

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5019 of 2003 (O&M)
Decided on: 11.12.2017

National Insurance Co. Ltd.Appellant

versus

Jai Singh and Ors.Respondents

FAO No. 5020 of 2003 (O&M)

National Insurance Co. Ltd.Appellant

versus

Smt. Bakhtawari and Ors.Respondents

FAO No. 3923 of 2004 (O&M)

Smt. BakhtawariAppellant

versus

Yodh Raj and Ors.Respondents

FAO No. 3924 of 2004 (O&M)

Jai SinghAppellant

versus

Yodh Raj and Ors.Respondents

FAO No. 3925 of 2004 (O&M)**Gaja Nanand****.....Appellant****versus****Yodh Raj and Ors.****.....Respondents****CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. D.P.Gupta, Advocate
for the appellant in FAO Nos.5019 and 5020 of 2003.

Mr. Vinod Gupta, Advocate
for the appellant in FAO Nos. 3923 to 3925 of 2004.

Mr. Naveen Sharma, Advocate for
Mr. Sunil Narang, Advocate
for respondent No.2 in FAO Nos.3923 to 3925 of 2004 and
for respondent No.3 in FAO Nos.5019 and 5020 of 2003.

Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate
for respondent No.4.

*********RAJBIR SEHRAWAT, JUDGE (ORAL)**

This judgment shall dispose of five appeal i.e. FAO No.5019 of 2003 and FAO No.5020 of 2003; filed by the Insurance Company of the Vehicle No.HR-39-9780, challenging the award of the Motor Accident Claims Tribunal (in short 'MACT') qua the findings on the issue of negligence. Other three appeals, namely FAO No.3923 of 2004, FAO No.3924 of 2004 and FAO No. 3925 of 2004 are filed by the claimants; for enhancement of the compensation awarded to them.

For convenience, the facts are taken from the appeal No.5019 of 2003, i.e. the appeal filed by the Insurance Company.

The brief facts of the case are that on 18.06.2001, Gaja Nand

was going on a Truck bearing registration No. HR-39-9780 along with Jai Singh, as co-driver and Vijay Singh as conductor on his truck. Gaja Nand was the main driver of the truck. When they reached near by-pass, Ladnu District Nagaur (Rajasthan), then another truck bearing registration No. PN-6B-7638 came from the opposite side, being driven by respondent-Yodh Raj at a high speed and in a rash and negligent manner. Seeing the truck Gaja Nand, who was driving the truck No. HR-39-9780 took his truck on the extreme left side of the road. However, the truck bearing registration No. PB-6B-7638, struck against his truck. Hence, it was claimed that the accident happened due to the negligent driving of the truck bearing registration No. PB-6B-7638 (hereinafter referred as the offending vehicle).

In this accident, Vijay Singh, the conductor of the truck of Gaja Nand, had expired. His widowed mother filed claim petition for claiming compensation on account of death of Vijay Singh. Gaja Nand, driver of truck bearing registration No. HR-39-9780 and Jai Singh, the co-driver of this truck received injuries. Therefore, they filed separate claim petitions claiming compensation, on account of their injuries. In the claim petition filed by Gaja Nand, the present appellant, the insurance company of Truck No. HR-39-9780 was not impleaded, as a party, since Gaja Nand was himself the driver of this truck. In claim petitions filed by Jai Singh and the mother of Vijay Singh, though the Insurance Company of this truck was impleaded, however, the negligence in those claim petition was also alleged against the driver of the other offending vehicle.

Upon being given the notice, the respondents in the claim petitions filed their respective written statement. The present appellant, the Insurance Company of truck bearing registration No. HR-39-9780 denied the

negligence of the driver of its truck in all the claim petitions.

The other insurance company of the offending vehicle, filed written statement taking routine preliminary objections. Still further, it was pleaded that the claim petitions have been filed by the claimants in collusion with the owner and driver of the other vehicle, as well as in collusion with the other insurance company. It was further claimed that the offending vehicle was not having the requisite fitness certificate and it was being driven in contravention of the terms and conditions of insurance policy.

The driver and owner of the offending vehicle filed separate written statement, claiming that the accident had taken place on account of rash and negligent driving of the driver of the vehicle of the claimants. The averments on merits were also controverted. It was pleaded that police have registered a case against the driver of the other vehicle i.e. Gaja Nand. Therefore, it was pleaded that the driver of the offending vehicle was not negligent.

Parties led their evidence.

After appreciating the evidence led by the parties, the Tribunal held that since it is a head-on-collision, therefore, it shall be taken, as a case of contributory negligence by driver of both the vehicles. Other reason given by the Tribunal; for holding both the drivers to be negligent, was that the driver of the other truck bearing registration No.HR-39-9780 i.e. claimant Gaja Nand had started driving of that truck just 15 minutes before the accident. Hence, the Tribunal held both the drivers to be negligent and apportioned the liability between the two vehicles by 50% each.

