964.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6410 of 2011 (O&M)
Date of decision:17.02.2016

National Insurance Company Limited ... Appellant

versus

Rachna and others .... Respondents

II. <u>FAO No.31 of 2013</u> (O&M)

Rachna and others ... Appellants

versus

Majeed Mohd. and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashwani Talwar, Advocate,
for the appellant in FAO No.6410 of 2011 and
for respondent No.3 in FAO No.31 of 2013.

Mr. Alok Jain, Advocate,
for the appellants in FAO No.31 of 2013 and
for respondents 1 to 3 in FAO No.6410 of 2011.

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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.

<u>K.Kannan, J.</u> *(Oral)*

1. Both the appeals are connected and they address the issue of quantum. The appeal by the claimants for enhancement is in

FAO No.31 of 2013 and the appeal by the Insurance Company is FAO No.6410 of 2011.

2. The accident had taken place when the deceased was driving his own vehicle and dashed against an insured's vehicle coming from the opposite direction. The accident had taken place on 31.08.2009 in the morning hours about 12 noon. It was a case of head-on collision and the Tribunal, while assessing the liability, apportioned the guilt between the deceased and the driver of the insured's vehicle and after determining the compensation, made a partial abatement of 50% to the representatives of the deceased.

3. The learned counsel for the claimants argued that a fellow passenger in the vehicle in which the deceased was driving had given a complaint and a FIR had been registered only against the driver of the insured's vehicle. The driver of the insured's vehicle himself did not give any evidence to discredit the evidence given by an eyewitness that the insured's vehicle alone was responsible for the accident. The finding of contributory negligence and an abatement made to 50% to the claim, under the circumstances, is erroneous.

4. The accident had taken place on the way to Chandigarh Airport in broad day light. There was sufficient room for two vehicles to pass by without any scope for collision. In such a situation, if there was a collision, the Tribunal was justified in not

looking for any evidence of the driver of the insured's vehicle and found both vehicles to be responsible. I confirm the finding and hold that the deceased must take responsibility and the representatives, who have suffered abatement to claim to the tune of 50%. He was running a business of manufacturing shoes and the income tax returns filed showed the gradual increase from ₹2,00,600/- in the year prior to his death to ₹2,61,000/- in the subsequent year in the year of his death. There was surely a prospect of increase of his income and I will, therefore, apply a 50% increase of gross income, take on ₹2,61,433/- and make a deduction of 15% as going towards tax. I will adopt a multiplier of 15 and provide also for loss of consortium to the wife and loss of love and affection to the children and the parent. The several heads of claim are tabulated as under:-

Accident	31.08.2009		
Age	35		
Occupation	Business of manufacturing shoes		
Claimants	Wife, 2 minor sons and mother		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1.	Income	3,00,000	2,61,433
2.	Add,% of increase 30%/50%		3,92,149.5 less 15%=3,33,327
3.	Deduction ½, 1/3, ¼, 1/5	¼	2,49,995.30
4.	Multiplicand		-
5.	Multiplier		15
6.	Loss of dependence	33,75,000	37,49,929.59
7.	Medical expenses		
8.	Loss of consortium		1,00,000
9.	Loss of love and affection		2,50,000

10.	Loss to estate		5,000
11.	Funeral expenses		25,000
	Total	33,95,000	41,29,929

There shall be an aggregate of ₹41,29,929/-.

5. Consistent with my finding that there had been a case of contributory negligence, I will direct 50% of the amount to be paid, namely, ₹20,64,964/- which I round off to ₹20,65,000/-. The additional amount over what has been already assessed will attract interest at 9% from the date of petition till date of payment. The additional amount will be distributed in the ratio of 2:2:2:1 among wife, children and mother respectively. The mother will be entitled to the whole of the amount and as regards the share of the minor children, the same shall be kept in deposit during their minority and 75% will be permitted to be withdrawn on attaining majority and the rest of 25% will be split into 3 portions and invested for a further period of 3 years, the first portion for a period of 1 year, 2nd portion for a period of 2 years and 3rd portion for a period of 3 years. The widow shall be entitled to withdraw 50% of the amount and the balance of amount shall be split into 6 portions and the first portion will be deposited for a period of 1 year, the 2nd portion for a period of 2 years and so on upto 6 years. The deposit shall be made a nationalized bank with a specific direction from the court that the amount will be disbursed to the respective claimants as and when the amounts mature directly to the party with advices to the Tribunal. As regards the deposits of the minors' share, interest shall

be paid once in 3 months to the mother for maintenance during the period of minority.

6. The award stands modified and the appeal by the Insurance Company in FAO No.6410 of 2011 is dismissed and the appeal by the claimants for enhancement in FAO No.31 of 2013 is allowed to the above extent.

(K.KANNAN)
JUDGE

17.02.2016
sanjeev