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

**1) FAO No.6338 of 2010 and
XOBJC No.73-CII of 2011**
Date of Decision: May 20, 2016

Smt. Durga Wati & another .... Appellants

Versus

Vansh Deep Kapoor & others .... Respondents

**2) FAO No.6344 of 2010 and
XOBJC No.74-CII of 2011**

Smt. Guddi Devi & another .... Appellants

Versus

Vansh Deep Kapoor & others .... Respondents

Coram Hon'ble Mr. Justice Amol Rattan Singh.

Present: Mr. Karan Singh, Advocate,
for the appellants in both the cases.

None for the cross-objectors (respondents No.1 and 3
in both the cases).

Mr. Suvir Dewan, Advocate,
for respondent-National Insurance Co. Ltd.
(respondent No.2 in both the cases).

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<u>Amol Rattan Singh, J.</u>

1. These two appeals, with cross-objections filed in each of them, arise from a common Award of the Motor Accident Claims Tribunal, Yamuna Nagar, dated 16.02.2010, in two claim petitions filed before it.

2. The facts, as taken from the Award, are that on 03.06.2006, Satinder Kumar, alongwith other labourers, Sukhal Parshad, Subhash Pal, Surinder Kumar

and Sunil Mahto, were doing some labour work in a plywood factory running in the name of M/s Ved Parkash Radhey Sham. They had loaded ply board sheets in vehicle bearing registration No. HR-38A-5477 and were travelling in the same truck, to deliver the ply board sheets to another place.

Allegedly, the truck was being driven by its driver (respondent No.3 herein), Puran Singh, in a rash and negligent manner. When the truck reached near Gupta Palace, Jagadhri, at about 3:40 PM, the aforesaid driver suddenly applied the brakes, due to which the ply board sheets fell on the labourers, leading to multiple grievous injuries suffered by them.

Surinder Kumar is stated to have died on the spot due to the injuries, whereas Satender Kumar was first taken to the Civil Hospital, Jagadhri, where he unfortunately died the next day, i.e. on 04.06.2006.

FIR No.227 was registered on 03.06.2006, for the commission of offences punishable under Sections 279, 337 and 304-A IPC, at Police Station, City Jagadhri.

3. As per the claim petition, Satender Kumar was 20 years of age, working as a labourer in the aforesaid firm, earning Rs.3500/- per month. The claimants (appellants in FAO No.6338 of 2010) are his parents who sought compensation for the loss of their son, at a young age.

4. The second claim petition was filed by the wife, two minor daughters, minor son and mother of Surinder Kumar, who, it was claimed, was 35 years of age, also earning Rs.3500/- per month, from the same firm. These claimants sought compensation of Rs.15 lakhs on account of the death of Surinder Kumar.

5. In the joint written statement filed by respondents No.1 and 3, i.e. the owner and driver of the truck, it was stated that no accident at all had taken place

on the said date and time and that the FIR was also lodged in connivance with the police. Further, the compensation claim was also contended to be highly speculative.

The insurance company, i.e. respondent No.2 before the Tribunal, also took the same plea in its separate written statement and further contended that the deceased were travelling as gratuitous passengers in the truck at the time of the accident and as such, the claimants were not entitled to any compensation.

It was further contended that respondent No.3 was not carrying a valid driving licence and that the vehicle was being used in violation of the terms and conditions of the insurance policy.

6. Upon the aforesaid pleadings, the learned Tribunal framed the following issues:-

> "1. Whether the death of Satinder Kumar and Surinder Kumar took place in an accident involving truck No.HR-38A-5477 as alleged? OPP
>
> 2. Whether the claimants in both the claim petitions are the legal representatives of the deceased and entitled to compensation, if so how much and from whom? OPP
>
> 3. Whether the claim petitions already filed by the claimants before the Workmen Compensation Commissioner, Yamuna Nagar, have been dismissed as withdrawn, if so to what effect? OPR-2.
>
> 4. Whether respondents No.1 and 3 have violated the terms and conditions of the insurance policy, if so its effect? OPR-2.
>
> 5. Relief."