Challenging this finding and the liability arising from this finding, the insurance company of the truck bearing registration No.HR-39-

9780, being driven by Gaja Nand, has challenged this finding, by filing the present appellant. While arguing the appeal, learned counsel for the appellant-insurance company has submitted that the Tribunal has not given any rational reason for recording the finding regarding the contributory negligence. It is his submission that merely because the vehicle coming from the front side has collided with the vehicle insured by them, does not mean that the driver of their vehicle was negligent. Still further, it is his submission that the other reason given by the Tribunal, that the driver of this vehicle had started driving only 15 minutes earlier, is totally irrelevant, so far as the finding of contributory negligence is concerned. Hence, it is submitted by him that this finding has to be set aside.

On the other hand, learned counsel for the insurance-company of the offending vehicle has submitted that the finding has rightly been recorded by the Tribunal. It is his submission that the contributory negligence of the driver of the other vehicle is also shown by the fact that an FIR has been registered against the driver of that other vehicle, and he is facing trial for that.

Having heard the learned counsel for the parties, this Court is of the considered opinion that the submission made by the learned counsel for the appellant-insurance company deserves to succeed. Merely because a vehicle coming from front side has collided with the vehicle insured by the appellant-insurance company does not mean that it was, definitely, the case of contributory negligence. It has come in evidence that the driver of this vehicle had taken his truck on the extreme left side katcha portion of the road. It has come in evidence that he could not take the truck to still further left side because, there was trench on the left side of the road. On the

contrary, no evidence has been led by the insurance company of the offending truck. Even the driver of the offending truck has not been examined by the insurance company in this case. Hence, the version of the driver of the vehicle of the appellant-insurance company has gone unchallenged. Hence, the same has to be accepted. The other reason given by the Tribunal for holding the contributory negligence; that the driver of vehicle of appellant had started driving only 15 minutes prior to the accident, is beyond comprehensions and is not supported by any logic. So; by any means, the finding recorded by the Tribunal; regarding the contributory negligence of the driver of the vehicle insured by the appellant-insurance company; cannot be sustained. Therefore, the finding recorded by the Tribunal regarding contributory negligence is set aside.

Accordingly, the appellant-insurance company is absolved of liability to make the payment in all the claim petitions, wherever it is the party. The liability to make the payment of the awarded amount is fixed upon the insurance company of the offending vehicle i.e. the United India Insurance Company. Learned counsel for the appellant-insurance company submits that pursuant to the award, they had deposited the amount before the Tribunal and the 75 per cent of the amount deposited by them have already been disbursed to the claimants. Therefore, his submission is that the liable insurance company be directed to pay back the amount, which was deposited by the appellant-insurance company; directly to them. Since the liability of the appellant company has been abolished, therefore the Insurance Company of the offending vehicle shall directly re-imburse the appellant company to the extent its deposited amount has already been paid to the claimant. The remaining deposited amount of the appellant

Insurance, if any, shall be returned to it by the Tribunal. The balance amount payable to the claimant shall be recovered from the Insurance company of the offending vehicle, now held liable in the present appeal.

FAO No.3923 of 2004

In this appeal filed by the widowed mother of the deceased Vijay Singh, it was claimed that the deceased was 28 years of age. The Tribunal has awarded a total amount of Rs.2,77,000/-. For awarding this amount, the Tribunal has assessed the income of the deceased to be Rs.2000/-, 1/3rd of the same has been deducted on account of the personal expenses, since deceased was unmarried. Keeping in view the age of the deceased, multiplier of 17 was applied. Beside this, the amount of Rs.5000/- was given on account of the funeral expenses.

Arguing the case of the appellant, the counsel for the claimants/appellants submitted that the income of the deceased has been assessed on the lower side. It is his submission that the claimant is entitled to the benefit of future prospects of the deceased as well. Still further it is submitted that on account of conventional heads also, she is entitled to Rs.30,000/-

On the other hand, learned counsel for the respondent-Insurance company submitted that in the present case, the deduction has to be made at the rate of 50%. Still further, he opposed the grant of benefit on account of future prospects of the deceased.

