

FAO No. 4746 of 2006
and other connected cases

::1::

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

Date of Decision: April 26, 2017

(1) FAO No.4746 of 2006

PUSHPA RANI AND OTHERS ...APPELLANTS..

V.

RAJESH KUMAR AND OTHERS ...RESPONDENTS

(2) FAO No.4747 of 2006

MEGHA @ MEGHNA CHAWLA AND ORS. ...APPELLANTS.

V.

RAJESH KUMAR AND OTHERS ...RESPONDENTS

(3) FAO No. 2910 of 2006

ORIENTAL INSURANCE CO. LTD.APPELLANT..

V.

PUSHPA RANI AND OTHERSRESPONDENTS.

(4) FAO No.2911 of 2006

ORIENTAL INSURANCE CO. LTD. ...APPELLANT..

V.

MEGHA @ MEGHNA CHAWLA AND ORS. ..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Ashwani Talwar, Advocate,
for the appellant.

Mr. Sagar Aggarwal, Advocate for
Mr. Varun Gupta, Advocate,
for respondents No.1 to 5.

Service of respondents No.6 and 7 dispensed with.

JASPAL SINGH, J.

By this common judgment, this Court intends to dispose of four appeals bearing FAO No.4746 of 2016, titled as ***“Pushpa Rani and others v. Rajesh Kumar and others”***, FAO No.4747 of 2016, titled as ***“Megha @ Meghna Chawla and others v. Rajesh Kumar and others”***, FAO No.2910 of 2006, titled as ***“Oriental Insurance Co. Ltd. v. Pushpa Rani and others”*** and FAO No.2911 of 2006, titled as ***“Oriental Insurance Co. Ltd. v. Megha @ Meghna Chawla and others”*** against the award dated 17.02.2006 passed by Motor Accident Claims Tribunal, Panipat (for short “Tribunal”) whereby MACT Case No.2 of 2003, titled as ***“Megha @ Meghna Chawla and others v. Rajesh Kumar and others”*** and MACT Case No.3 of 2003, titled as ***“Pushpa Rani and others v. Rajesh Kumar and others”***, were partly allowed. In MACT No. 2 of 2003, preferred under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short “the Act”), the claimants were awarded compensation to the tune of 8,16,000/-, out of which 50% deducted towards contributory negligence and remaining amount of compensation ₹4,08,000/- on account of death of Mahesh Chawla whereas in MACT No.3 of 2003, claimants were awarded compensation to the tune of Rs.4,08,000/-on account of demise of Rajesh Kumar Wadhwa, there being commonality of facts and evidence and to avoid repetition.

2. Succinctly, the facts giving rise to these appeals are that on the intervening night of 26/27.10.2002, Rajesh Kumar Wadhwa and Mahesh Kumar Chawla were coming from Babarpur Mandi after finishing their work on motorcycle bearing registration No.HR-06G-0286 driven by

Mahesh Kumar Chawla and Rajesh Kumar Wadhwa, pillion rider, when they reached in front of GT Road Panipat, a Refinery Bus No. DL-1PA-5642 came from Karnal side at a very high speed and being driven in a rash and negligent manner, which struck against their motorcycle. Due to the impact, they fell down at a far of place from GT Road and sustained multiple injuries. Rajesh Kumar Wadhwa succumbed to the injuries at the spot whereas Mahesh Kumar Chawla was rushed to Civil Hospital, Panipat. His condition being precarious, he was then shifted to Prem Hospital, Panipat and thereafter, Apolo Hospital, Mathura Road, New Delhi. Though, he remained admitted from 27.10.2002 to 31.10.2002 for treatment but ultimately, he could not survive and breathed his last on 31.10.2002. FIR No.185, dated 27.10.2002, under Sections 279 and 304-A IPC was registered at Police Station Sadar, Panipat for causing accident against the driver of the bus referred to above.

