

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 557 of 1999

Date of Decision: October 27, 2017

Gurdev Kaur and another

.....Appellants

versus

Mangat Ram and others

.....Respondents

FAO No. 615 of 1999

National Insurance Co. Ltd.

.....Appellant

versus

Gurdev Kaur and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present:- Mr. D.R. Bansal, Advocate
for the appellant in FAO No. 615 of 1999 and
for respondent No. 3 in FAO No. 557 of 1999

Mr. Saurabh Gulia, Advocate for
Mr. Girish Agnihotri, Sr. Advocate
for respondent No. 4 (in FAO No. 615 of 1999)

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Sudhir Mittal, J.

1. An accident took place on 17.04.1995, which resulted in the death of Sukha @ Sukhpal Singh (hereinafter referred to as 'Sukha') and one Sant Ram. Sukha was employed as a Cleaner on Truck No. PB-13-C-5000 whereas Sant Ram was driver of truck No. CHW-7156. Sukha alongwith the driver of Truck No. PB-13-C-5000, namely, Roda s/o Lachhman Singh had gone to Shakti Stone Crusher, Chandi Mandir for loading concrete stones. However, the material was not available, therefore, they returned from Chandi Mandir. On the way back, there

was a long que of vehicles at Chawla Petrol Pump and Truck No. CHW-7156 was also part of that que. Its driver, Sant Ram, was standing near bumper of the truck. Sukha alighted from his own truck to request Sant Ram to move his vehicle slightly so as to enable Sukha's truck to pass. Meanwhile, a canter bearing No. HR-03-8924 came from Pinjore side. It was being driven by respondent No. 1 in a rash and negligent manner and it struck the front portion of Truck No. CHW-7156, whereafter it ran over Sukha. As a result of this accident, Sukha died on the spot whereas Sant Ram received injuries and later died on 28.09.1995.

2. Two claim petitions were filed; one by parents of Sukha and the other by his wife and three minor children of Sant Ram. Vide the impugned award dated 15.12.1998, the parents of Sukha were granted a compensation of ₹ 59,000/- whereas the legal heirs of Sant Ram were granted compensation to the tune of ₹ 30,000/- on account of injuries sustained by said Sant Ram, after returning a finding that there was no evidence to connect the death of Sant Ram with the accident.

3. The present two appeals have been filed by the parents of Sukha and National Insurance Company Limited viz. FAO Nos. 557 and 615 of 1999, respectively, one claiming enhancement of compensation and the other challenging its liability to pay compensation. Both these appeals are being decided by a common judgment as they arise out of the same accident resulting in passing of the impugned award. The finding of the learned Tribunal that the accident was caused due to rash and negligent driving of Mangat Ram-respondent No. 3 is not being challenged in either of the appeals and, therefore, the said finding is affirmed.

FAO No. 615 of 1999

4. The Insurance Company challenges its liability to pay compensation on the ground that the driver of the offending vehicle (hereinafter referred to as 'Canter') did not have a valid driving licence on the date of the accident. Reference has been

made to the statement of RW-2 Mohinder Singh, Junior Assistant of Transport Authority, Ferozepur and RW-3 Ramesh Chand, Clerk of Licencing Authority, Hoshiarpur. RW-2 Mohinder Singh deposed that at Serial No. 28779 of 1990, there is no entry of any licence issued to Mangat Ram-respondent No. 3. Similarly, RW-3 Ramesh Chand stated that no licence bearing No. 23452/92-93 was issued in favour of said Mangat Ram. This evidence came in the background that Mangat Ram had deposed that his driving licence was lying in the judicial file of the criminal case which was relatable to District Transport Office, Ferozepur. On a later date, he appeared and produced a driving licence Ex. R-1 relating to District Transport Office, Hoshiarpur. It has come on record from the evidence of RW-3 that licence Ex. R-1 was renewed by the Licensing Authority, Hoshiarpur from 26.09.1995 to 25.09.1998. The owner of the offending vehicle viz. M/s Dhillon Kool Drinks Private Limited-respondent 4 did not produce any evidence on its behalf i.e. no representative of the company entered the witness box.

5. In view of the above evidence, it is strenuously contended on behalf of the appellant-Insurance Company that the Canter was being driven by a person who did not hold a valid driving licence. Even the owner of the Canter has not cared to step into the witness box to make a statement that he had employed Mangat Ram as driver after examining his driving licence. The evidence on record also shows that the renewal of Ex. R1 took place only on 26.09.1995 i.e. 5 months after the date of the accident. It is, thus, argued that Mangat Ram did not hold valid driving licence on the date of accident.

6. Learned counsel for respondent No. 4 has not been able to rebut the arguments made on behalf of the appellant-Insurance Company.

7. It is clear from the evidence on record that Mangat Ram was not a licensed driver since the driving licence possessed by him had not been issued by a

Competent Authority. It is evident that the licences possessed by Mangat Ram were fake. Even Ex. R1 can not save Mangat Ram-respondent No. 3 because the said licence was renewed only on 26.09.1995 i.e. 5 months after the accident. The evidence suggests that Ex. R1 had expired on the date of the accident and the renewal is obviously beyond a period of 30 days from the date of expiry.

8. The appeal of the Insurance Company thus succeeds. However, in view of the judgment of Hon'ble the Supreme Court of India in the case of ***National Insurance Company Ltd. vs. Swaran Singh (2004) 3 SCC 297***, the Insurance Company would be liable to pay the amount of compensation and subsequently recover the same from respondents No. 3 and 4, whose liability shall be joint and several.

FAO No. 557 of 1999

9. This appeal has been filed by the parents of deceased Sukha for enhancement of compensation awarded by the learned Tribunal.

10. It is not in dispute that deceased Sukha was 19 years old and was unmarried on the date of the accident. He was working as a Cleaner on Truck No. PB-13-C-5000. The learned Tribunal has assessed his monthly income as ₹ 1800/- which is not being challenged by the respondent–Insurance Company. The learned Tribunal has granted a compensation of ₹ 59,000/- only. Although none has appeared on behalf of the claimants, the compensation granted by the learned Tribunal is awfully inadequate and the same desires to be enhanced in view of the reasons given herein-after.

11. From the judgments of Hon'ble the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(6) SCC 121*** and ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170***, it follows that dependency of 50% has to be granted in view of the death of a bachelor. A

multiplier of 18 is to be applied since the deceased was of 19 years of age on the date of accident. Enhancement of 50% on account of future prospects is also required to be granted. Thus, the compensation is re-assessed as follows:-

1.	Annual income @ ₹ 1800/- per month	₹ 21,600/- (1800x12)
2.	Increase of 50% in income on account of future prospects	₹ 32,400/- (21600+10800)
3.	Deduction of 50% on account of personal expenses	₹ 16,200/- (32400-16200)
4.	Annual dependency after applying multiplier of 18 as deceased was 19 years of age	₹ 2,91,600/- (16200x18)
5.	Loss of love and affection	₹ 1,00,000/-
6.	Loss of Estate	₹ 50,000/-
7.	Funeral expenses	₹ 25,000/-
8.	Total Compensation	₹ 4,66,600/-

12. The enhanced amount of compensation will carry an interest @ 7.5% p.a. from the date of filing of claim petition till the date of payment. The respondent – Insurance company is directed to make payment before the learned Tribunal within a period of three months from the date of receipt of certified copy of this judgment. It is further clarified that the compensation amount shall be recoverable from respondents No. 1 and 2, whose liability would be joint and several.

13. The appeals are, thus, allowed in the above-stated terms.

October 27, 2017
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned : Yes

Whether Reportable : Yes