Having heard the learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that the award passed by the MACT deserves to be modified. So far as the income of the deceased is concerned, the same appears to be taken at the

low level. By any means, since the deceased was working as a cleaner on the truck, therefore, even by the minimum standard, he would be getting Rs.2500/-, including the diet charges- which is quite prevalent in the trade. Hence, the income of the deceased is taken at Rs.2500/-. In terms of the judgment of the Hon'ble Supreme Court, the claimants are entitled to increase of compensation to the extent of 40% of the income, on account of future prospects of the deceased. Hence, after adding the future prospects, the income of the deceased, comes to Rs.3500/- per month. Therefore, the income of the deceased is assessed at Rs.3500/- per month. Out of this, the standardised deduction of 50% has to be applied, as per the judgment of Hon'ble Supreme Court in **Sarla Verma & Ors. vs. Delhi Transport Corp. & Anr. 2009 (6) SCC 121**. Hence, the monthly loss of dependency to the claimants comes to Rs.1750/- per month. The multiplier of 17 has rightly been applied by the Tribunal. Accordingly, the total loss of dependency to the claimant would be Rs.3,57,000/- (1750x12x17). Beside this the amount awarded for funeral expenses is also on lower side. As per the latest judgment of the Hon'ble Supreme Court in the case of National Insurance (supra), the amount awarded on account of conventional heads has to be Rs.70,000/-. However, in the present case, since the wife is not there, only the mother is the claimant, therefore, an amount of Rs.30,000/- is awarded on account of conventional heads. Resultantly, the claimant in this appeal is held entitled to a compensation of Rs.3,87,000/-. The interest on this amount is retained at the same rate, as was awarded by the Tribunal.

In view of the above, the award passed by the Tribunal is modified to the above extent qua the present appeal.

FAO No.3924 of 2004

In this appeal, the claimant is the injured Jai Singh, the co-driver of the vehicle, bearing registration No.HR-39-9780. In his case, the disability; on account of injury of his spinal cord; has been proved on record to be 70%. The income of the injured for the purpose of calculation of loss of income and future income has been taken at Rs.3000/-. Taking the proportionate loss at 70%, the loss of monthly income has been assessed at Rs.2100/- The multiplier of 15 has been applied. Medical expenses has been granted by the Tribunal at Rs.10,000/-. Beside this compensation for pain and suffering has been awarded at Rs.5000/-.

Arguing his case, learned counsel for the appellant submits that in this case, since the appellant was the driver and because of his spinal injury, he is no more able to drive any vehicle; since he is almost bed ridden, therefore, the disability of the claimant has to be taken as 100% functional disability. Still further, the counsel submits that income assessed by the Tribunal at Rs.3000/- is at the lower side. The counsel further submits that no amount has been awarded for loss of current income during the treatment and follow-up treatment. Beside this, the counsel submits that an amount awarded on account of pain and suffering is on the lower side. No amount has been awarded on account of loss of amenities and loss of life expectancy.

Counsel prays for enhancement of the amount on these grounds and for this purpose the counsel has relied upon the judgment of Hon'ble Supreme Court rendered in **2012 (4) RCR (Civil) 273** titled as **Kavita Vs. Deepak & Ors.**

On the other hand, learned counsel for the respondent-insurance company has submitted that the compensation has rightly been

awarded and no increase is warranted in this case.

Having heard the learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that in this case the disability of the claimant is regarding the spinal injury. Therefore, even as per the common knowledge, a person having spinal injury, would not be in a position to perform the function, of a driver. Hence the functional disability of the claimant has to be taken at the level of 100%. But Court does not find any illegality with the assessment of the income of the claimant. The same has rightly been assessed by the Tribunal at Rs.3000/- per month. The multiplier of 15 has also rightly been applied by the Tribunal in terms of the judgment of the Hon'ble Supreme Court. Accordingly, the compensation to be awarded to the claimant on account of future loss of income would be an amount of Rs.5,40,000/- (3000x12x15). Still further, keeping in view the nature of the injury and the treatment taken by the claimant, it can safely be inferred that he would not have been able to perform his daily routine, for at least six months. Therefore, he is held entitled to loss of current salary for six months. Accordingly, he is awarded an amount of Rs.18000/- (3000x6). The medical expenses has rightly been awarded by the Tribunal at Rs.10,000/-. However, the compensation awarded on account of pain and suffering is grossly inadequate. The loss of amenities on account of injury also deserves to be awarded. Still further, the compensation for loss of life expectancy has also to be awarded, keeping in view, the judgment of the Hon'ble Supreme Court in case of Kavita (supra). Accordingly, the claimant is awarded an amount of Rs.1,00,000/- on account of pain and suffering, the amount of Rs.1,00,000/- on account of loss of amenities and still another amount of Rs.1,00,000/- on account of

loss of life expectancy, in terms of the above said judgment of the Hon'ble Supreme Court.

In view of the above, the claimant in the present appeal is held entitled to the compensation of Rs.8,68,000/-

Sr.No.			Amount(Rs.)
1.	Loss of future income	-	5,40,000/-
2.	Loss of current income	-	18,000/-
3.	Medical expenses	-	10,000/-
4.	Pain and suffering	-	1,00,000/-
5.	Loss of amenities	-	1,00,000/-
6.	Loss of life expectancy	-	1,00,000/-
	Total	-	8,68,000/-

In this appeal also, the interest on the amount has been retained, at the same rate, as was awarded by the Tribunal.

