

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

FAO No.5338 of 2003

Date of decision:5.7.2016

MOHINDRO RANI AND OTHERS

... Appellants

Versus

PRTC AND OTHERS

... Respondents

FAO No.4939-2004

PRTC AND ANOTHER

... Appellants

VS.

MOHINDRO RANI AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr. Animesh Sharma, Advocate
for the appellants in FAO No.5338 of 2003 and
for respondents No.1 to 7 in FAO No.4939 of 2004.

Mr. Harsh Aggarwal, Advocate
for the appellants in FAO No.4939 and
for respondents No.1 and 2 in FAO No.5338 of 2003.

None for respondent No.3 in FAO No.5338 of 2003.

Mr. B.S. Taunque, Advocate
for respondent No.4 in FAO No.5338 of 2003.

Mr. Suvir Dewan, Advocate for
respondent No.9 in FAO No.4939 of 2004.

AMOL RATTAN SINGH, J.

1. These are two cross appeals, filed by the claimants and the owner of the vehicle involved in the accident, against the Award of the learned Motor Accident Claims Tribunal, Patiala, dated 18.9.2003.

2. The claim petition filed by the appellants in FAO No.5338 of 2008, sought compensation under Section 166 of the Motor Vehicles Act, 1988, for the unfortunate death of Amarjit Singh, aged 35 years, in a motor vehicle accident that took place on 2.2.2002, at about 3:00 p.m., opposite the High School, Kurala, on the Zirakpur Banur road.

3. The accident is stated to have taken place due to the rash and negligent driving of respondent No. 3, while driving Bus No.PB-11-B-9660, owned by respondent Nos.1 and 2 and stated to be insured by respondent No.4.

The facts, taken above and hereinafter, are from the Award of the learned Tribunal.

It was contended that the deceased was coming back to Banur on his bicycle and when he reached opposite the aforesaid school, the third respondent, came driving the bus in a rash and negligent manner and struck it against the bicycle of the deceased, due to which he fell down and received serious injuries and died on the spot.

It was claimed that the deceased was earning Rs.6,000/- per month as a vegetable seller. A total compensation of Rs.6 lacs was claimed.

4. Upon notice issued to them, respondents No.1 and 2 filed a joint written statement completely denying the accident, further denying that respondent No.3 was driving the bus in question in a rash and

negligent manner. However, it was stated that the bus was duly insured with respondent No.4.

The criminal case registered against respondent No.3 was also stated to be 'falsely registered'.

Respondent No.3 filed a separate written statement, again essentially reiterating the aforesaid contentions.

5. The insurance company filed a separate written statement, reiterating the aforesaid contentions and further stating that respondent No.3 was not holding a valid and effective driving licence and that the “offending vehicle” was not carrying a valid route permit and as such, there was a violation of the conditions of the insurance policy. Therefore, it was contended that even if any compensation was held to be payable, the insurer was not liable to do so.

6. Upon replications having been filed, the following issues were framed by the learned Tribunal:-

“1. Whether Amarjit died due to rash and negligent driving of Bus No.PB-11E-9660 by Jagdish Raj, respondent No.3, on 2-2-2002 in the area of opp. High School, Kurala on Zirakpur-Banur Road? OPP.

2. Whether the claimants are entitled to get compensation. If so, to what amount and from which of the respondents? OPP.

3. Whether respondent No.3 was not holding a valid and effective driving licence on the day of alleged accident. If so, its effect? OPR-4.

4. Relief.”

7. The claimants examined three witnesses and tendered the post mortem report of the deceased by way of documentary evidence, whereas the respondents examined respondent No.3 and tendered the insurance policy, a letter and the report of the District Transport Officer, Patna, as also a copy of the driving licence of respondent No.3, by way of documentary evidence.

8. PW1-Chuhar Ram stated that he was an eye witness who had seen the deceased riding his bicycle ahead of him, on the left side of the road and that the bus had come from behind and had struck him, due to which he died. He further testified that the bus driver had parked the bus on the side and had even told this witness his name upon query. He, thereafter, got the FIR registered against respondent No.3.