7. The claimants examined four witnesses, including the Ahlmad of a Court, one Dr. Vineet Gupta, eye witness Sunil Mahto, other than the first

claimants in each claim petition (first appellant in each of these appeals).

The respondents examined respondent No.1, i.e. the owner of the vehicle, whereas the insurance company closed its evidence after producing certain documents.

8. Upon considering the evidence before it, the learned Tribunal held that though Satender Kumar and Surinder Kumar died in the accident in question but the negligence of respondent No.3, i.e. the driver of the vehicle, was not proved.

This was so held by the Tribunal on the ground that the eye witness, Sunil Mahto, while appearing as PW5, nowhere stated that respondent No.3 was actually negligent in driving the vehicle. As per the Tribunal, PW5 had deposed that all the labourers were travelling in the rear body of the truck, where the plywood sheets were loaded. He had only stated that the driver suddenly applied the brakes as a result of which the plywood loaded in the truck had fallen upon the labourers travelling in it, including himself, resulting in injuries and the death of the aforesaid two persons.

Also, it was noticed by the Tribunal (though not given as one of the reasons for eventually dismissing the claim petitions), that Sunil Mahto had stated that he did not know the number of the truck or the name of the driver at the time of the accident but was subsequently told the number.

However, as regards the contention that no such accident took place, the learned Tribunal held that the two deceased had died because of the injuries sustained by them in the accident itself.

9. Other than the aforesaid reason, i.e. non-disclosure of negligence of respondent No.3 by PW5, the learned Tribunal noticed that first the claimants had filed a petition under the Workmens' Compensation Act, 1923, which they

withdrew later.

Thereafter, they first filed the claim petition before the MACT under Section 163-A of the Motor Vehicles Act, 1988, which they later amended, (with such amendment allowed), to be treated as a petition under Section 166 of the said Act.

The Tribunal held that even after the amendment, the pleadings were not essentially changed in the petition and as such, though the requirement of Section 163-A of the Act had been satisfied, but thereafter, negligence of the driver had to be specifically proved, which was not proved.

Yet further, it was held that with the claim petition filed under the Workmens' Compensation Act having been withdrawn, with that fact not disclosed in the claim petition before the MACT, there was concealment by the claimants, and yet further, it was not shown that permission had been taken from the Commissioner under the Workmens' Compensation Act, to file a fresh petition, before the Motor Accident Claims Tribunal.

Consequently, both the claim petitions were dismissed vide the impugned Award; but even so, the learned Tribunal calculated the compensation which otherwise may have been awardable to the claimants.

10. However, even while holding that no compensation was payable to the claimants, the liability of the respondents was also still assessed, inasmuch as, the insurance company (presently respondent No.2) was held not liable to pay compensation (had it been payable), in view of the fact that the deceased not being employees of respondent No.1, were still travelling in the goods vehicle and as such, they were treated to be gratuitous passengers, even as casual labourers who had been employed to load and unload the plywood on the vehicle.

Having already held that the deceased and the other persons travelling in the truck were not employees, of the plywood factory either, nor of respondent No.1, i.e. the owner of the vehicle, the insurance company was absolved of all liability to pay any compensation, if at all it had been payable, as respondents No.1 and 3, i.e. the owner and driver of the vehicle, were held guilty of having violated the conditions of the insurance policy.

Eventually, the claim petitions in any case were dismissed, as already discussed.

11. The first question before this Court, therefore, naturally, is as to whether the dismissal of the claim petitions, vide the impugned Award was correct or erroneous, on the above grounds, other than the issue of considering whether the compensation assessed was adequate or not, if found payable by this Court.

12. Learned counsel for the appellants submitted that as a matter of fact, the learned Tribunal had erred in not appreciating the testimony of PW5 correctly, inasmuch as, he had specifically stated that the accident had taken place due to the negligence of respondent No.3, i.e. the driver of the vehicle. In this regard, he pointed to the evidence available in the record of the Tribunal, put up before this Court, from which it is seen that after stating that the plywood fell on the labourers travelling in the truck, on account of the brakes suddenly applied by the driver, PW5 had specifically stated that the accident occurred due to the fault of the truck driver who had driven the truck at a fast speed and had suddenly applied the brakes.

