

201.

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

FAO No.2791 of 2010 (O&M)

Date of decision:16.02.2016

Smt. Darka Devi

... Appellant

versus

Suresh and others

.... Respondents

II. FAO No.3001 of 2010 (O&M)

Suresh and another

... Appellants

versus

Rajesh and another

.... Respondents

III. FAO No.3002 of 2010 (O&M)

Suresh and another

... Appellants

versus

Smt. Darka Devi and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.A. Sheoran, Advocate,
for the appellant in FAO No.2791 of 2010
and for respondent No.1 in FAO No.3002 of 2010.

Mr. Anil Ghanghas, Advocate,
for the appellants in FAO Nos.3001 and 3002 of 2010
and for respondents 1 and 2 in FAO No.2791 of 2010.

Mr. Ravinder Arora, Advocate,
for National Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. All the three appeals are connected as they arise out of a single incident of accident when the driver of the insured's vehicle dashed against a tree in a bid to avoid collision with a truck coming from the opposite direction. The truck owner or the driver were not parties to suit. The claims were at the instance of passengers in the jeep. One passenger died and another was injured. The appeal by the legal representative of the deceased in FAO No.2791 of 2010 and the appeal by the owner is FAO No.3002 of 2010, aggrieved against the inadequacy of compensation and the liability cast on the owner without a provision for indemnity respectively. FAO No.3001 of 2010 is a claim against the award passed for injured passenger in the vehicle.

2. One of the passengers in the vehicle and who was an eyewitness was examined as PW6 to speak about the truck coming from the opposite direction had been driven negligently that was solely responsible for the accident. It was elicited from PW6 in the cross-examination that there were 8/9 persons in the jeep and the fare for a passenger for travel from Tosham to Jhavri was ₹3/- per person. It is stated that they had to give the fare after reaching the

village Jhavri. The person that died was the brother of PW6, who gave evidence about the fact that they were travelling, undertaking to pay fare at ₹3/- per person. The owner did not avail to himself any benefit of cross-examination that the passengers were not taken for hire. In the owner's own turn, he sought to give evidence denying that he was transporting the persons on hire but they were all gratuitous passengers. I discard the attempt of the owner to plead that he was not using it for hire or reward. There was clear evidence by one of the passengers, the circumstance when he and his deceased brother were travelling and that the people had to pay fare when they were alighting from the vehicle. I take the evidence of PW6 as concluding the issue that the vehicle was put to use for a purpose which was specifically excepted in the terms of use of the policy which specifically states that, "policy covers use of the vehicle for any purposes other than (a) Hire or Reward." There have been clear violation of terms of policy and, therefore, in the manner of determination of compensation, the Tribunal was justified in assessing the compensation and directing the recoveries to be made against the owner/driver at the instance of the insurer.

3. In the manner of assessment to compensation, the Tribunal has made an error in determining compensation and making a partial abatement of the claim for contributory negligence.

The deceased and the injured persons were passengers and they

cannot be said to be contributed to the accident except when there a proof that the passenger had contributed to it. There could be an instance when a passenger jumped out of the vehicle or when he attempted to cause disturbance to the steering of the vehicle that resulted in the accident. The evidence was that yet another truck owner had driven the vehicle in such a fashion that it literally pushed the driver of the insured's vehicle to one left hand corner that ultimately resulted in a collision against a tree. This cannot be attributed to the passenger for abatement of a portion of claim due to contributory negligence.

4. The learned counsel for the appellant/claimant in FAO No.2791 of 2010 points out that the Tribunal has not provided adequately for loss of consortium and for loss of love and affection. Considering that the accident took place on 03.09.2003 and the deceased was said to be 28 years of age and that further the deceased was working as a teacher in a private school having been qualified to be a teacher with a B.Ed. Degree, I will take the income as taken by the Tribunal as ₹4,500/-, make a prospect of increase at 50%, apply a multiplier of 17 as suggested by the Supreme Court in **Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121** and provide for a compensation for consortium and loss of love and affection in the manner suggested in **Rajesh Versus Rajbir Singh-2013(9) SCC 54**. I will moderately reduce the claim for

funeral expenses and for loss of love and affection to the parent and child considering the fact that the accident was of the year 2003 and the provision for interest itself will compensate for the present sums of compensation provided with the non-pecuniary heads. The tabulation of various claims is as follows:-

Accident	03.09.2003		
Age	28		
Occupation	Teacher		
Claimants	Mother, widow, minor daughter		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (₹)	Amount (₹)
1.	Income	4,500	4,500
2.	Add, % of increase 30%/50%		6,750
3.	Deduction ½, 1/3, ¼, 1/5	3,000	4,500
4.	Multiplicand		54,000
5.	Multiplier	18	17
6.	Loss of dependence		9,18,000
7.	Medical expenses	1,580	1,580
8.	Loss of consortium	5,000	1,00,000
9.	Loss of love and affection		1,00,000
10.	Loss to estate		5,000
11.	Funeral expenses		10,000
	Total	6,59,580	11,34,580

There shall be award of ₹11,34,580/- which I round off to ₹11,34,600/- and the additional amount of compensation shall also attract interest at 7.5% from the date of petition till date of payment. The amount shall be distributed amongst the widow, minor daughter and mother in the ratio of 2:2:1. The primary liability will be on the insurer and the right of recovery shall be granted against the owner and driver.

5. FAO No.2791 of 2010 is allowed, FAO Nos.3001 and 3002 of 2010 filed by the owner and driver are dismissed.

(K.KANNAN)
JUDGE

16.02.2016
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