The third respondent, though initially denied the accident, but in cross-examination, admitted that he had stopped the bus after the accident and that he had been facing a criminal trial for the same.

9. Upon appraising the aforesaid evidence, as also the post mortem report, the Tribunal held that the accident was caused due to the negligence of respondent No.3.

10. On the question of quantum of compensation, though three witnesses, i.e. PW1-Chuhar Ram, the appellant No.1, i.e. the widow of the deceased (PW2) and one Saudagar Ram-PW3, testified that the deceased was earning Rs.6000/- to Rs. 7,000/- from the sale of vegetables and was also earning Rs.100/- to Rs. 300/- per day from a kiriyana shop, their testimonies were not accepted by the Tribunal,

holding that in the absence of any firm proof of income, the deceased could at best be held to be a manual labourer, since no certificate of his educational qualification was also produced, and as such, his monthly income was assessed to be Rs.2400/-.

A deduction of 1/3rd was made from the aforesaid income towards the personal expenses of the deceased, and accepting his age to be 35 years, as contended, a multiplier of 13 was applied and consequently, the claimants were held entitled to a compensation of Rs.2,34,000/-.

11. As regards liability to pay compensation, it was held by the Tribunal that though respondent No.3 was carrying a licence seen to be issued by the Licencing Authority Patna on 17.8.1981, however upon enquiry by the insurance company, from the District Transport Officer, Patna, the report (Ex.R4), showed that the said licence, bearing No.81-J-836, was in fact not issued in the name of Jagdish Raj, i.e. respondent No.3.

No rebuttal to the aforesaid evidence having been led by any of the parties, including the first and second respondent, it was held that the licence being fake, the insurance company could not be saddled with the liability to pay the compensation.

12. Before this Court, Mr. Animesh Sharma, learned counsel for the appellant-claimants in FAO No.5338 of 2003 (respondents No.1 to 7 in FAO No.4939 of 2004), submitted that the Tribunal wholly erred in not applying the appropriate multiplier, and further in not awarding any compensation for funeral expenses, loss of estate, loss of consortium to appellant No.1 and loss of love and

affection to the other appellants.

Further, no compensation for the loss of future prospects of income have been awarded.

Still further, a deduction of 1/5th of the income of the deceased should have been applied, rather than 1/3rd, the number of dependents being 7.

He therefore prayed that the compensation be accordingly enhanced.

13. Mr. Harsh Aggarwal, learned counsel appearing for the respondent- Pepsu Road Transport Corporation (appellant in FAO No. 4939 of 2009), submitted that in the case of the Corporation, even with the driver possessing a fake driving licence, but the vehicle being duly insured, it would be the insurance company and not the Corporation, that would be liable to pay the compensation. He cited the judgment in the Corporations' own case in this regard, i.e. Pepsu Road Transport Corporation Vs. National Insurance Company (2013) 10 SCC 217.

He further submitted that even on the issue of negligence, the Tribunal had wholly erred, in holding the said issue against the respondents, simply on the basis of the testimony of one eye-witness.

Lastly, learned counsel submitted that the Tribunal had also erred in dismissing the application of the Corporation, seeking to amend the written statement, to take the plea of due verification of the driving licence of the driver, at the time of his employment.

Hence, he submitted that for the Tribunal to have held that no

evidence was led to disprove the validity of the licence, and simply on that basis to have foisted the liability on the Corporation, is a wholly erroneous finding.

Consequently, he prayed that the appeal of the Corporation be allowed, both on the issue of negligence, as also on the issue of liability to pay the compensation amount, and the appeal of the claimants be dismissed.

14. Having heard learned counsel for the parties, as regards the issue of negligence, I find absolutely no reasons to interfere with the finding of the learned Tribunal, inasmuch as, the third respondent, after denying the accident altogether, eventually admitted that the accident had taken place and as such an adverse inference with regard to the truth of the matter would necessarily be drawn against the respondents.

Other than that, there is no reason to disbelieve the testimony of the eye-witness, duly corroborated by the registration of an FIR on the date of the accident itself, against respondent No.3, who is also a State employee. Read with the post mortem report of the deceased, the Tribunal found that the victim had died due to injuries sustained in the accident. I find no reason to interfere with that finding.