Learned counsel therefore submitted that with the Tribunal having wholly ignored that part of the testimony, and the fact that the very same witness had also got the FIR registered, pursuant to which a criminal case was pending in the Court of the learned ACJM, as admitted by the owner of the offending vehicle, i.e. respondent No.1, in his affidavit before the MACT, no further proof was required that it was actually respondent No.3 who was guilty of negligent and rash driving. Learned counsel submitted that this would further be so in view of the fact that the driver never stepped into the witness box to refute the aforesaid testimony, though respondent No.1 had stated in his affidavit that the said driver, i.e. respondent No.3, had met with an accident in Gujarat and was unable to come and testify. However, he further pointed to the fact that no evidence in this regard, i.e. of the driver having met with another accident, was led by respondent No.1 or respondent No.3, and respondent No.1 in his cross-examination (as RW1), before the Tribunal, had admitted that he had never approached any higher police authority with regard to the false registration of a case against the driver of his truck.

Hence, Mr. Karan Singh submitted, that as a matter of fact, the accident having taken place due to the rash and negligent driving of respondent No.3, all three respondents were jointly and severally liable for compensating the appellants, for the deaths of Surinder Kumar and Satender Kumar.

As per learned counsel, even the insurance company could not be absolved of its liability, as the offending vehicle was duly carrying a valid permit as per the testimony of RW1, which evidence not dislodged by the insurance company and further, it was also deposed by the owner (Respondent No. 1-RW-1), that he had paid premium for the employees/labourers on the truck, which again has not been refuted by the insurance company by examining any witness to the contrary. Hence, he submitted that the company is actually liable to pay the compensation.

13. On the other hand, Mr. Suvir Dewan, learned counsel for respondent No.2, i.e. the National Insurance Company Ltd., submitted that the deceased having boarded the goods vehicle as gratuitous passengers, hence, even if the finding of the Tribunal on the issue of negligence is upheld, though according to learned counsel, it is not proved in any manner, the insurance company cannot be held liable to indemnify the insured, i.e. respondent No.1, in view of the fact that the policy did not cover any gratuitous passengers, especially as they were travelling on the rear side of the goods vehicle, where the plywood was loaded.

Hence, he submitted that other than the fact that the appeals need to be dismissed on that ground alone, however, even if this Court were to come to the conclusion that any compensation is payable, then the liability to do so would be on respondents No.1 and 2 and not on the insurance company.

14. Though nobody appeared on the final date of hearing for respondents No.1 and 3, however, the cross-objections filed on behalf of respondent No.1, i.e. the owner of the vehicle, are on record. A perusal of the said cross-objections shows that respondent No.1 has taken a plea that firstly, the deceased and other labourers travelling with them, were doing work for M/s Ved Parkash Radhey Sham Plywood Factory and had loaded the plywood sheets on to the vehicle and were travelling on the truck for the purpose of unloading the plywood at the place where it was delivered. Hence, it is contended in the cross-objections, that the finding of the Tribunal that the deceased were not employees of M/s Ved Parkash Radhey Sham, is wholly erroneous as even if they were not permanent employees, they were at least casual/temporary employees of the said firm.

Therefore, it is further contended, that the insurance company is very much liable to pay compensation in case this Court comes to the finding that the deceased Satender Kumar and Surinder Kumar had died due to the negligence of respondent No.3, i.e. the driver of the vehicle. Consequently, it has been further prayed that the finding of the Tribunal, wholly exonerating the insurance company of its liability, deserves to be reversed.

15. Having heard learned counsel for the parties and having considered the Award of the Tribunal, in my opinion, the appeals deserve to succeed. The Tribunal erred firstly in holding that the eye witness, Sunil Mahto, stated to be one of the injured labourers, while appearing as PW5 had not stated anything about the negligent driving of respondent No.3, i.e. Puran Singh. A perusal of the testimony of the aforesaid witness shows that, in his examination-in-chief, he deposed as follows:-

> "On 3.6.2006 truck No.5477 was carrying goods. I was travelling in that truck with six other labourers including Surinder and Satinder. All of us were factory worker of M/s Radhey Sham Ved Parkash. The driver suddenly applied the brakes as a result of which the ply loaded in the truck fell over us. I also suffered injuries in the accident. Satinder and Surinder died on account of the injuries suffered due to the fall of ply over them. The accident took place due to the fault of the truck driver, who was driving the truck at a fast speed and suddenly applied brakes. I lodged the report of the accident with the police."