In view of the above, the award of the Tribunal in this appeal is modified to the above extent.

FAO No.3925 of 2004

This appeal is filed by the injured Gaja Nand, who was driving the vehicle No.HR-39-9780 at the time of accident. The Tribunal has taken the disability as 100%, as proved on record of the case. Both the legs of the claimant have been amputated at the level of lower limb. The income of the claimant in this case has been assessed at Rs.3000/-. Multiplier of 17 has been applied by the Tribunal in this case. The medical expenses of Rs.63000/- has been awarded. Still further, he has been awarded an amount of Rs.5000/- on account of pain an suffering. No amount has been awarded on account of loss of amenities,loss of life expectancy and attendant

charges.

The counsel for the appellant in this case has submitted that the claimant was the main driver of the vehicle. It has also come on record that beside the cash salary, the claimant was also getting diet money on daily basis. Accordingly, the income of the injured has to be taken, at least, at Rs.4000/- per month. Still further, it is submitted by him that no amount has been awarded on account of loss of current income during the period of treatment. The counsel further submits that the claimant deserves to be awarded compensation on account of loss of amenities, loss of life expectancy and the amount awarded on account of pain and suffering deserves to be enhanced.

On the other hand, learned counsel for the respondent-insurance company has pointed out that the multiplier applicable in this case would be 15, keeping in view the age of the injured. The tribunal has wrongly applied the multiplier of 17. It is submitted by the counsel that this Court can take note of this fact, in terms of order 41 Rule 33 of CPC to correct this perversity committed by the Tribunal. Still further, counsel submits that the income of the injured has rightly been assessed. According to the counsel, no enhancement is called for in the present case.

Having heard the counsel for the parties, this Court is of the considered opinion that income of the deceased for the purpose of calculation of the loss of current income and future income has to be taken at Rs.4000/-. The Tribunal has taken the income at Rs.3000/-. However, as per the common practice in the trade, the driver of the vehicle is also paid diet money on daily basis. Therefore, by any means, the income of the claimant would be approximately Rs.4000/- per month. The counsel for the

respondent also is right in saying that the Tribunal has wrongly applied the multiplier of 17. Keeping in view the age of the claimant and the judgment of the Hon'ble Supreme Court, the multiplier of 15 is held to be applicable in this case. Accordingly the claimant shall be entitled to a compensation of Rs.7,20,000/- ($4000 \times 12 \times 15$) on account of loss of future income. Beside this, the treatment taken by the claimant and the surgeries conducted upon him for the treatment would reflect that he would not have been in a position to do anything for at least six months. Accordingly, he is also held entitled to an amount of Rs. 24000 (4000×6) on account of loss of current income.

The medical expenses have rightly been awarded by the Tribunal at Rs.63,000/-. But the amount awarded on account of pain and suffering is on the lower side. The same is to be enhanced, keeping in view the fact, that the claimant suffered the agony of the pain and treatment for long duration, ultimately leading to the amputation of his both legs. Beside this, the tribunal has also gone wrong in law in not awarding any compensation on account of loss of amenities and loss of life expectancy. Accordingly the claimant in the present case is held entitled to Rs.1,00,000/- on account of pain and suffering, Rs.1,00,000/- on account of loss of amenities and Rs.1,00,000/- on account of life expectancy.

Since, it has come on record that both the legs of the claimant have been amputated. Therefore, it is but obvious that he would be requiring the assistance of the attendant for whole of his life.

Even as per the conservative assessment the claimant would be spending Rs.1500/- per month upon the services of the attendant. Hence the appellant shall be entitled to an amount of Rs. 2,70,000/- ($1500 \times 12 \times 15$) on

account of attendant charges for current and future period.

In view of the above, the claimant-appellant is held entitled to the compensation of Rs.13,77,000/-. As per the details given below:

Sr.No.		Amount(Rs.)	
1.	Loss of future income	-	7,20,000/-
2.	Loss of current income	-	2,4000/-
3.	Medical expenses	-	63,000/-
4.	Pain and suffering	-	1,00,000/-
5.	Loss of amenities	-	1,00,000/-
6.	Loss of life expectancy	-	1,00,000/-
7.	Attendant Charges	-	2,70,000/-
Total		-	Rs.13,77,000/-

The interest on this amount is retained at the same rate as awarded by the Tribunal. Since the contributory negligence of the claimant has been set aside in the connected appeal filed by the insurance company, therefore ,in the present appeal also, the same is held to have been set aside.

Resultantly, he will be entitled to the entire amount ,as awarded above from the Insurance Company of the offending Vehicle.

In view of the above, all the five appeals are allowed. The award of the MACT is modified to the extent mentioned above, in the respective appeals.

11th December , 2017
Manju

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No
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