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

(1) **FAO No.6323 of 2011 (O&M)**
Date of decision : 21.11.2016

Sandeep Kumar

......Appellant

Versus

Jasbir Kaur and others

...Respondents

(2) **FAO No.6582 of 2011**
Date of decision : 21.11.2016

Jasbir Kaur and others

......Appellants

Versus

Sulakhan Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Sandeep Bansal, Advocate for appellant in FAO No.6223 of 2011 and for respondent No.2 in FAO No.6582 of 2011.

Mr. J.S. Cooner, Advocate for respondents No.1 to 3 in FAO No.6223 of 2011 and for appellants in FAO No.6582 of 2011.

Mr. Amit Gupta, Advocate for Mr. Vipin Mahajan, Advocate for respondent No.4 in FAO No.6223 of 2011 and for respondent No.1 in FAO No.6582 of 2011.

Mr. R.K. Bashamboo, Advocate for respondent No.5-Insurance Company in FAO No.6223 of 2011 and for respondent No.3 in FAO No.6582 of 2011.

* * * *

DARSHAN SINGH, J.

This judgment of mine shall dispose of both the appeals caption above as both these appeals have been arisen out of the same award dated 09.05.2011 passed by the learned Motor Accidents Claims Tribunal, Tarn Taran (hereinafter called the "Tribunal") whereby the appellants-claimants of FAO No.6582 of 2011 have been awarded compensation to the tune of Rs.13,30,000/- on account of death of Balbir Singh in the motor vehicular accident which took place on 01.01.2008.

2. FAO No.6323 of 2011 has been preferred by Sandeep Kumar the owner of truck bearing registration No.PB-06H-8971 assailing the award particularly the exoneration of the Insurance Company.

3. FAO No.6582 of 2011 has been preferred by the appellants-claimants for enhancement of the amount of compensation.

4. I have heard learned counsel for the parties and have gone through the record of the case carefully.

5. Initiating the arguments, Mr. Sandeep Bansal, Advocate, learned counsel for the appellant in FAO No.6323 of 2011, the owner of the vehicle, contended that truck bearing registration No.PB-06H-8971 was duly insured with the Reliance General Insurance Company Limited respondent No.4 in the claim petition. But the learned Tribunal has wrongly mentioned in the award that the respondents No.1 and 2 could not produce any document on the file to show that the offending vehicle was insured with respondent-Insurance Company. He contended that

rather the documents for insurance were brought on record. So, the respondent-Insurance Company was liable to indemnify the insured.

6. Mr. R. K. Bashamboo, Advocate, learned counsel for respondent-Insurance Company has very fairly conceded that he has received the report from the respondent-Insurance Company wherein it has been verified that the vehicle in question was duly insured with it at the relevant period.

7. Thus, this fact is not disputed that the vehicle owned by appellant Sandeep Kumar the appellant of FAO No.6323 of 2011 was duly insured with respondent - Reliance Insurance Company Limited on the date of accident. So, the learned Tribunal has wrongly exonerated the respondent-Insurance Company from the liability to indemnify the insured.

8. Now we take up FAO No.6582 of 2011 filed by the appellants-claimants for enhancement of the amount of compensation.

9. Learned counsel for the appellants-claimants contended that the learned Tribunal has not awarded any future prospects towards the income of the deceased. He was the employee of the BSNL holding the permanent and regular job. His income was bound to increase with the passage of time. He further contended that very less amount has been awarded under the other conventional heads. He further contended that the learned Tribunal has deducted 50% of the income of the deceased towards his living and personal expenses. There was no evidence to show

that the appellant-claimant Gurvinder Singh was having any independent source of income. So, 1/3rd of the income of the deceased should have been deducted towards his personal and living expenses. Thus, he contended that just amount of compensation has not been awarded.