Thus, this witness did not only state that the driver of the vehicle was driving at a fast speed and suddenly applied the brakes due to which the ply wood fell over the labourers, he also specifically stated that the accident occurred due to the fault of the driver. Hence, it is not understood as to how the Tribunal held that this witness had not stated that respondent No.3 was not negligent in driving.

Further, the negligence in driving can also be assessed from the fact that the plywood fell down on the labourers, upon the brakes having been applied suddenly. Obviously, the impact, of a vehicle in motion suddenly stopping, led to the plywood being dislodged and falling upon the labourers, so hard that it not only caused injuries but also the death of two labourers. In the normal course, if brakes are applied on a vehicle travelling at a slow speed, which in such a situation it should have been, goods loaded in the vehicle do not fall. Such an occurrence would normally happen only if the vehicle is travelling at a speed higher than it should have been, and had to be stopped suddenly for any reason. Thus, the onus on the driver of a goods vehicle, loaded with goods, to drive the vehicle carefully at a slow speed, especially when he has allowed labourers to sit in the rear side of the vehicle, alongwith the goods, is an onus which has to be discharged by him with great responsibility, so as to ensure that the lives of those whom he has so allowed to travel in his vehicle, in the same compartment/part of the vehicle, where the goods are loaded, are safe. This is apart from the facts that in any case, the goods in the vehicle, i.e. the plywood, should have been secured in a manner to ensure that in case of the sudden need to apply brakes, or in case of an accident, the plywood boards did not either fall on to anybody sitting in the vehicle, and did not fall out of the vehicle on to any person or vehicle coming behind the truck in which the plywood was loaded.

15-A As regards the finding of the Tribunal that this witness did not mention that the name and number of the vehicle, again I do not see what significance is attached to the said fact, in view of the fact that a labourer travelling in a truck, who is not otherwise on the staff of the truck, cannot be accepted to know the name of the driver and in any case, would also not normally memorise the number of the vehicle that he was getting into. Thus, the Tribunal wholly mis-appreciated the evidence in that regard also.

16. As regards the filing of a claim petition under the Workmens' Compensation Act (now Employees Compensation Act, 1923) and then withdrawing it, I do not see how a simple withdrawal of a claim filed under the Act of 1923, would debar a claim under the Act of 1988. No doubt, in terms of Section 167 of the Act of 1988, a claim can be raised under either of the two Acts but not under both. Though, it may be a subject of debate as to whether that bar operates only in respect of an accident of a vehicle owned by an employer of a workman, leading to an injury to the workman, or whether it would also operate where a workman working under a particular employer was injured while travelling in a vehicle, not owned by the employer and was not driven by a driver employed by the employer, but nevertheless the employee was travelling in the line of duty for such employer; however, that controversy is not being gone into in the present case, in view of the fact that the death of the workmen, i.e. Satender Kumar and Surinder Kumar, occurred in a vehicle not owned by the firm they were working with, (even if as casual labour as contended), i.e. M/s Ved Parkash Radhey Sham Plywood Factory, but were travelling by a vehicle owned by respondent No.1 herein.

Thus, had the appellants-claimants taken compensation under the Act of 1923, and then also claimed compensation under the Act of 1988, then, of course, that controversy would have to be gone into, however, since the appellants-claimants withdrew their claim filed under the Act of 1923, without taking any compensation under that Act, in my opinion the principle of *res-judicata* also would not apply to the provision of a specific beneficial legislation, either in the form of the Act of 1923, or in the form of Chapters 10, 11 and 12 of the Act of 1988.

Therefore, the appellants not having taken any claim under the Act of 1923, I do not see how, simply due to non-disclosure of withdrawal of those petitions/applications, it would affect their rights to claim compensation from the owner, driver and insurer of the motor vehicle in which the deceased were travelling, if it is proved that the accident was caused due to the negligent driving of the driver of that vehicle. This would be especially so, keeping in view the fact that the deceased were only labourers/low category workmen, which issue would also be discussed in the next following paragraph.

