

FAO-10027-2014 (O&M) &
FAO-10076-2014 (O&M)

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

FAO-10027-2014 (O&M)
Date of decision: 1.6.2016

Bajrang Dass Goyal and others

...Appellants

Versus

M/s Micro Turners, Jhar Majri and others

...Respondents

FAO-10076-2014 (O&M)
Date of decision: 1.6.2016

Shri Ram General Insurance Co. Ltd.

...Appellant

Versus

Barjang Dass Goyal and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Rahul Vats, Advocate for the claimants

Ms.Rajwant Kaur, Advocate
for the driver and owner of the offending vehicle.

Mr.Sanjiv Goyal, Advocate for the Insurance Company

SNEH PRASHAR, J.

This judgment shall dispose of both the abovementioned appeals i.e. FAO-10027-2014 filed by the claimants and FAO-10076-2014 filed by the Insurance Company, assailing the award dated 11.8.2014 passed by learned Motor Accident Claims Tribunal, Panchkula (for short 'the Tribunal') vide which a sum of Rs.61,15,000/- was awarded to the claimants as compensation on account of death of

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Sorabh Goyal (son of appellants No.1 and 2, husband of appellant No.3

and father of appellant No.4) and the liability of payment of compensation amount was fastened upon the Insurance Company.

The submissions made by Mr.Rahul Vats, Advocate representing the claimants, Ms.Rajwant Kaur, Advocate for the driver and owner of the offending vehicle and Mr.Sanjiv Goyal, Advocate for the Insurance Company have been heard and record perused.

Learned counsel for the claimants submitted that the deceased was 26 years of age at the time of his death. He was businessman and as per income tax return for the year 2013-14, after deducting Rs.20,600/- payable towards income tax, learned Tribunal assessed his income as Rs.3,74,400/- per annum. The multiplier of 16 applied by learned Tribunal is in contravention to the law laid down in **Sarla Verma and others vs. DTC and another 2009 ACJ 1298**, according to which, since the deceased was 26 years aged, it should have been 17. Also no amount has been awarded to the minor daughter on account of loss of love, care and guidance and for loss of love and affection to the mother.

On the other hand, learned counsel for the Insurance Company controverting the submissions made by learned counsel for the claimants submitted that the income tax return for the year 2013-14 on the basis of which, the income of the deceased was assessed, was filed after his death by his father and exorbitant increase in the income had been shown only to extract higher compensation. In the earlier income tax return for the assessment year 2012-13, which was filed when the

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deceased was alive, his income was shown as Rs.2,00,930/- per annum, and that should have been made basis for assessing his income.

Learned counsel further submitted that the alleged accident is the result of head on collision between the two vehicles involved i.e. car bearing registration No.HR-03L-4697 and truck bearing registration No.HP 12A-5623. As such, there being contributory negligence on part of both the drivers, the liability should be fastened in the ratio of 50:50.

Atul Bansal, an eye witness and cousin of deceased Sorabh Goyal, appeared in the witness box as PW2. He deposed that at about 4.15 P.M. when Sorabh Goyal was crossing the bridge, in the meantime, a truck bearing registration No.HP-12A-5623 driven by Dharmender (respondent No.2) in a rash and negligent manner came and collided with the car of Sorabh Goyal. In his statement, he specifically deposed that the alleged accident occurred solely due to rash and negligent driving of offending truck by its driver. Neither respondent No.4-Dharmender driver of the offending truck stepped into the witness box to controvert the statement of PW2 Atul Bansal nor the insurance company summoned him as a witness to support their contention that the accident had taken place due to contributory negligence on part of the deceased, who was driving the car at the time of accident. The objection of the Insurance Company has no basis to stand on and the same is rejected.

The accident took place on 17.1.2013. There are three income tax returns i.e. for the year 2011-12, 2012-13 and 2013-14 of the deceased tendered in evidence. The income tax return for the assessment year 2013-14 Ex.PW4/4 was filed on 29.7.2013 and as per the same, the

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aggregate income of the deceased was Rs.3,94,460/- per annum and the tax payable on the total income was Rs.19,446/-. But, apparently, the said income tax return was filed after his death and therefore no value can be attached to the same. In the income tax return for the year 2011-12 the income of the deceased was shown as Rs.92,340/- and as per the income tax return for the year 2012-13 his income stand reflected as Rs.200,930/-. No doubt substantial increase in the income had been shown but in the income tax return for the year 2013-14 filed after his death there is unexplained and exorbitant increase which certainly does not appear to be genuine. Thus taking the income tax return for the year 2012-13 Ex.P4/3 as the basis and adding the possible increase in the income during the year he had worked before his death, the income of the deceased is assessed as Rs.2,90,000/- per annum.

Following the law laid down in **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54**, learned Tribunal has rightly added 50% to the actual income of the deceased computing future prospects. After adding 50% to the annual income of the deceased, it comes to Rs.4,35,000/- on which a sum of Rs.26,265/- is payable towards income tax. As such, the actual income of the deceased is assessed as Rs.4,08,735/- per annum. Since, the deceased was 26 years of age, multiplier of 17 would be applicable. Deduction of 1/3rd on account of personal and living expenses of the deceased has rightly been made.

No amount had been awarded towards loss of love, care and guidance to the minor daughter. The untimely separation from the father

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is a loss that can never be covered. Following the law laid down in

Vimal Kanwar and others vs. Kishore Dan and others 2013 (2) RCR

(Civil) 945 an amount of Rs.one lac is allowed to the minor daughter for loss of love, care and guidance. A sum of Rs.50,000/- is allowed to the mother for loss of love and affection. Learned Tribunal has already awarded a sum of Rs.one lac to the widow on account of loss of consortium and Rs.25,000/- for funeral expenses, which are just and adequate.

Accordingly, the total compensation comes to Rs.49,07,330/- i.e. Rs.4,08,735/- (actual income after adding 50% towards future prospects) -1/3rd (deduction towards personal expenses of the deceased) x 17 (multiplier) + Rs.2,75,000 /- (conventional heads including already awarded). Vide order dated 15.9.2015 passed in FAO-10076-2014 filed by the Insurance Company, the disbursement of compensation amount beyond Rs.40 lacs was stayed by this Court. As such, the remaining amount i.e. Rs.9,07,330/- alongwith interest as awarded by learned Tribunal be disbursed to the claimants within two months from the date of receipt of certified copy of this judgment, failing which, it shall carry interest at the rate of 7.5% per annum from the date of filing of the appeal, till its realization.

Both the appeals are disposed of accordingly and the award is modified to the above extent.

1.6.2016
gsv

(SNEH PRASHAR)
JUDGE