

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

FAO No.1538 of 2016(O&M)

The Oriental Insurance Company Ltd. ...Appellant

Versus

Dalwinder Singh @ Bhupinder Singh and others ...Respondents

and

FAO No.1557 of 2016(O&M)

The Oriental Insurance Company Ltd. ...Appellant

Versus

Gursewak Singh and others ...Respondents

Date of Decision: May 17, 2016

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.D.P.Gupta, Advocate for
the appellant – Insurance Company.

Mr.Munish Gupta, Advocate for
the respondents – claimants.

HARINDER SINGH SIDHU, J.

This judgment shall dispose of two appeals i.e. FAO Nos.1538 and 1557 of 2016, as both have been filed by the Insurance Company (The Oriental Insurance Company Limited) against two different awards dated 15.1.2016 passed by Motor Accident Claims Tribunal, Hoshiarpur (for short 'the Tribunal), but arising out of the same accident, which occurred on 27.1.2015, wherein, Harwinder Kaur and Harpreet Kaur had lost their lives.

Two different claim petitions were filed by the legal heirs of the

deceased. The Tribunal awarded compensation of Rs.10,85,000/- and Rs.11,45,000/- for the deaths of Harwinder Kaur and Harpreet Kaur, respectively.

Brief facts of the case are that on 27.1.2015, Harwinder Kaur and Harpreet Kaur were returning back to village Tutomazara after taking medicine from Mahilpur on Activa Scooter No.PB-07AT-1145. The scooter was driven by Harwinder Kaur, while Harpreet Kaur was the pillion rider. They were followed by Jarnail Singh resident of Tutomazara on his scooter No.PB-07J-2051. At about 2.30 PM, when they reached near the turning of village Tutomazara, a Bolero No.PB-11AK-2828 being driven rashly and negligently by respondent No.5 came from back side and struck against the Activa Scooter, as a result of which, both the occupants of the scooter fell down on the pucca portion of the road and sustained serious injuries. The scooter got entangled with the Bolero Jeep and it was dragged for quite a long distance. Harwinder Kaur and Harpreet Kaur died at the spot due to accidental injuries. FIR No.11 dated 27.1.2015 under Sections 304-A, etc. IPC was registered in Police Station Chabewal against respondent No.6 – Bhupinder Singh alias Sonu.

The legal heirs of the deceased filed claim petitions before Motor Accident Claims Tribunal, Hoshiarpur (for short 'the Tribunal).

The Tribunal returned a finding that the accident had been caused due to rash and negligent driving of the Bolero Jeep by its driver Bhupinder Singh. It assessed the income of the deceased at Rs.5000/- per month and considering that both the deceased were less than 40 years at the time of their accidental death, also added 50% to the income towards future

prospects. Besides, the Tribunal also awarded Rs.1,00,000/- towards 'loss of consortium' and Rs.25,000/- for 'funeral expenses'.

Learned counsel for the appellant- Insurance Company has challenged the award on the following grounds:-

1. Since the statement of the eye-witness Jarnail Singh is contradictory, therefore, the Tribunal has erred in returning the finding of rash and negligent driving of the Bolero Jeep against respondent No.6.
2. The determination of the income of the deceased at Rs.5000/- per annum is on higher side, and
3. No evidence of any employment of the deceased was produced, therefore, the Tribunal was not justified in granting the benefit of future prospects towards income.

Dealing with first argument, the onus to prove the rash and negligence on the part of the driver of the Bolero Jeep was on the claimants. Jarnail Singh – eye witness (AW1) tendered into evidence his affidavit as Ex.AW1/A, wherein, he attributed rashness and negligence to the driver of the Bolero Jeep. He deposed on the same lines as pleaded in the claim petition that on 27.1.2015 both the deceased were riding Activa Scooter on the correct side of the road. It was being driven by Harwinder Kaur, while Smt.Harpreet Kaur was sitting on the pillion seat. This witness was following them on his scooter No.PB-07J-2051. Secondly, an FIR was also registered against respondent No.6 in Police Station Chabewal on the same day. Some contradictions in the statement of the eye-witness cannot shatter the case of the claimants, which is also fortified by registration of an FIR against respondent No.6 on the day of accident itself.

In Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR

109, the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, was discussed as under:-

“xxx xxx xxx There is no denial that Radhey Shyam respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case State v. Radhey Shyam. Thus, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of Radhey Shyam respondent in which the claimant suffered injuries. xxx xxx xxx”

In case of **Mallamma vs. Balaji and others, 2004 ACJ 368**, the Karnataka High Court while reversing the finding of the Tribunal on the issue of negligence, held as under:-

“12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same.”

In **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006**, decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

“xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is

required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle”

In view of the above factual and legal position, the finding of the Tribunal that the accident was caused due to rash and negligent driving of the Bolero Jeep cannot be interfered with.

So far as the determination of the income of the deceased at Rs.5,000/- per month is concerned, both the deceased were home makers and were enjoying good health. In **Lata Wadhawa and others vs. State of Bihar and others 2001(4) RCR(Civil) 673** Hon'ble Supreme Court considered various issues raised by the petitioners including the one relating to payment of compensation to the victims of fire accident which occurred on March 3rd, 1989 resulting in the death of 60 persons and injuries to 113 persons. On the issue of payment of compensation to house-wives, it was observed in paragraph No.10 as under:-

“10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the

value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000/- per annum in case of some and Rs. 10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given datas for determination of compensation, did not assist in any manner by providing the datas for estimating the value of services rendered by such housewives. But even in the absence of such datas and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be re-calculated, taking the value of services rendered per annum to be Rs. 36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs. 50,000/- instead of Rs. 25,000/- given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000/- per annum and multiplier applied is eight. Though, the multiplier applied is correct, but the value of services rendered at Rs. 10,000/- per annum, cannot be held to be just and, we therefore, enhance the same to Rs. 20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs. 20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs. 50,000/- towards the conventional figure.”

The Hon'ble Supreme Court while upholding the assessment of income of a house-wife at Rs.5000/- in **Arun Kumar Agrawal v. National Insurance Co. Ltd.**, (2010) 9 SCC 218 also noted about the significant contribution of a house-wife towards the family. It observed:

“49. Work is very vital to the system of gender reconstruction in societies and in this context masculine and feminine work is clearly demarcated. The question which obviously arises is whether the census definition of work reflects the underlying process of gender discrimination.

50. Women are generally engaged in homemaking, bringing up children and also in production of goods and services which are not sold in the market but are consumed at the household level. Thus, the work of women mostly goes unrecognised and they are never valued. Therefore, in the categorisation by the census what is ignored is the well-known fact that women make significant contribution at various levels including agricultural production by sowing, harvesting, transplanting and also tending cattle and by cooking and delivering the food to those persons who are on the field during the agriculture season.

51. Though census operations do not call for consideration in this case but reference to the same has been made to show the strong bias shown against women and their work. We hope and trust that in the ongoing census operations this will be corrected.”

The accident in **Lata Wadhawa's** case (supra) had occurred in the year 1989, wherein, the notional income of a home-maker was taken to be Rs.3000/- per month. The case in hand relates to an accident of 2015 and, therefore, the assessment of the notional income of the deceased home-maker at the rate of Rs.5000/- is just and fair.

The deceased was aged about 32 years at the time of the accident. Therefore, the Tribunal, has rightly granted increase of 50% in her income towards future prospects, as laid down in **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(6) SCC 347.**

This Court in various first appeals including **FAO No.1207 of 2014** titled “**Reliance General Insurance Company Ltd. vs. Sayera Khatoon and others**” decided on 3.3.2014, **FAO No.1502 of 2015** titled “**National Insurance Company Limited vs. Pushpa Singh Chauhan and others**” decided on 20.3.2015 and **FAO No.4299 of 2015** titled “**Oriental Insurance Company Limited vs. Swarna Devi and others**” decided on 1.9.2015 has upheld the addition to the income towards future prospects, where, the deceased were either self-employed or working in un-organised sectors. The Special Leave Petitions filed against the aforesaid decisions have been dismissed by the Hon'ble Supreme Court.

In view of above, there is no ground to interfere in the impugned award.

Appeals dismissed.

May 17, 2016

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**(HARINDER SINGH SIDHU)
JUDGE**