17. Next, coming to the issue of the claim petitions having first been filed under Section 163-A of the Act of 1988 and then having been amended to be petitions under Section 166 of that Act.

Admittedly, such amendment was allowed to the appellants herein, by the Tribunal itself. Once such amendment was allowed, the initial filing of the petitions under Section 163-A, would not deprive the claimants of their right to claim compensation in terms of Section 166, such amendment not having been challenged at any stage by the respondents.

Other than that, it needs to be specifically noticed that the appellants are the legal heirs of deceased labourers; as such, obviously whatever petitions were made filed by them or amended thereafter, were obviously on the advice of their counsel. No doubt, any action taken by a counsel for a party in a *lis,* is to be taken as an act or action by the litigant himself/herself and further, ignorance of law obviously is not a ground generally available to a litigant; however, in my opinion, a Court cannot shut its eyes to the status of parties to a *lis* and as such, with the appellants-claimants being widows and children, or parents, of labourers, they obviously come from one of the lowest strata of society, who cannot be attributed even basic knowledge of the form of pleadings.

Hence, the claim petitions having been allowed to be amended by the Tribunal, in such circumstances, the appellants cannot be denied their right to compensation in the opinion of this Court.

17-A In any case, the ground for dismissal, by the Tribunal, on this aspect, was that after the amendment to the petitions, allowing them to be filed as petitions under Section 166 of the Act of 1988, the burden to prove negligence of the driver of the vehicle was on the claimants, which, according to the Tribunal, was a burden they did not discharge sufficiently.

This Court has already, hereinabove, specifically differed with the finding of the Tribunal on the issue of negligence, holding that respondent No.3 was, in fact, negligent in driving the vehicle, leading to the death of Satender Kumar and Surinder Kumar, due to which the claim petitions were filed.

Hence, the Tribunals' reasoning for dismissing the claim petitions, on all counts, is reversed.

18. Having held as above, to the effect that the claim petitions did not deserve to be dismissed for the reasons that the Tribunal has given, and should have been allowed, it is now to be seen as to whether the compensation assessed by the Tribunal (though not held to be awardable and consequently not awarded to the claimants), was adequate compensation or not.

FAO No. 6344 of 2010

19. Coming first to the case of the appellants in FAO No.6344 of 2010, i.e. the widow, three minor children and mother of deceased Surinder Kumar.

Appellant No.1, Guddi Devi, widow of the deceased, testified as PW3 and deposed that her husband was earning Rs.3500/- per month as a labourer in the plywood factory, but could not actually come up with any proof of such employment. However, taking Rs.3500/- per month to be also minimum wages payable to an unskilled worker, as on the date of the accident, i.e. 03.06.2006, the learned Tribunal assessed the income of the deceased at that much, per month. To the aforesaid sum, a 1/3rd cut was made towards the personal living expenses of the deceased, with the Tribunal stating that it was in terms of the law laid down in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121. Thus, the loss of monthly dependent income to the claimants was assessed at Rs.2335/- and the annual dependency at Rs.28,020/-.

The age of the deceased was taken to be between 30 to 35 years, as he was stated to be 30 years old in the post mortem report and stated to be 35 years of age as per the testimony of the 1st appellant herein. Consequently, a multiplier of 16 was applied and the loss of income to the appellants was calculated at Rs.4,48,320/-

Other than the above, appellant No.1 was awarded Rs.20,000/- towards loss of consortium and another Rs.20,000/- towards the funeral expenses and last rites of the deceased.

Consequently, a total compensation of Rs.4,80,320/- was calculated by the Tribunal, as may have been payable but was, as already discussed, held to be not payable. (Actually, the total sum would work out to Rs. 4,88,320/- even as per the above, but was shown to be Rs. 4,80,320/- by the Tribunal).

20. Having seen the above, as regards the monthly income assessed, the Tribunal actually assessed it slightly more than the minimum wages payable to an unskilled worker. As per the notification of the Haryana Govt., on minimum wages applicable w.e.f. 01.01.2006 to 01.07.2006, such wages were Rs. 2447.32.

