

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

FAO No.1179 of 2013 (O&M)

Date of decision: 01.02.2016

The Oriental Insurance Company Limited Appellant

Versus

Archit Saini and others Respondents

2) FAO No.1180 of 2013 (O&M)

The Oriental Insurance Company Limited Appellant

Versus

Archit Saini and others Respondents

3) FAO No.1181 of 2013 (O&M)

The Oriental Insurance Company Limited Appellant

Versus

Gauri Saini and others Respondents

4) FAO No.1182 of 2013 (O&M)

The Oriental Insurance Company Limited Appellant

Versus

Archit Saini and others Respondents

5) FAO No.1183 of 2013 (O&M)

The Oriental Insurance Company Limited Appellant

Versus

Archit Saini and others Respondents

6) FAO No.1318 of 2013 (O&M)

Archit Saini and another	Appellants
Versus	
Sh. Purshotam Lal and others	Respondents
7) FAO No.1452 of 2013 (O&M)	
Archit Saini	Appellant
Versus	
Sh. Purshotam Lal and others	Respondents
8) FAO No.4596 of 2013 (O&M)	
Archit Saini and another	Appellants
Versus	
Sh. Purshotam Lal and others	Respondents
9) FAO No.4597 of 2013 (O&M)	
Archit Saini and another	Appellants
Versus	
Sh. Purshotam Lal and others	Respondents
10) FAO No.4598 of 2013 (O&M)	
Gauri Saini	Appellant
Versus	
Sh. Purshotam Lal and others	Respondents

CORAM: HON’BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjiv Pabbi, Advocate
 for the appellant
 in FAO Nos.1179-1183 of 2013 and
 for respondent No.3
 in FAO Nos.1318, 1452, 4596-4598 of 2013

Mr. R. S. Mamli, Advocate
for the appellants
in FAO Nos.1318, 1452, 4596-4598 of 2013 and
for respondents
in FAO Nos.1179-1183 of 2013

JITENDRA CHAUHAN J. (Oral)

CM No.19388-CII of 2013 in FAO No.4596 of 2013;

CM No.19389-CII of 2013 in FAO No.4597 of 2013

and

CM No.19390-CII of 2013 in FAO No.4598 of 2013

Keeping in view the grounds mentioned in the applications, the same are allowed and the delay of 119 days in filing the appeals stands condoned.

MAIN APPEALS

1. By this single judgment, I intend to dispose of the aforesaid ten appeals having arisen out of the common impugned award dated 21.12.2012.

2. Brief facts of the case are that on 15.12.2011, Archit Saini and Gauri Saini along with their parents Vinod Kumar Saini and Mamta Saini were coming from Srinagar to Yamuna Nagar in Car bearing registration No.HR02-K-0448, being driven by Vinod Saini. At about 10.30 PM, when they reached in front of Sadha Chula Dhaba in the area of Police Station Sujanpur, near Pathankot, District Gurdaspur, a Gas Tanker bearing registration

No.JK02-AF-8590 had been parked on the road without parking lights or indicator. Due to the traffic light coming from the opposite side, the driver, Vinod Kumar Saini could not see the wrongly parked above said offending tanker and the car struck against the protruding girder/chassis of offending vehicle. The car was completely damaged and Vinod Kumar Saini and Mamta Saini, who were sitting on the front seats of the car died on the spot, whereas, the appellants-Archit Saini and his sister-Gauri Saini, suffered multiple grievous injuries, on their bodies.

3. In this regard, an FIR No.155 dated 16.12.2011, under Sections 337, 338, 427 and 304-A IPC, in respect of the accident in question was got registered at Police Station Sujanpur, District Gurdaspur (Pb).

4. Consequently, the claimants-appellants filed a total five claim petitions before the learned Tribunal. Claim Petition No.06 of 2012, claiming the compensation of Rs.5,00,000/- on account of the injuries sustained by the appellant-Archit Saini; Claim Petition No.07 of 2012; claiming compensation of Rs.20,00,000/- on account of the death of their mother Smt. Mamta Saini; Claim Petition No.08 of 2012, claiming compensation of Rs.72,00,000/- on account of the death of their father-Vinod Kumar Saini; Claim Petition No.10 of 2012, claiming compensation of Rs.70,000/- on account of the damage to car and

Claim Petition No.11 of 2012, claiming compensation of Rs.5,00,000/- on account of the injuries sustained by appellant-Gauri Saini. Vide common impugned award, dated 21.12.2012, the learned Tribunal awarded compensation amounting to Rs.65,300/- Rs.3,99,000/-, Rs.42,22,840/-, Rs.15,000/- and Rs.60,300/-, respectively.

