

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

(1)

FAO No.5203 of 2013 (O&M)

Date of decision : 23.02.2016

Oriental Insurance Co. Ltd.

.....Appellant

Versus

Smt. Charan Kaur and others

...Respondents

(2)

FAO No.933 of 2014 (O&M)

Date of decision : 23.02.2016

Smt. Charan Kaur and others

.....Appellants

Versus

Bhupinder 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. Lalit Garg, Advocate for appellant
in FAO No.5203 of 2014 and
for respondent No.3 in FAO No.933 of 2014.

Mr. Vijay Lath, Advocate for respondents No.1 to 8
in FAO No.5203 of 2014 and
for appellants in FAO No.933 of 2014.

Mr. Deepak K. Sharma, Advocate for respondents No.9 & 10
in FAO No.5203 of 2014 and
for respondents No.1 & 2 in FAO No.933 of 2014.

DARSHAN SINGH, J.

This judgment of mine shall dispose of both the appeals referred above, which have arisen out of the same award dated 02.08.2013 passed by learned Motor Accidents Claims Tribunal, Rupnagar (hereinafter called the 'Tribunal'), whereby the claimants-appellants of FAO No.933 of 2014 have been awarded the compensation to the tune of Rs.12,20,000/- on account of death of Sher Singh in the motor vehicular accident which took place on 05.03.2012.

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

3. In nutshell, as per the case of the claimants on 05.03.2012 deceased Sher Singh was coming from his village towards Kiratpur Sahib while travelling on tractor bearing registration No.PB-16C-5239 with proper care and caution and on the left side of the road. When he reached near the Government School village Massewal, then a truck bearing registration No.HP-12A-6721 came from the opposite side, which was being driven by respondent No.2 Makhan Singh in a rash and negligent manner and struck against the tractor. As a result of which, Sher Singh received multiple serious injuries and succumbed to the injuries at the spot. The criminal case bearing FIR No.19 dated 05.03.2012 was registered against respondent No.2 at Police Station Kiratpur Sahib under Sections 279/304-A of the Indian Penal Code, 1860 (hereinafter called the 'IPC') with respect to this accident. It is further pleaded that the deceased was the only breadwinner of the family and was aged about 37

years at the time of his death. He was working as driver-cum-owner of the tractor and was also doing the agricultural work. He was also doing the dairy farming and was earning Rs.25,000/- per month. The claimants were dependent upon him. So, they have prayed for grant of compensation to the tune of Rs.30,00,000/- along with interest @ 12% per annum.

4. The claim petition was contested by the respondents. Respondents No.1 & 2 filed the joint written statement, whereas respondent No.3 the Insurance Company filed the separate written statement. They denied the involvement of vehicle in question and alleged that false case has been got registered against respondent No.2 in connivance with the police just to get illegal compensation.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the accident took place due to rash and negligent driving of respondent No.2? OPP
2. Whether claimants are entitled for compensation as prayed for? OPP
3. Whether respondent No.2 is not holding valid driving licence, RC, route permit? OPR
4. Whether the claim petition is not maintainable? OPR
5. Relief.

6. On appreciating the evidence on record, the learned Tribunal allowed the claim petition and awarded the compensation to the tune of Rs.12,20,000/- to the claimants which was to be paid jointly and severally by respondents No.1 to 3. The claimants were also awarded the

interest @ 9% per annum from the date of filing the claim petition till realisation.

7. FAO No.5203 of 2013 has been filed by respondent No.3 the Oriental Insurance Company, challenging the impugned award. FAO No.933 of 2014 has been filed by the claimants for enhancement of the compensation.

8. I have heard Mr. Lalit Garg, Advocate, learned counsel for the appellant in FAO No.5203 of 2014 and for respondent No.3 in FAO No.933 of 2014, Mr. Vijay Lath, Advocate, learned counsel for respondents No.1 to 8 in FAO No.5203 of 2014 and for appellants in FAO No.933 of 2014, Mr. Deepak K. Sharma, Advocate, learned counsel for respondents No.9 & 10 in FAO No.5203 of 2014 and for respondents No.1 & 2 in FAO No.933 of 2014 and gone through the paper-books carefully.

9. Mr. Lalit Garg, Advocate, learned counsel for the appellant-Insurance Company contented that the negligence on the part of respondent No.2 the driver of the truck is not established. The claimants have not examined any independent witness. It is alleged that one more person was travelling on the tractor but even he has not been examined. PW2 Harbans Singh is closely related to the victim, so his statement cannot be relied upon.

10. He further contended that the claimants have not produced any evidence with respect to the land holding of the deceased. They have also not produced on file the registration certificate of the

tractor to show that he was the owner of the tractor. Thus, the income of the deceased has been wrongly taken by the learned Tribunal to the tune of Rs.6000/- per month.

