

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

(1)

FAO No.5644 of 2012 (O&M)

Date of decision : 15.02.2016

New India Assurance Company Ltd.

.....Appellant

Versus

Laxmi Rani and others

...Respondents

(2)

FAO No.7957 of 2014 (O&M)

Date of decision : 15.02.2016

Laxmi Rani and others

.....Appellant

Versus

Hardeep Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. R.C. Gupta, Advocate for appellant
in FAO No.5644 of 2012 and
for respondent No.3 in FAO No.7957 of 2013.

Mr. N.S. Dandiwal, Advocate for respondents No.1 to 5
in FAO No.5644 of 2012 and
for appellants in FAO No.7957 of 2013.

Mr. Kulbir Sekhon, Advocate for respondents No.6 & 7
in FAO No.5644 of 2012 and
for respondents No.1 & 2 in FAO No.7957 of 2013.

DARSHAN SINGH, J.

This judgment of mine shall dispose of both the appeals referred above, which have arisen out of the same award dated 23.07.2012, passed by the learned Motor Accidents Claims Tribunal, Bathinda (hereinafter called the 'Tribunal').

2. For the sake of convenience, the status of the parties shall be referred as per the claim petition.

3. Vide the impugned award, the claimants have been awarded the compensation to the tune of Rs.13,21,000/- along with interest @ of 6% per annum from the date of filing the petition till realisation on account of death of Lachhman Singh in the motor vehicular accident, which took place on 26.02.2011.

4. Mr. R.C. Gupta, Advocate, learned counsel for the appellant-Insurance Company in FAO No.5644 of 2012 contended that the negligence on the part of the driver of the vehicle and the involvement of the vehicle in the accident is not established. The truck bearing registration No.PB-19E-2845 has been falsely involved only to get the compensation.

5. He further contended that the learned Tribunal has wrongly deducted 1/4th towards the personal expenses of the deceased. His brother and sister cannot be considered to be dependent upon him. Thus, he contended that the amount of compensation has been computed on higher side.

6. On the other hand, Mr. N.S. Dandiwal, Advocate, learned

counsel for appellants in FAO No.7957 of 2013 contended that the negligence on the part of the driver of truck bearing registration No.PB-19E-2845 and the involvement of the vehicle is fully established from the evidence adduced before the Tribunal. He further contended that the brother and sister of the deceased were dependent upon him as his father has already died. So, there is nothing wrong in deduction of 1/4th from his income.

7. He further contended that the learned Tribunal has not computed the just and appropriate compensation as the learned Tribunal has not added the future prospects to the income of the deceased. The loss of consortium to his widow has only been granted to the tune of Rs.5000/- and no compensation has been awarded to the mother on account of love and affection.

8. In reply to the aforesaid contentions, Mr. R.C. Gupta, Advocate, learned counsel for the New India Assurance Company Ltd. contended that no future prospects were required to be added to the income of the deceased as he was not having any permanent job and only his notional income has been taken into consideration by the learned Tribunal in order to compute the compensation, so no future prospects were required to be added to his income.

9. I have duly considered the aforesaid contentions.

10. I do not found any substance in the contentions raised by learned counsel for the Insurance Company. The claimants have examined CW-1 Udayvir Singh the eye witness of the occurrence. He

