amount comes to Rs.90,000/-.

14. Deceased Naresh was unmarried. The claim petition has been filed by his parents and siblings. As per the law laid down by Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another*** (supra), in case of bachelor, deduction will be 50%. So, 50% of the income of deceased Naresh Kumar shall be deducted towards his personal and living expenses. The remainder comes to Rs.45,000/- per annum. In view of the age of the deceased, the multiplier of 18 shall be applicable. The loss of dependency comes to Rs.8,10,000/-. In addition to the aforesaid amount, the mother of the deceased shall be entitled to Rs.1,00,000/- towards love and affection of her son. The appellants-claimants shall also be entitled to Rs.25,000/- towards funeral expenses. Thus, the total amount of compensation comes to Rs.9,35,000/-. Consequently, the amount of compensation payable to appellants-claimants in FAO No.127 of 2004 is hereby enhanced from Rs.4,22,000/- to Rs.9,35,000/-.

15. In FAO No.128 of 2004, claimants Smt. Kamla Garg

widow, Mukesh Garg and Parveen Garg the sons, Diwan Chand the father of deceased Devi Dayal have sought the compensation on account of death of Devi Dayal in this accident. Deceased Devi Dayal was working as Computer Operator in State Bank of India, Delhi and was drawing the salary at the rate of Rs.13,854/- per month. The learned Tribunal has also taken into consideration the income of the deceased to be Rs.13,854/- per month, but the learned Tribunal has not added anything towards the future prospects to the income of the deceased. At the time of death, he was 53 years of age, so 15% of the income of the deceased were required to be added towards the future prospects, which comes to Rs.2078.10. To make it a round figure, we can take Rs.2000/-. Thus, the total income of the deceased Devi Dayal comes to Rs.15,854/- (13854 + 2000) *i.e.* Rs.1,90,248/- per annum. I found substance in the plea raised by learned counsel for the Insurance Company that the learned Tribunal should have deducted income tax from the income of the deceased Devi Dayal. So, 10% of the income of deceased, which comes to Rs.19,024.80, to make it a round figure we can take Rs.19000/-, are required to be deducted towards income tax. The net income comes to Rs.1,71,248/-. Deceased Devi Dayal was having four dependents, so $1/4^{th}$ of his income shall be deducted towards his personal and living expenses. The remainder comes to Rs.1,28,436/-. As per the age of deceased Devi Dayal who was 53 years of age, the multiplier of 11 shall be applicable. The loss of dependency comes to Rs.14,12,796/-. In addition to that, the claimant-widow of deceased shall also be entitled to Rs.1,00,000/- towards loss of consortium. The claimants shall also be entitled to a sum of Rs.25,000/- towards funeral expenses. Thus, the total amount of compensation comes to Rs.15,37,796/-.

16. Learned counsel for appellant-claimant has not agitated the amount of compensation awarded to Rajesh Kumar, the appellant of FAO No.129 of 2004 for grant of compensation on account of injuries suffered by him in this accident.

17. Learned counsel for the appellant-Insurance Company has contended that the Insurance Company is not liable for payment of amount of compensation as the licence produced by respondents is not connected with the driver of the vehicle. In the driving licence, the father's name of driver has been mentioned as Bhajna Ram. Suresh Kumar the driver of the vehicle has appeared as RW-1. He has deposed that his driving licence is on the file of criminal case titled as State Vs. Suresh pending in the Court of the S.D.J.M., Hansi. His licence was issued by the Licensing Authority, Bathinda about 6/7 years back. The Insurance Company has examined Shri Dinesh Kumar, Advocate, District Court Hisar. He deposed that he was appointed as Local Commissioner by the Court to visit the office of District Transport Officer-cum-Licensing Authority, Bathinda. He issued notice to counsel for both the parties for submitting the introductory and cross-introductory. He visited office of District Transport Officer-cum-Licensing Authority, Bathinda, where he recorded the statement of Mahender Singh, Senior Assistant, office of District Transport Officer-cum-Licensing Authority, Bathinda, which is Ex.R1. He further deposed that he has also verified the record of the Authority. On the basis of inspection of the record

and on the basis of statement of Mahender Singh, Senior Assistant, he prepared the report Ex.R2. Licence of Suresh Kumar was having his photograph affixed on the form which was on the file of the office of District Transport Officer-cum-Licensing Authority, Bathinda. He admitted that he has not brought the photocopy of the said record. He stated that father's name of Suresh Kumar was mentioned as Babu Ram in the register. He admitted that he has not seen the father's name of Suresh Kumar in other record and he cannot say that father's name of Suresh Kumar was mentioned as Bhajna Ram in other record. From the statement of RW-2 Dinesh Kumar, Advocate, it comes out that this witness has not checked up the father's name of driver Suresh Kumar in the other record. He has deposed only on the basis of father's name of Suresh Kumar mentioned in the register. He should have obtained the copy of the application moved by applicant for issuance of driving licence. That could have been the conclusive proof about the father's name of the applicant. If the father's name of Suresh Kumar driver has been wrongly written in the register of Licensing Authority as Babu Ram instead of Bhajna Ram, it cannot be stated that driver Suresh Kumar had no driving licence on the date of accident. Thus, in the absence of the complete record, the statement of RW-2 Dinesh Kumar, Advocate cannot establish that the driving licence relied upon by the driver does not belong to him. In these circumstances, the appellant-Insurance Company cannot be exonerated from liability.

18. Thus, keeping in view my aforesaid discussion, FAO No.129 of 2004 stands dismissed. All the four appeals bearing FAOs

No.1409 to 1412 of 2004 preferred by appellant-Insurance Company are also dismissed being devoid of any merits. However, keeping in view my aforesaid discussion, FAOs No.126 to 128 of 2004 are hereby partly allowed. In FAO No.126 of 2004, the amount of compensation is enhanced to Rs.4,52,600/- from Rs.2,03,600/-; in FAO No.127 of 2004, the amount of compensation is enhanced to Rs.9,35,000/- from Rs.4,22,000/-; and in FAO No.128 of 2004, the amount of compensation is enhanced to Rs.15,37,796/- from Rs.11,60,800/-, as awarded by the learned Tribunal. The enhanced amount of compensation be deposited with the learned Tribunal within a period of 60 days from today, failing which the appellants-claimants shall be entitled to interest @ 7.5% per annum from the date of filing the claim petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

31.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**