

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

**Date of Decision: 27.05.2016.**

**FAO Nos.6325 and 6326 of 2011 (O&M)**

The Oriental Insurance Company Limited ....Appellant.

**VERSUS**

Harshpreet Kaur and others ....Respondents.

**WITH**

**FAO Nos.6813 and 6814 of 2011 (O&M)**

Harshpreet Kaur and another ....Appellants.

**VERSUS**

Amir Chand and others ....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. D.P. Gupta, Advocate  
for the appellant (in FAO Nos.6325-26 of 2011) and  
for respondent No.3 (in FAO Nos.6813-14 of 2011).

Mr. Ashit Malik, Advocate  
for the appellants (in FAO Nos.6813-14 of 2011) and  
for respondents No.1 and 2 (in FAO Nos.6325-26 of 2011).

Mr. Yogesh Saini, Advocate  
for respondents No.3 & 4 (in FAO Nos.6325-26 of 2011) and  
for respondents No.1 & 2 (in FAO Nos.6813-14 of 2011).

Mr. Ram Kumar Saini, Advocate  
for respondent No.5 (in FAO Nos.6325-26 of 2011) and  
for respondent No.4 (in FAO Nos.6813-14 of 2011).

Mr. Ravinder Arora, Advocate  
for respondent No.6 (in FAO Nos.6325-26 of 2011) and  
for respondent No.5 (in FAO Nos.6813-14 of 2011).

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**SNEH PRASHAR, J.**

The award dated 05.08.2011 passed by learned Motor Accident Claims Tribunal, Kurukshetra (for short, “the Tribunal”), by virtue of which MACT Case Nos.117 and 118 of 2010 i.e. the claim petitions under Sections 166/140/141 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by Harshpreet Kaur and another (claimants-appellants) were allowed, has given rise to four appeals captioned above, two filed by the insurance company with whom Truck bearing No.HR-38G-5595 (hereinafter referred to as “the offending truck”) was insured and the others by Harshpreet Kaur and another, the claimants.

Precisely, the facts as extracted from the record are as under:-

On 27.12.2009 at around 5.00 a.m., Satnam Singh (since deceased) alongwith his wife Karamjit Kaur (since deceased) had started from Delhi for Gurdaspur by means of a Skoda car bearing registration No.DL-4CR-9093 (for short, “the skoda car”). He was driving the car on the left side of the road at a moderate speed. One Narinder Singh alongwith his friend Dalip Singh, resident of Hisar was also going from Delhi to Gurdaspur in a separate Verna car bearing registration No.HR-20P-1453 (for short, “the verna car”). At around 9.30 a.m., when they reached in the area of village Dhanori near 'Shiv Vaishno Punjabi Dhaba' on the G.T. road, the offending truck, the driver of which was Amir Chand (respondent No.1 in the claim petitions) was carelessly and negligently parked in the middle of the road. As there was fog and no indicator, reflector or signal showing existence of the offending truck on the road had been put up, the skoda car driven by Satnam Singh rammed into the stationary truck. Both Satnam Singh and Karamjit Kaur suffered serious and fatal injuries. Satnam Singh

succumbed to the injuries at the spot and Karamjit Kaur was declared dead when she was taken to C.H.C., Shahbad. Seeing the accident, Amir Chand, driver of the offending truck fled away from the spot.

The minor daughter and son (legal representatives) of deceased Satnam Singh and Karamjit Kaur filed two separate petitions under the provisions of Sections 166/140/141 of the Act of 1988 claiming compensation from the driver, owner and insurer (respondents No.1 to 3 in the petitions) of the offending truck as well as owner and insurer (respondents No.4 and 5 in the petition) of the skoda car for their untimely death.

The petitions were contested by the respondents. In their written statement, respondents No.1 and 2 apart from raising preliminary objection regarding maintainability of the claim petitions, denied that negligence on part of respondent No.1 had caused the accident. Controverting all other averments of the claimants, they pleaded that as a result of some mechanical fault the offending truck became out of order and could not be moved and as it was a foggy day, respondent No.1 tried to indicate presence of the truck by standing on the road but in the meantime the skoda car struck into the same. Respondent No.3 besides denying the accident raised all preliminary objections available to the insurer under the Act of 1988. Respondent No.4 (owner of the skoda car) submitted that the accident took place due to negligence of respondent No.1. Respondent No.5 (insurer of the skoda car) also raised certain preliminary objections and denying the averments of the claimants pleaded that the accident had taken place due to sole rash and negligent act of respondent No.1.

On the basis of pleadings of the parties, issues were settled.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal came to the conclusion that the accident took place due to sole rash and negligent parking of the offending truck by respondent-Amir Chand and awarded Rs.33,75,000/- in claim petition No.117 of 2010 filed in respect of death of Karamjit Kaur and Rs.41,75,000/- in claim petition No.118 of 2010 filed in respect of death of Satnam Singh, as compensation to the claimants (appellants in FAO Nos.6813 and 6814 of 2011) and held the driver, owner and insurer (respondents No.1 to 3 in the petition) jointly and severally liable to pay compensation and also held that the appellant-insurance company shall have the first liability to pay the award amount.

