THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 2416 of 2010 (O&M)
Date of decision: February 16, 2016

United India Insurance Co. Ltd.
...Appellant
Versus
Gurdas Singh Dhaliwal and others
...Respondents

(2) FAO No. 5944 of 2010 (O&M)

Gurdas Singh Dhaliwal and another
...Appellants
Versus
M/s Mahavir Rice and Dal Mills and others
...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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?**

Present: Mr. Vinod Gupta, Advocate,
for the appellant in FAO No. 2416 of 2010 and
for respondent 3 in FAO No. 5944 of 2010.

Mr. Arun Jindal and Rishav Jain, Advocates, for
the appellants in FAO No. 5944 of 2010 and
for respondents No. 1 and 2 in FAO No. 2416 of 2010.

Mr. Vivek Aggarwal, Advocate,
for respondents No. 3 and 4 in FAO No. 2416 of 2010 and
for respondents No. 1 and 2 in FAO No. 5944 of 2010.

K. KANNAN, J. (Oral)

1. This order shall dispose of the above titled both appeals as they arise out of the same set of facts.

2. FAO No. 2416 of 2010 is at the instance of the insurance

company denying the liability whereas FAO No. 5944 of 2010 is by the claimants seeking enhancement of compensation.

3. The deceased was said to be travelling in a scooty and the insured vehicle which was coming behind dashed against the scooty when the deceased was reported to have suddenly taken a right turn. The Tribunal found the driver of the insured vehicle to be responsible for the accident and assessed the compensation. The contention of the learned counsel for the insurer is that the deceased himself would have taken a caution before taking a right turn to mind about a vehicle which was coming behind, stopped in the corner of the road, let the vehicle pass and take a right turn or slowed down the vehicle, signaled a vehicle coming behind to slow down also and then take a right turn.

4. The accidents take place in a trice. The rule of caution what the counsel argue before me is what is ideal but the dynamics of a road accident can not be put through a slow motion. If only there had been a little more caution by the driver coming behind, he could have never caused a situation for a driver of a scooty to be put in a seriously injured condition that caused his death four days later. I surely find this accident to be result on account of negligent driving of the insured vehicle and will discard the argument that there was any contributory negligence on the part of the deceased.

5. The deceased was a nurse, whose salary was shown at ₹15,434/-, although the insurer wanted to point out that the house rent allowance have been given twice over. I have examined the salary certificate. It provides for 15% amount to basic salary as house rent allowance and makes a further provision of 5% which I believe must be city compensatory housing allowance. So long as allowance enjoyed and the

aggregate salary comes to ₹15434/-, I take that to be the basic allowance, apply a prospect of increase at 30% and make a deduction of 15% going towards tax and take the gross salary less tax to be deducted further by 1/3rd towards personal expenses and take the contribution to the family at ₹1,36,435.20 I will make provision for loss of consortium to the husband at ₹1 lakh and ₹1 lakh for loss of love and affection for the child. Various heads of claim are tabulated as under:-

Fatal Accident		***Date of accident***	
Age	43	18.4.2006	
Occupation	Nurse		
Claimants:	Husband and 1-1/2 years old child		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1	Income	15434	15434
2	Add, % of increase	20,064.20	20, 064.20
3	Deduction	1,33,76.00	1,33,76.00
4	Multiplicand (annualized)	1,60,512	16,0563.00 less 15% towards tax
5	Multiplier	14	14
6	Loss of dependence	22,47,168	19,10.092.80
7	Medical expenses	60149	60149
8	Loss of Consortium	5000	1,00,000
9.	Loss of love and affection for the child		1,00,000
10	Loss to estate		5000
11	Funeral Expenses/ and transporation	10000	25000
	Total	23,22,317	22,00241.80

6. There are some arithmetical errors in the judgment of the Tribunal. The Tribunal assessed at ₹25,80,667/- and the correct amount as per its calculation could have been ₹23,22,317/-.

7. The total compensation payable shall be ₹22,00241.80/- with interest as already awarded. The amounts shall be equally disbursed between the husband and the child. The amount for the child shall be

retained in a fixed deposit during the entire period of minority and 75% of the amount will be permitted to be withdrawn on attaining the majority and rest of 25% will be shall be split into three equal portions, 1st portion for a period of one year, 2nd portion for a period of two years and so on upto three years and deposited in a nationalized bank. The amounts will be directly remitted to the account of the quondam minor, the details of which will be submitted by his father before the insurer for appropriate remittances with due advice to the tribunal. The award passed by the tribunal is modified and the compensation as re-assessed as above.

6. The appeals are disposed of in terms of the modified award, referred to above.

February 16, 2016 **(K.KANNAN)**
prem **JUDGE**