15. Coming to the compensation awarded, learned counsel for the claimants-appellants is correct to the extent that the Tribunal has erred, firstly in deducting only 1/3rd of the assessed income of the deceased towards his personal expenses.

It is to be noticed that the claimants before the Tribunal

are the widow, four minor children, and parents of the deceased (Present appellants in FAO No.5338 of 2003).

Even though the father of the deceased, i.e. presently appellant No.7, cannot be taken to be dependent upon him, unless specifically shown to be so, which is not the case in the present lis, there were still six other dependents upon him, and as such, in terms of the ratio of the judgment of the hon'ble Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and others (2009) 6 SCC 121, the deduction towards the personal expenses of the deceased, from his assessed income, is to be $\frac{1}{5}^{\text{th}}$ of such income. Therefore, otherwise finding no error in the assessed income of the deceased, a deduction of $\frac{1}{5}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$ is applied thereto (to the assessed monthly income of Rs. 2400/- of the deceased), coming to a monthly dependent income of Rs. 1920/- to the claimants, or an annual dependent income of Rs.23,040/-.

The deceased being 35 years of age, a multiplier of 16 (not 13) is to be applied to the aforesaid amount, thereby coming to a total loss of dependent income to the first six appellants to be Rs.3,68,640/-.

16. In terms of the judgments of the Supreme Court in Rajesh Vs. Rajbir and others (2013) 9 SCC 54 and Vimal Kanwar Vs. Kishore Dan (2013) 7 SCC 476, a sum of Rs. 25,000/- is to be awarded to appellants towards funeral expenses and last rites of the deceased and is accordingly awarded, to be apportioned to the extent of 50% each in favour of appellant No.1 and appellant No.7, i.e. the widow and father of the deceased.

17. Appellant No.1 would also be entitled to compensation towards loss of consortium of ₹ 1 lac, in terms of the ratio of the aforesaid judgments.

Though in Rajesh's case (supra) the hon'ble Supreme Court had awarded a total compensation of ₹ 1 lac towards the loss of care and guardian of the minor children of the deceased, in Vimal Kanwar's case (supra), Rs.2 lacs were awarded under that head to the daughter of the deceased. Consequently this Court has been awarding between Rs.1 lac to 2 lacs to the minor children of deceased motor accidents victims, but in this case, the number of children being four, a total of ₹ 2 lacs is awarded to them, i.e. to appellants No.2, 3, 4 and 5, to be apportioned in the ratio of ₹ 50,000/- each. ₹ 50,000/- each is also awarded towards the loss of love and affection of their son at his age of 35 years, to the parents of the deceased, i.e. appellants No. 6 and 7.

18. Coming to the issue of loss of future prospects of income, that matter is under consideration of the Supreme Court, having been referred to a larger Bench in **National Insurance Company Limited Vs. Pushpa and others (2015) 9 SCC 166**.

Since the deceased was admittedly not in any permanent salaried employment, and as such awardability of such compensation, in such cases, is still to be finally determined by their Lordships, this Court has been calculating the loss of such future prospects of income, on the touchstone of the judgment in **Sarla Verma's case** but has been directing that the amount be not disbursed to the claimants, till the judgment of the Supreme Court is

pronounced in **Pushpa's case**.

Accordingly, the loss of future prospects of income of the deceased is assessed as follows.

19. Since his monthly income was assessed to be Rs. 2400/-, he being below 50 years of age, 50% of that amount is to be taken to be the yardstick to calculate the compensation under this head. Hence, 50% of Rs. 2400 being Rs. 1200/- per month, or Rs. 14,400/- per annum, a deduction of 1/5th is to be applied to the aforesaid sum towards the personal expenses of the deceased, thereby coming to a loss of dependent future prospects of income, to appellants No.1 to 6, to be Rs.11,520/- per annum, to which again a multiplier of 16 is to be applied. Hence, the total of loss of future prospects of income to the appellants, if eventually held payable, is Rs.1,84,320/-.