Feeling aggrieved by the award passed by learned Tribunal, the appellant-insurance company preferred appeals i.e. FAO No.6325 as well as FAO No.6326 of 2011. Also being unsatisfied with the compensation awarded by learned Tribunal, the appellants-claimants filed FAO No.6813 of 2011 and 6814 of 2011.

The submissions made by learned counsel for the parties have been heard and record perused.

The foremost argument raised by learned counsel for the appellant-insurance company with vehemence is that it is a clear cut case of contributory negligence on part of the driver of the offending truck and deceased Satnam Singh, who was driving the skoda car which collided with the offending truck. The offending truck was in stationary condition as it had developed some mechanical fault. Even if, for the sake of argument as

standing in the middle of the road without any indication, still it was expected from the driver of the skoda car to be careful and cautious while driving. There being no explanation to account for the deceased's inability to avoid hitting into the stationary truck, which should have been visible to the deceased in the lights of his own car, it becomes quite apparent that the deceased himself was driving rashly and negligently because of which even after seeing the offending truck on the road, he could not immediately apply brakes and control his car. Learned Tribunal gravely erred in holding that the total negligence was of driver of the offending truck which led to the accident even when contributory negligence on part of deceased Satnam Singh was proved and could not be ignored. To support his argument, learned counsel relied upon **Pepsu Road Transport Corporation vs. Gurdial Singh and others, 1989(2) The Punjab Law Reporter 467; Baldev Singh vs. Smt. Binder & Ors., 2010(3) Law Herald (P&H) 1977 and Raj Rani vs. Oriental Insurance Co. Ltd., 2009(13) SCC 654.**

The argument of learned counsel for the appellant-insurance company may appear to be attractive but is devoid of merit. In **Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors., JT 2002(6) SC 380,** which was a case of collision between a car and a truck, the Hon'ble Supreme Court observed as under:-

*“The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence.' Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory*

*negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."*

In the case in hand, the offending truck was parked in the middle of the road without putting on the back lights, reflectors, indicators or some kind of obstruction to show presence of the truck on the road. No doubt, the accident took place at 9.30 a.m. in the morning but it was mentioned in the First Information Report as well as in the statement of Narinder Singh, eyewitness of the accident, that there was heavy fog because of which the visibility was very poor. During winters especially in the last week of December, if there is heavy fog, the visibility is zero even at 9.30 a.m. Even the normal lights of the vehicle are not of much help. It is not the case that the deceased was driving in a high speed because of which when he tried to apply brakes he could not control his vehicle and hit into the truck. From the statement of the eyewitness, it transpires that as there was no indication of the existence of the offending truck on the road and the visibility was very poor due to heavy fog, deceased Satnam Singh could not see the offending truck and hit into the same. Driver of the offending truck did not dare to appear in the witness box to make atleast a self serving statement. On the said facts, the cases referred to by learned counsel for the appellant-insurance were distinguishable from the facts in hand. Neither any evidence was led by the appellant-insurance company nor from the evidence available on record, commission of any negligent act or breach of a legal duty on part of the deceased, driver of the skoda car, is made out. It cannot

caution. It was solely the negligence of driver of the offending truck who had left the same in the middle of the road without any indication that the accident occurred. Accordingly, the findings of learned Tribunal are affirmed.

Coming to the quantum of compensation to the appellants-claimants, learned counsel for the appellant-insurance company argued that the income tax returns Ex.P13 to Ex.P16 of deceased Satnam Singh and his deceased wife Karamjit Kaur were proved by PW6 Hari Kishan, Income Tax Officer, Ward No.48(1) New Delhi, but in his cross-examination, he admitted that the returns Ex.P13 to Ex.P15 do not bear the signatures of the assessee or the income tax official. The said copies had been downloaded from the internet. The copies downloaded from the internet would amount to secondary evidence. The electronic record cannot be admitted in evidence unless the requirements under Section 65-B of the Indian Evidence Act, 1872 are satisfied. In absence of certificate in terms of Section 65-B accompanying the electronic record, the documents had no evidentiary value. To support his argument, learned counsel relied upon **Anvar P.V. vs. P.K. Basheer and others, 2015(1) SCC (Civil) 27.**

The documents proved by PW6 Hari Kishan, Income Tax Officer were not C.Ds., V.C.Ds. or chip etc. The same were income tax returns which as stated by PW6 Hari Kishan in his cross-examination had been filed online by the assessees as per rules. He volunteered to state that now no signed return is required to be filed by an assessee. The return is filed online and in the instant case the reports Ex.P13 to Ex.P16 have been processed and finalized by the department. Merely because the returns were downloaded from the internet would not make them secondary evidence

especially when PW6 the income tax officer stated that the copies downloaded from the original through internet are correct to the best of his knowledge. In view of his statement, it can be said that the returns were proved in due process of law and the documents were very much admissible in evidence.