However, thereafter, the revised chart shows that w.e.f. 01.11.2004, the minimum wages for an unskilled worker were Rs.2600/- and w.e.f. 01.07.2007 were Rs.3510/-. Thus, assessment of monthly wages of an unskilled worker, at Rs.3000/- per month, as on 03.06.2006, seems to be more reasonable than the amount of Rs. 3500/- per month assessed by the Tribunal.

Further, in terms of *Sarla Vermas'* case (supra) where the number of dependents is 4 to 6, the deduction towards the personal living expenses of the deceased is to be taken to be 1/4th of his income and not 1/3rd as was done by the Tribunal. Deceased Surinder Kumar having a widow, three minor children and a mother to look after, i.e. 5 persons, accordingly, a deduction of 1/4th is applied to the monthly income of Rs.3000/-, thereby arriving at a loss of dependent income to the appellants-claimants to be Rs.2250/- per month. The annual dependency therefore works out to Rs.27,000/-, to which a multiplier of 16 is to be applied (as was applied also by the Tribunal), the deceased being between 30 to 35 years of age. Hence, the total loss of income to the appellants is Rs.4,32,000/-.

20-A. In terms of the ratio of the judgments in **Sanobanu Nazirbhai Mirza and others v. Ahmadabad Municipal Transport Service,** 2013 (4) RCR (Civil) 732, **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, Rs.1,00,000/- is to be awarded to appellant No.1 towards loss of consortium, and not Rs.20,000/- as was done by the Tribunal. That sum is accordingly awarded.

20-B. No amount was awarded to appellants No.2, 3 and 4, i.e. the two minor daughters and minor son of deceased Surinder Kumar, for the loss of love and affection of their father.

In *Rajesh v. Rajbirs'* case (supra), a total sum of Rs.1,00,000/- was awarded to the three minor children, for the loss of love and affection, care and guidance of their father, whereas in *Vimal Kanwars'* case (supra), Rs.2,00,000/- was awarded to the daughter, for the loss of love and affection of her father. This Court, consequently, has been awarding up to Rs.1,00,000/- each to minor children, especially girls, taking the 'mean ratio' of the aforesaid two judgments, but in this case, the number of minor children being 3, a balance would need to be struck and consequently, a total sum of Rs.2,00,000/- is awarded to the three minor children of the deceased, i.e. appellants No.2, 3 and 4, for the loss of love and affection, care and guidance of their father.

20-C Rs.50,000/- is also awarded to appellant No.5, i.e. the mother of the deceased, for the loss of love and affection of her son.

Rs.25,000/- (instead of Rs.20,000/-) is awarded to appellant No.1 towards funeral expenses and the last rites of deceased Surinder Kumar, again in terms of the ratio of the aforesaid judgments.

20-D Consequently, the total compensation to be paid to the appellants in FAO No. 6344 of 2010, is as follows:-

i)	Towards loss of income	:	Rs.4,32,000/-
ii)	Towards loss of consortium to appellant No.1	:	Rs.1,00,000/-
iii)	For the loss of love & affection, care and guidance, to appellants No.2,3 & 4	:	Rs.2,00,000/-
iv)	For the loss of love and affection of her son, to appellant No.5	:	Rs.50,000/-
v)	Towards funeral expenses and last rites	:	Rs.25,000/-
	Total	:	Rs.8,07,000/-

The above compensation would carry interest @ 6% per annum, running from the date of the filing of the claim petition, till realization thereof.

FAO No. 6338 of 2010

21. As regards the claimants in FAO No.6338 of 2010, i.e. the parents of deceased Satender Kumar, appellant No.1 in the said appeal, i.e. Smt.Durgawati Devi, testified as PW4 and stated that her son was 20 years of age, though as per the post mortem report his age was shown to be 19 years, as found by the Tribunal. Yet, accepting the statement of the mother, the age of Satender Kumar, at the time of his death, was taken by the Tribunal to be 20 years.

As regards the income of the deceased, the same deposition was made by this witness also, as was made in the other claim petition, to the effect that her son was working in a plywood factory, earning Rs.3500/- per month, but with no evidence thereto having been led. However, again, the Tribunal assessed the income at the same amount (Rs. 3500/-), holding it to be payable to an unskilled worker.