11. He further contended that the learned Tribunal has also wrongly awarded the future prospects to the income of the deceased. The deceased was not holding any permanent job. He was just a casual worker. Addition of future prospects in such cases is not permissible. To support his contentions, he relied upon cases *National Insurance Company Ltd. Vs. Pushpa and others 2015(6) RCR (Civil) 844 and Shashikala and others Vs. Gangalakshamma and another 2015(2) RCR (Civil) 510*. Thus, he contended that the impugned award is liable to be set aside.

12. Mr. Deepak K.Sharma, Advocate, learned counsel for respondents No.1 & 2 has also supported the contentions raised by Mr. Lalit Garg, Advocate, learned counsel for the appellant-Insurance Company.

13. On the other hand, Mr. Vijay Lath, Advocate, learned counsel for the claimants-appellants of FAO No.933 of 2014 contended that the negligence on the part of respondent No.2 and involvement of the vehicle is fully established from the statement of PW2 Harbans Singh the witness of occurrence, whose statement is further corroborated from the copy of the FIR Ex.P1 and copy of report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter called the 'Cr.P.C.'). Respondent No.2 the driver of the truck has not stepped into the witness box to rebut the evidence adduced by the claimants. So, there is nothing

to doubt the unrebutted evidence adduced by the claimants on the issue of negligence and involvement of the vehicle.

14. He further contended that the learned Tribunal has awarded only 30% future prospects but as per the age of the deceased 50% future prospects should have been added to the income of the deceased. He further contended that learned Tribunal has rightly taken the income of the deceased to be Rs.6000/- per month. He further contended that learned Tribunal has deducted 1/6th of his income towards his living and personal expenses. There were seven dependents upon the deceased, so the deduction should have been 1/10th. He relied upon case ***New India Assurance Company Ltd. Vs. Gopali and others 2012(3) RCR (Civil) 818.***

15. He further contended that the learned Tribunal has awarded very less amount of compensation towards other conventional heads like funeral expenses, loss of consortium, loss of love, care and guidance to the children and no amount has been awarded to the mother towards loss of love and affection. Thus, he contended that the compensation awarded by the learned Tribunal is inadequate.

16. I have duly considered the aforesaid contentions.

17. It is settled principle of law by this time that the Tribunal is not required to act as a Criminal Court to find out whether the claimants have established the occurrence beyond shadow of doubt. In the inquiry if there is prima facie evidence of the occurrence, there is no reason to disbelieve such evidence. The statement of the witness coupled

with the factum of registration of FIR and trial of the accused in the Criminal Court are sufficient to arrive at conclusion that the accident has taken place. The Hon'ble Apex Court in case ***Kusumlata and others Vs. Satbir Singh and others 2011 ACJ 926*** has reiterated the aforesaid legal position and laid down that in cases relating to the motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Strict proof of an accident may not be possible to be done by the claimants. The claimants are merely to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied.

18. In the instant case, the claimants have adduced sufficient evidence to establish the negligence in causing the accident on the part of respondent No.2, the driver of truck No.HP-12A-6721. The claimants have examined PW2 Harbans Singh, the witness of the occurrence. He has categorically deposed that on 05.03.2012 he was going towards Kiratpur Sahib on his motorcycle. Sher Singh deceased was going ahead of him on his tractor bearing registration No.PB-16C-5239. Sher Singh was driving the tractor with proper care and caution on the left side of the road, when deceased reached near Government School in village Massewal, then the truck bearing registration No.HP-12A-6721 came from the opposite side being driven in a rash and negligent manner by respondent No.2 and struck against the tractor of Sher Singh, as a result of which he received injuries and died at the spot. Ex.P1 FIR No.19

dated 5.3.2012 under Section 279/304-A IPC was registered on the statement of PW2 Harbans Singh at Police Station Kiratpur Sahib against respondent No.2 for causing this accident. Claimants have also produced the copy of the report under Section 173 Cr.P.C., which shows that respondent No.2 was facing trial for causing this accident. The aforesaid evidence adduced by the claimants has gone unrebutted as respondent No.2 Makhan Singh, the driver of the tractor, has not stepped into the witness box. The non-appearance of the driver of the truck raises the adverse inference against the respondents and there is no reason to disbelieve the unrebutted evidence adduced by the claimants on the issue of negligence and involvement of the vehicle. Thus, there is no escape from the conclusion that the present accident has taken place due to rash and negligent driving of truck No. HP-12A-6721 by respondent No.2 Makhan Singh. So, the finding of learned Tribunal on this issue stands affirmed.