5. Now, the insurance company has impugned the award dated 21.12.2012 by filing separate appeals before this Court primarily on the ground that the accident has taken place due to the negligence and fault of the driver of the car, which hit against the stationary truck/tanker or in any case, it was a case of contributory negligence.

6. The claimant-appellants have also impugned the award on the grounds of the compensation awarded by the learned Tribunal is inadequate and have prayed for modification/enhancement of the award.

7. The learned counsel for the Insurance Company refers to the statement of PW7-Sohan Lal, an eyewitness, posted on the duty to contend that the tanker was though parked without indicator, yet it was visible from 70 ft. as the area had sufficient light. Therefore, there is negligence on the part of the driver of the car. Further, a just and reasonable compensation has already been granted to the claimants-injured for their injuries and damage of

the car. Hence, no further enhancement is required to be made.

8. On the other hand, the learned counsel for the claimants-injured, states that the tanker had been parked without any parking lights or indicators in total violation of the traffic rules and due to the lights of on coming traffic, the driver, Vinod Kumar Saini, father of the injured-claimants, could see the said offending vehicle. Further, the learned Tribunal has not awarded just and adequate amount qua the damage to the car as well as for the injuries sustained by the injured-claimants.

9. I have heard learned counsel for the parties and perused the case file.

10. As per the statement of PW1-Dr. Mukesh Verma, injured-Archit Saini, aged 14 years, had suffered head injury and fracture inner table parietal bone with epidural haematoma whereas, the injured, Gauri Saini, aged 9 years, had suffered left frontal bone depressed fracture with a small epidural haematoma. Both of them remained hospitalised from 19.12.2011 to 25.12.2011. Keeping in view the age of the injured, this Court feels that amount of Rs.20,000/- awarded towards pain and suffering deserves to be enhanced by another amount of Rs.15,000/- each, to injured-Archit & Gauri. Though, there is no record that the injured have lost a year of study, but, it can be safely assumed that their performance in the examinations must

have been adversely affected due to the accident. Therefore, another sum of Rs.10,000/- each, is awarded towards of loss of studies to each of the injured-claimants. The amount of Rs.15,000/- towards special diet, in view of the age and the injuries, is also inadequate, so another amount of Rs.5,000/- is awarded towards this head to each of the claimants.

11. The learned Tribunal has rightly awarded the amount qua the damage of the car as Rs.15,000/- after considering the mechanical report and value of the car Ex.P33. Thus, no ground for interference in the qua the damage of the car is made out.

12. Furthermore, in case of death of parents of claimants-appellants, amount of Rs.10,000/- (Rs.5,000/- each, in case of death of claimants' parents) has been awarded towards loss of love and affection, which is not just and adequate, therefore, following the law laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others, (2013-3) PLR 776***, an amount of Rs.2,00,000/- (Rs.1,00,000/- each, in case of death of claimants' parents) is awarded towards loss of love and affection in respect of death of the claimants' parents, payable to the children of the deceased, in equal share. As per the law laid down in ***Rajesh Vs. Rajbir Singh (SC), 2013(3) R.C.R. (Civil), 170***, amount of Rs.20,000/- (Rs.10,000/- each, in case of death of claimants' parents) awarded by the learned Tribunal, towards cremation and last rites is further

enhanced to Rs.50,000/- (Rs.25,000/- each, in case of death of claimants' parents).

13. In view of the above, the claimants-injured are held entitled to the enhanced compensation of Rs.2,80,000/- [Rs.30,000/- (enhancement towards 'pain and suffering') + Rs.20,000/- (enhancement towards loss of studies) + Rs.10,000/- (enhancement towards special diet) + Rs.1,90,000/- (enhancement towards 'loss of love and affection') + Rs.30,000/- (enhancement towards cremation and last rites)] as indicated above, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, the claimants-appellants shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal till its realization.

14. So far as the issue of contributory negligence is concerned, it has come in the testimony of Sohan Lal, PW-7, that the tanker/offending vehicle was parked without indicator but the same was visible from a distance of 70 ft. Moreover, a perusal of site plan Ex.P45 reveals that the offending vehicle was not parked in the middle of the road.

15. In view of the statement of PW-7 and site plan Ex.P45, it is proved that the tanker/offending vehicle was visible from a distance of 70 ft. and not parked in the middle of the road.

Therefore, in the considered opinion of this Court, it is a case of

contributory negligence.

16. This Court is of the opinion that there is 50% negligence on the part of the deceased/driver of the maruti car and the remaining negligence is of the offending vehicle. Hence, the claimants-injured are entitled to 50% of the total compensation awarded to them including the enhanced compensation. However, no deduction is to be made from the amount of Rs.1 lacs granted to each claimant for the loss of love and affection.

17. Accordingly, the award stands modified to the above extent and the present appeals of the claimants are disposed of.

(JITENDRA CHAUHAN)
JUDGE

01.02.2016
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