The deceased being a bachelor, 50% of his personal living expenses was deducted, thereby assessing the monthly loss of dependent income to be Rs.1750/- and the annual loss to be Rs.21,000/-.

However, a multiplier of 15 was applied and consequently, the loss of income to the claimants was assessed as Rs. 3,15,000/-. To that a sum of Rs. 20,000/- was added as compensation towards funeral expenses and last rites of the deceased and a total compensation of Rs. 3,35,000/- was awarded to the parents of deceased Satender Kumar, i.e. the present appellants in FAO No. 6338 of 2010.

(Note:- By clerical error, the Tribunal has first given the sum calculated as loss of income to be Rs. 2,13,000/- instead of Rs. 3,15,000, but while awarding the total compensation of Rs. 3,35,000 has correctly given the sum as Rs.

3,15,000/- + Rs. 20,000/-).

Again, however, the aforesaid sum was held to be not actually payable to the claimants, for the reasons already discussed hereinabove.

21-A. Having considered the above, as regards the annual dependent income of the claimants in this case, for the same reason as given in the case of the other appeal, i.e. FAO No.6344 of 2010, the monthly income of the deceased is taken to be Rs.3000/- (and not Rs. 3,500/-) to which a 50% deduction is to be made, as was correctly made by the Tribunal, the deceased being a bachelor. Thus, the dependency of appellant No.1, i.e. Durgawati Devi, mother of the deceased (his father, appellant No.2, not having been shown to be dependent on his son), would be Rs.1500/- per month, the annual dependency therefore being Rs.18,000/-.

However, the Tribunal erred in applying a multiplier to the dependent income of the claimants, in terms of the age of the mother of the deceased and not as per the age of the deceased.

It was held in **Amrit Bhanu Shali** vs. **National Insurance Co. Ltd** (2012) 11 SCC 738 that the multiplier to be applied even in the case of a bachelor, is to be as per the age of the deceased and not as per the age of either of his parents. The same was reiterated by the Supreme Court in **M. Mansoor and another** vs. **United India Insurance Company** (2013) 15 SCC 603, wherein, while quoting from **Amrit Bhanu Shali's** case (supra) their Lordships held as follows:-

> "*12. Admittedly, both the parents namely the appellants herein have been held to be dependants to the deceased Amjath Khan Arabu and therefore, the Tribunal held that they have the right to get the compensation. The Tribunal as well as the High Court made a deduction of 1/3rd only towards personal and living expenses of the deceased and as rightly contended by the learned counsel for the Respondent*

No.1, the deceased being a bachelor and the claimants being parents, the deduction of 50% has to be made as personal and living expenses as per the decision of this Court in Sarla Verma case (supra) extracted above. The first question is determined accordingly.

13. The Tribunal adopted the multiplier of 17 and the High Court determined the multiplier as 12 on the basis of the age of the parents/claimants. This Court in the decision in Amrit Bhanu Shali & Ors. vs. National Insurance Company Limited & Ors. (2012) 11 SCC 738 held as follows :

> *"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation."*

14. In the decision in Sarla Verma case (supra) this Court held that the multiplier to be used should be as mentioned in column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 24 years, the multiplier of 18 ought to have been applied. The Tribunal taking into consideration the age of the deceased wrongly applied the multiplier of 17 and the High Court committed a serious error by bringing it down to the multiplier of 12."

Hence, the deceased being 20 years of age in the present case, the multiplier to be applied to the dependent income of appellant No. 1, i.e. Durga Wati, the mother of the deceased, would be 18 and not 15, in terms of the aforesaid judgments, read with the judgment in Sarla Vermas' case (supra).

Consequently, the loss of dependent income to appellant No. 1 works out to Rs. 3,24,000/- (Rs. 18,000x18).

21-B Appellant Nos. 1 and 2 would also both be entitled to get compensation for the loss of love and affection of their son at a very young age of 20 years, at the rate of Rs.50,000/- each. Though that sum is highly inadequate in my opinion, but has nevertheless, been the sum which is awarded to parents of a deceased adult child.