10. On the other hand, learned counsel for the respondents contended that the deceased was going to retire shortly, so the future prospects towards the income of the deceased were not required to be added. They further contended that both the sons of the deceased were major and were not dependent upon his income. So, the learned Tribunal has rightly deducted 50% of the income of the deceased towards his personal and living expenses. They further contended that sufficient amount of compensation has been awarded towards other conventional heads. Thus, they pleaded that there is no scope of any enhancement of the amount of compensation.

11. I have duly considered the aforesaid contentions.

12. This fact is not disputed that the age of the deceased at the time of his accidental death was 52 years. He was the employee of BSNL, a government of India enterprises. AW-3 Hardeep Singh Senior Telephone Operator has appeared as a witness along with the service record of the deceased. He has proved his salary certificates Ex.A2 and Ex.A3 and further deposed in the cross-examination that he was to retire at the age of 60 years. He also deposed that as per the service record his date of birth was 05.05.1953. So, on the date of his accidental death he

was below 55 years of age. As per the law laid down by Hon'ble Apex Court in case ***Rajesh Vs. Rajbir and others 2013(3) RCR 170***, 15% future prospects are required to be added to the income of the persons who are in the age group of 50 to 60. So, 15% of the income of the deceased shall be added towards future prospects. Total income of the deceased comes to Rs.19,550/- per month *i.e.* Rs.2,34,600/-.

13. The claim petition was filed by Smt. Jasbir Kaur, widow, Harvinder Singh and Gurvinder Singh, sons of the deceased. There is no dispute that both of the sons of the deceased were major. The respondent Insurance Company or the owner of the vehicle has not led any evidence to show that appellant-claimant No.3 Gurvinder Singh was also an earning hand. AW-1 Jasbir Kaur–claimant No.1 has simply stated that her elder son was working with Municipal Committee, Firozpur and was maintaining his family. So, at least appellant-claimant No.1 Jasbir Kaur and appellant-claimant No.3 Gurvinder Singh the younger son of the deceased were dependent upon the income of the deceased. The Hon'ble Apex Court in case ***Santosh Devi Vs. National Insurance Company Ltd. and others 2012(2) RCR (Civil) 882***, has laid down as under:-

> *"16. The Tribunal's observation that the two sons of the appellant cannot be treated dependant on their father because they were not minor is neither here nor there. In the cross-examination of the appellant, no question was put to her about the source of sustenance of her two sons. Therefore, there was no reason for the Tribunal to assume that the sons who had become major can no longer be regarded dependant on the deceased."*

14. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, 1/3rd of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.1,56,400/-. In view of the age of the deceased, learned Tribunal has rightly applied the multiplier of 11. Thus, the loss of dependency comes to Rs.17,20,400/-.

15. Learned Tribunal has only awarded a sum of Rs.5000/- towards funeral expenses and a sum of Rs.5000/- to appellant-claimant No.1 on account of loss of consortium. The appellants-claimants shall be entitled to a sum of Rs.25,000/- on account of funeral expenses. Appellant-claimant No.1 shall be entitled to Rs.1,00,000/- towards loss of consortium. Learned Tribunal has not awarded anything to appellants-claimants No.2 and 3 towards loss of love, affection and guidance. Appellants-claimants No.2 and 3 shall be entitled to a sum of Rs.1,00,000/- under this head. So, the total amount of compensation comes to Rs.19,45,400/-

16. Thus, keeping in view my aforesaid discussion, both the appeals are hereby partly allowed. In FAO No.6323 of 2011 the respondent-Insurance Company is held liable to indemnify the appellant-insured. In FAO No.6582 of 2011, the amount of compensation payable to the appellants-claimants is enhanced to Rs.19,45,400/- from Rs.13,30,000/- as awarded by the Tribunal. They shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced

amount from the date of filing the petition till realisation. The respondents of FAO No.6582 of 2011 (respondents No.1 to 3 in the claim petition) shall be jointly and severally liable to pay the entire amount of compensation including the enhanced amount. However, the apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

21.11.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned	**:**	**Yes / No**
Whether reportable	**:**	**Yes / No**