19. In order to compute the amount of compensation, we have to determine the income of the deceased. The learned Tribunal has taken the income of the deceased as Rs.6000/- per month but the same seems to be on the higher side. The claimants have alleged that the deceased was working as owner-cum-driver of tractor bearing registration No.PB-16C-5239. He was also an agriculturist and doing the dairy farming. The claimants have not placed on record any revenue document to show that the deceased was owner or in possession of any agricultural land. They have also not placed on record the registration certificate of

tractor No.PB-16C-5239 to establish that the deceased was the owner of the tractor in question. The plea regarding dairy farming is also vague. It is not mentioned that as to how many milch cattle the deceased was having. No evidence has been produced by the claimants to show as to whom he was supplying the milk. If the deceased would have been doing the dairy farming, he must have maintained some accounts, but no such evidence has been brought on record. Thus, in these circumstances the income of the deceased can be taken as driver of the tractor or as a semi-skilled worker to the tune of Rs.5000/- per month i.e. Rs.60,000/- per annum.

20. This fact is not disputed that the deceased was 37 years of age at the time of his death. The learned Tribunal has awarded 30% future prospects towards the income of the deceased. I do not find any substance in the contentions raised by learned counsel for the appellant-Insurance Company that no future prospects were required to be added to the income of the deceased.

21. Case ***Shashikala and others Vs. Gangalakshamma and another*** (supra), relied upon by learned counsel for the appellant-Insurance Company is based on ***National Insurance Company Ltd. Vs. Pushpa*** (supra). In Pushpa's case (supra), the Hon'ble Apex Court has referred the matter to the Larger Bench for authoritative pronouncement with respect to the addition of future prospects in view of the conflict between the legal principles in cases ***Reshma Kumari and others Vs. Madan Mohan and another*** (2013) 9 SCC 65 and ***Rajesh and others Vs.***

Rajbir Singh and others (2013) 9 SCC 54. So, in those cases, the matter was referred to the Larger Bench for authoritative pronouncement in view of the conflicting decisions in above referred two cases. But in a recent judgment dated 15.05.2015 rendered by the three Judges Bench of Hon'ble Apex court in case ***Munna Lal Jain Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, it has been laid down as under:-

*“11. As far as future prospects are concerned, in **Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54**, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:*

“8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”

The deceased being of the age of 30 years, 50% is the required addition.”

22. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court in the latest judgment, the claimants were entitled to the future prospects to be added towards the income of the deceased. Admittedly, the deceased was below 40 years of age. 50% of his income should be added as future prospects but the learned Tribunal has wrongly added 30% of the income of the deceased. As discussed above, the

income of the deceased has been taken to be Rs.5000/- per month *i.e.* Rs.60,000/- per annum. After adding 50% future prospects, the total income of the deceased comes to Rs.90,000/- per annum.

23. Now the question arises as to how much amount is to be deducted towards the personal and living expenses of the deceased. The deceased was having seven dependents. As per the law laid down by the Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121***, where the dependents exceeds six in number, the deduction should be 1/5th. Case ***New India Assurance Company Ltd. Vs. Gopali and others*** (supra), relied upon by learned counsel for the appellant is not applicable to the facts of this case as in that case the deceased was having nine family members/dependents. So, 1/5th of the income of the deceased shall be deducted towards his personal and living expenses, which comes to Rs.18,000/- (90,000/5). The remainder comes to Rs.72,000/-. In view of the age of the deceased, the multiplier of 15 shall be applicable. So, the loss of dependency comes to Rs.10,80,000/-.

24. In addition to the aforesaid amount, the claimants shall also be entitled to a sum of Rs.25,000/- towards funeral and transportation charges. Claimant No.1 Smt. Charan Kaur, the widow of deceased Sher Singh, shall be entitled to Rs.1,00,000/- towards loss of consortium. The learned Tribunal has awarded Rs.5000/- towards loss of estate. The deceased was having five minor children. In ***Rajesh and others Vs. Rajbir Singh and others*** (supra) there were three minor

children of the victim and the learned Apex Court has awarded Rs.1,00,000/- towards loss of care and guidance for minor children. In the instant case, as the deceased has five children, so, Rs.2,00,000/- is awarded towards loss of love, care and guidance to the minor children. Appellant Sita Devi, mother of deceased Sher Singh, shall also be entitled to sum of Rs.50,000/- towards loss of love and affection of her son. So, the total amount of compensation comes to Rs.14,60,000/-.

25. Thus, keeping in view my aforesaid discussion, FAO No.5203 of 2013 has no merits and same is hereby dismissed. The FAO No.933 of 2014 is hereby partly allowed. The compensation awarded to appellants-claimants in FAO No.933 of 2014 is hereby enhanced from Rs.12,20,000/- to Rs.14,60,000/-. The appellants shall be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

23.02.2016
sunil yadav

(DARSHAN SINGH)
JUDGE