has fully supported the version of the claimants with respect to the mode of accident. He categorically deposed that at about 11:00 p.m. on 26.2.2011, when they reached near bus stand of village Dhilwan Kalan then the offending truck bearing registration No.PB-19E-2845 being driven by respondent No.1 Hardeep Singh came from Kot Kapura side. He was driving the truck at a very high speed, in a rash and negligent manner and struck the vehicle of Lachhman by bringing the offending truck on the wrong side of the road, due to which both Lachhman Singh and his cleaner received multiple injuries. Lachhman Singh was shifted to Civil Hospital, Kot Kapura but he died there. His cleaner has died at the spot. On his statement, the FIR No.13 dated 27.2.2011 Ex.CW1/C under Sections 304-A/427 of the Indian Penal Code was registered at Police Station Baja Khana against respondent No.1 Hardeep Singh. The testimony of CW-1 Udayvir Singh, the witness of the occurrence, is corroborated from the copy of the FIR Ex.CW1/C. No evidence has been led by the respondents (including the appellant-Insurance Company) in order to rebut the aforesaid evidence adduced by the claimants on the mode of accident. The non-appearance of respondent No.1 Hardeep Singh, the driver of the truck, in the witness box raises an adverse inference against the respondents. Thus, there is no reason to disbelieve the un rebutted evidence adduced by the claimants on the mode of accident. The evidence, so adduced by the claimants, clearly establishes that the present accident has occurred due to rash and negligent driving of truck bearing registration No.PB-19E-2845 by respondent No.1, which

resulted into the fatal injuries to Lachhman Singh and his cleaner.

11. I also do not found any wrong in the deduction of 1/4th towards the living and personal expenses of deceased Lachhman Singh out of his income. The heading of the claim petition clearly shows that Smt. Kiran Devi, the mother of deceased Lachhman Singh has been described as widow of Suraj Pal Singh, which shows that his father had already died. So, certainly his mother, unmarried sister and minor brother would be dependent upon his income. Thus, the deceased had total five dependents *i.e.* his widow, minor son, widow mother, unmarried sister and minor brother. As per the law laid down by Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121***, in view of the number of dependents upon deceased Lachhman Singh, 1/4th of his income was to be deducted towards his personal and living expenses. So, the learned Tribunal has not committed any mistake.

12. I found considerable substance in the contentions raised by learned counsel for the appellant in FAO No.7957 of 2013 that the learned Tribunal has not computed the just and appropriate compensation. The learned Tribunal has not taken into consideration the notional income of the deceased. The notional income is only taken qua the victim who is non-earning. In the instant case though the learned Tribunal has discarded the salary certificate of the deceased, but this fact has not been disputed that the deceased was driver by profession and even at the time of the accident he was driving vehicle bearing

registration No.PB-03S-2814 and learned Tribunal has taken his income in view of the nature of job to be Rs.8000/- per month. So, certainly it is not the notional income of the deceased.

13. As per the law laid down by Hon'ble Apex Court in cases ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54*** and ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, the future prospects are to be granted even to the persons who are self-employed. Deceased was also self-employed being driver by profession. As per the postmortem report, he was 23 years of age at the time of the accident. So, 50% of his income was required to be added towards future prospects. The total income of the deceased comes to Rs.12,000/- (8000 + 4000). 1/4th of his income is to be deducted towards his personal and living expenses. The remainder comes to Rs.9000/-. In view of the age of the deceased, the multiplier of 18 would be applicable. So, the multiplicand comes to Rs.19,44,000/- (9000 x 12 x 18).

14. The learned Tribunal has awarded only Rs.5000/- to claimant Laxmi Rani the widow of the deceased towards loss of consortium. This amount is enhanced to Rs.1,00,000/-. No amount has been awarded to the mother of the deceased towards loss of love and affection. She is awarded Rs.50,000/-. Deceased also had a minor son of only 1 ½ years of age. So, he will also be entitled to a compensation of Rs.1,00,000/- on account of loss of love, care and guidance. In this manner, the total amount of compensation comes to Rs.22,14,000/-

(19,44,000 + 20,000 + 1,00,000 + 50,000 + 1,00,000).

15. Thus, keeping in view my aforesaid discussion, FAO No.5644 of 2012 is without any merits and same is dismissed. However, FAO No.7957 of 2013 is partly allowed. The award of compensation to appellants-claimants in FAO No.7957 of 2013 is enhanced to Rs.22,14,000/- from Rs.13,21,000/-, as awarded by the learned Tribunal. The appellants-claimants shall be entitled to interest @ 6% per annum, as awarded by the learned Tribunal, on the enhanced amount from the date of filing the petition till realisation. The mode of disbursement of the awarded amount and the liability shall remain as determined by the learned Tribunal.

15.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**