Deceased Satnam Singh and Karamjit Kaur had export business and were Directors of M/s Saini Flange (P) Limited, Industrial Area, Kundli. From the income tax return Ex.P15 for the assessment year 2009-2010 filed by deceased Karamjit Kaur, it is proved that her income was Rs.30,000/- per month. As such, the income of the deceased was rightly taken by learned Tribunal as Rs.3,60,000/- per annum and that needs no modification.

Perusal of the award shows that no amount was added to the income of deceased Karamjit Kaur computing future prospects. Following the ratio of **Rajesh and others vs. Rajbir Singh and others, 2013(2) R.C.R. (Civil) 170** since the age of the deceased was 42/43 years when she died in the accident, there had to be an addition of 30% to the actual income of the deceased on account of future prospects, which learned Tribunal failed to allow. As such, adding 30% to the income of the deceased towards future prospects, the amount comes to Rs.4,68,000/-. As rightly argued by learned counsel for the appellant-insurance company, since the income of the deceased comes within the range of taxable income, it was improper on part of learned Tribunal to have not deducted the income tax. According to the slabs applicable in the financial year 2009-2010, no tax was to be paid by a woman upto the income of Rs.1,80,000/- and savings upto Rs.1,00,000/-

income of deceased Karamjit Kaur were Rs.30,000/-. Accordingly, after deducting the amount under exemption limit of Rs.1,80,000/- and deductions of Rs.30,000/- the taxable income of the deceased comes to Rs.2,58,000/-. Deducting Rs.25,800/- as 10% income tax, the amount comes to Rs.4,42,200/-.

The deceased is survived by minor daughter and son-appellants No.1 and 2. The number of dependents being two, deduction of 1/3rd towards personal and living expenses of the deceased made by learned Tribunal is appropriate and calls for no change. Therefore, deducting 1/3rd, the amount comes to Rs.2,94,800/-. The age of the deceased being 42/43 years, the multiplier of '14' was rightly applied. Accordingly, the compensation payable to the appellants-claimants for loss of dependency on account of death of Karamjit Kaur comes to Rs.41,27,000/- (to make it a round figure).

In addition to the amount of Rs.41,27,000/- calculated towards dependency, the amount of Rs.15,000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/-. A further amount of Rs.1,00,000/- is awarded to the appellants-claimants for loss of love and affection.

Coming to quantum of compensation payable to the appellants-claimants on account of death of Satnam Singh, considering the income tax return Ex.P14 for the assessment year 2009-2010, learned Tribunal had rightly taken the income of deceased Satnam Singh as Rs.4,80,000/- per annum and that appears appropriate. However, no addition was made to the income computing future prospects. Adding 30% to the income of the deceased towards future prospects, the amount comes to Rs.6,24,000/-. Here

income tax slabs in the year 2009-2010, no tax was to be paid upto the income of Rs.1,50,000/- and savings upto Rs.1,00,000/- were permissible. As per income tax return Ex.P14, the deductions from income of deceased Satnam Singh were Rs.1,00,000/-. Thus, after deducting the amount of Rs.1,50,000/- as exemption limit and deductions of Rs.1,00,000/-, the taxable income of the deceased comes to Rs.3,74,000/-. Deducting Rs.44,800/- towards income tax, according to the slab given in the relevant assessment year, the amount comes to Rs.5,79,200/-.

There being two dependents namely appellants Harshpreet Kaur and Sanjeet Singh, deduction of 1/3rd towards personal and living expenses of the deceased was rightly made by learned Tribunal. Therefore, deducting 1/3rd, the amount comes to Rs.3,86,130/-. The age of the deceased being 47 years, the multiplier of '13' applied by learned Tribunal is appropriate and the compensation payable to the appellants-claimants for loss of dependency on account of death of Satnam Singh comes to Rs.50,19,700/- (to make it round figure).

In addition to the amount of Rs.50,19,700/- calculated towards dependency, the amount of Rs.15,000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/-. A further amount of Rs.1,00,000/- is awarded to the appellants-claimants for loss of love and affection. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeals bearing FAO Nos.6325 and 6326 of 2011 filed by the appellant-insurance company are dismissed and the appeals bearing FAO Nos.6813 and 6814 of 2011 filed by the appellants-claimants are partly allowed and the award dated 05.08.2011 passed by

in claim petition No.117 of 2010 and Rs.9,69,700/- in claim petition No.118 of 2010 be paid to the appellants-claimants within 45 days from the date of receipt of certified copy of this judgment, failing which they shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

**(SNEH PRASHAR)**  
**JUDGE**

**27.05.2016.**  
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