As in the other case, a sum of Rs.25,000/- is also awarded to appellant No.2 towards the last rites and funeral expenses of his son, in terms of the judgments in Rajesh and Vimal Kanwars' cases (supra), as against the Rs. 20,000/- awarded under this head by the Tribunal.

21.C Hence, the total compensation now awarded to the appellants in FAO No. 6338 of 2010 is as follows:-

i)	Towards loss of income (to appellant No. 1)	:	Rs.3,24,000/-
ii)	For loss of love & affection (to both appellants)	:	Rs.50,000/- each =Rs.1,00,000/-
iii)	Towards funeral expenses and last rites (to appellant No.2)	:	Rs.25,000/-
	Total	:	Rs.4,49,000/-

23. Coming to the next aspect, in all such cases, this Court has been calculating the loss of future prospects of income but not making them payable immediately to the claimants, yet directing the insurance company/the owner and driver of the "offending vehicle", to deposit the sum calculated with the Motor Accident Claims Tribunal, with a direction to the Tribunal to further have such compensation deposited in a fixed deposit carrying maximum interest, in a nationalized bank.

This Court has been holding that in case the ratio of the judgment of the hon'ble Supreme Court (in the matter referred to a larger Bench with regard to awardability of loss of future prospects of income, in cases where the deceased was not on a permanent salaried job), comes in favour of such claimants, the amount deposited would become immediately payable to the claimants, in the same manner as an Award of the Tribunal is executed, without further reference to this Court. If, on the other hand, the ratio of the Supreme Courts' judgment is to the effect that such compensation is not payable to claimants in such cases, then the insurer/the insured, as had deposited the calculated sum with the Tribunal, would be entitled to get the amount refunded, alongwith the interest accumulated thereupon, by applying to the Tribunal for such refund.

However, in the present case, since it is being held that respondent No.2, i.e. the insurance company, is not liable to pay any compensation (for the reasons given hereinafter), it is felt to be an unreasonable burden to be immediately foisted on the owner and driver of the vehicle, i.e. respondents No.1 and 3 in both these appeals.

Hence, the issue of payment of any loss of future prospects of income is left open, to be claimed by the appellants in both these appeals, depending upon the outcome of the judgment of the Supreme Court, in the matter referred to the larger Bench, in **National Insurance Co.Ltd. v. Pushpa,** (2015) 9 SCC 166.

24. Having already noticed earlier that the insurance company, i.e. presently also respondent No. 2, was held not liable to pay any compensation, in view of the fact that there was a breach of policy by the insured (i.e. the owner of the vehicle, respondent No. 1-Vansh Deep Kapoor), for the reason that the deceased were held to be gratuitous passengers, the reasoning of the learned Tribunal is not found to be faulted by this Court.

This is for the reason that undoubtedly neither of the deceased was an employee of respondent No. 1, as is even stated in the Cross-Objections filed by respondent No. 1, to both these appeals. As noticed by the Tribunal, the insurance policy, however, only covered employees of respondent No. 1. Thus, if an employee of respondent No. 1, i.e. his driver (respondent No. 3), allowed, even for any practical reasons of unloading the goods from the vehicle, any persons to sit in the rear of the vehicle, they would be gratuitous passengers in the vehicle, not covered by any term of the insurance policy (Ex. R-11 before the Tribunal).

Though it must be stated here that the copy of the said policy, as is available before this Court from the records of the Tribunal, is a wholly illegible copy, however, the insurance policy by the same company, renewed in the following year, i.e. for the period 2007-08, is also available in the said record but nothing contained in the policy is seen to cover gratuitous passengers, even assuming that the policy was the same, *ad verbatim,* as policy for the period 2006-07. Nothing contained in the cross-objections filed by respondent No. 1, dispel the above finding.

Hence, I find no reason to disagree with the finding of the Tribunal, that respondent No. 2, i.e. the insurance company, is not liable to pay any compensation to the appellants-claimants and it is only the joint and several liability of respondents No. 1 and 3 to do so.

25. Both the appeals are hence allowed, in the aforesaid terms and the cross-objections filed to each of the two appeals are hereby dismissed; however, there shall be no order as to costs.

May 20, 2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**