The aforesaid sum shall be deposited by the insurance company with the Tribunal, along with 6% interest per annum, running from the date of the filing of the claim petition till the date of such deposit. The learned Tribunal would immediately thereafter have the said total amount deposited in a fixed deposit, in a nationalised bank, so as to carry maximum interest on it.

If the ratio of the judgment of the Supreme Court in Pushpa's case (supra), is to the effect that loss of future prospects of income are payable to the dependents of a deceased who was not in a permanent salaried job, appellants No. 1 to 6 herein (in FAO No.5338 of 2003), would be entitled to disbursement of the total amount deposited by the insurance company, along with the interest that would have accrued upon that sum in the fixed deposit, in the same

manner that an award of the Tribunal is executed.

If, on the other hand, the ratio of the judgment in Pushpa's case (larger Bench), holds to the contrary, then the insurance company would be entitled to have the entire amount, along with the interest accrued thereupon in the bank, refunded to it by making an application to the Tribunal.

No further reference to this Court, in either case, would be necessary.

20. Coming last to the issue of liability to pay the compensation, it is seen that in the aforesaid case of the Pepsu Road Transport Corporation (supra) has cited by learned counsel for the Corporation, it was held by the Supreme Court that the driver of an organisation such as the PRTC would have been employed after having been imparted training to drive a bus. Thereafter, after six years of service (in that case), it cannot be held that the Corporation was at fault in having employed a person whose licence had been proved to be fake by the insurance company.

21. In the present case, though no specific period of employment of respondent No.8 has been given, either in the grounds of appeal or by learned counsel for the Corporation, however, obviously the fact that he would have been employed upon a driving test either having been held prior to his employment, or in any case, he would have been trained to drive buses of the Corporation, the ratio of the judgment would apply in the present case, also in the opinion of this Court, though otherwise, there would be no reason whatsoever, to foist the liability on to the insurer, i.e.

respondent No.9 in FAO No.4939 of 2004.

Learned counsel for the insurance company, appearing in both these cases, have tried to submit that on first principles, the Company cannot be held liable to indemnify the insured, when its driver was not holding a valid licence at the time of the accident. However, in view of the ratio of the judgment of the Supreme Court in the aforesaid case, based on the reasoning given therein, that argument cannot be sustained.

Consequently, other than the compensation for loss of future prospects that is to be deposited by the insurance company with the Tribunal, what is immediately disbursable to the appellants (in FAO No.5388 of 2003), is as follows:-

Sr. No.	Heads	Compensation
1	Towards loss of actual income to appellants No.1 to 6	Rs. 3,68,640/-
2	Towards loss of consortium to appellant No.1	Rs.1 lac
3	Towards loss of love and affection, to appellants No.2 to 7 (at the rate of Rs.50,000/- each)	Rs.3 lacs
4	Towards funeral expenses to appellant No.7	Rs. 25,000/- (₹ 12500/- each)
	Total	₹ 7,93,640/-

Thus, the aforesaid amount is Rs.5,59,640/- over and above the Rs.2,34,000/- awarded by the Tribunal.

The enhanced amount would carry an interest at the rate of 7% per annum, running from the date of filing of the claim petition, to the date of realization thereof by the appellants in FAO 5388 of 2003. Of the aforesaid sum of Rs.5,59,640/-, Rs.62,500/- shall be paid to appellant No.6, i.e the mother of the deceased, Rs.1,35,000/- shall be paid to appellant No.1, i.e. the widow of the deceased, Rs. 62,500/-

to respondent No. 7 (father of deceased) and Rs. 74,910/- each to appellants No. 2 to 5, i.e. the children of the deceased, each amount carrying the interest awarded thereupon, as held hereinabove.

Thus, FAO No.5338 of 2003 is allowed as above, with no orders as to cost.

FAO No.4939 of 2004 filed by the Corporation, is also allowed to the extent that the liability to pay the compensation, has now been foisted upon the insurance company, i.e. respondent No. 9 in this appeal. No order as to costs in this appeal either.

05.07.2016
SwarnjitS

(AMOL RATTAN SINGH)
JUDGE