3. In MACT No.2 of 2003, captioned as ***“Megha @ Meghna and others vs. Rajesh Kumar”***, it has been averred that Mahesh Kumar Chawla was aged about 30 years and was earning ₹7,000/- per month by self-employment. He was carrying on the business of handloom trading at plot No.3 behind old Subzi Mandi, Panipat. The claimants also incurred a sum of ₹3,50,000/- on medical treatment of deceased besides a sum of ₹25,000/- on his last rites and ceremonies. They put forth a claim of ₹20 lacs along with interest.

4. In MACT No.3 of 2003, it has been unfolded that Rajesh Kumar Wadhwa was aged about 33 years and earning ₹5000/- per month by way of self-employment. He was book seller by profession and was

running a book shop near Geeta Vidya Mandir Sagar School, Panipat. The claimants have spent a sum of ₹25,000/- on last rites. They have put forth a claim of ₹15 lacs along with interest.

5. In response to the notice of the aforesaid claim petitions, the same were resisted by respondents No. 1 and 2. They filed written statements raising preliminary objections *inter alia*, on the ground that the claim petition(s) are not maintainable and has got no locus standi; cause of action. A false case has been got registered by the claimants against respondent No.1, the deceased being the sole architect of the accident and that the bus was duly insured with respondent No.3. On merits, they have denied various averments made in the petitions and has alleged that accident has occurred due to the driver of motorcycle i.e. Mahesh Kumar Chawla and there is no fault attributable to respondent No.1 in causing the accident. Even, Mahesh Kumar Chawla was neither registered owner of the motorcycle nor he was holding a valid and effective driving license. The bus in question has been wrongly/ falsely involved in the alleged accident, just to extract the compensation. The respondents No.1 and 2 prayed for dismissal of the claim petitions.

6. Respondent No.3-Insurance company filed the written statement raising preliminary objections that the petitions are bad for non-joinder of necessary parties and further that neither any cause of action has arisen to file the claim petitions nor they have got any locus standi. Moreover, the claimants cannot take advantage of the wrong doings of the deceased. It has further been alleged by the insurance company that the bus has been falsely involved in collusion and connivance of the claimants, respondent No.1 and

the police. In the alternative, respondent No.3 has pleaded that the accident took place due to contributory negligence of the deceased as well as the bus driver. Further, it has also been alleged that driver of the motorcycle was not holding a valid and effective driving license, at the time of alleged accident. Respondent No.3 also prayed for dismissal of claim petitions.

7. From the pleadings of the parties, following issues were framed by the 1d. Tribunal:-

“1. Whether the accident took place due to rash and negligent driving of Bus No. DL-1PA-5642 by respondent No.1? OPP

2. Whether the petitioners are entitled to any compensation, if so, how much and from whom? OPP

3. Whether respondent No.1 was not holding an effective and valid driving licence at the time of accident? OPR

4. Relief.”

8. In order to settle the controversy between the parties, both the parties adduce and conclude evidence in respect of their respective pleadings and have led oral as well as documentary evidence.

9. In order to prove their case, claimants have examined PW1 Pushpa Rani, PW2 Ramesh @ Shadi Lal, PW3 Vipin Kumar, PW4 Megha @ Meghna Chawla, PW5 Ram Kishan, PW6 Ashok Kumar, PW7 Kuldeep Singh and tendered affidavits Ex.PA to Ex.PD and produced documents Ex.P1 to Ex.P29, Ex. PW5/A and Ex.PW5/B and Mark P1 to Mark P18 and closed their evidence.

10. Respondents No.1 and 2 examined Rajesh Kumar as RW1 by

way of affidavit Ex.RW1/A, produced documents Ex.R1 and Ex.R2 and closed their evidence.

11. Respondent No.3 examined Ramesh Chand, Addl. Ahlmad as RW2, O.P. Kapoor as RW3 and produced documents Ex.R3 to Ex.R13 and closed its evidence.

12. After appraisal of evidence and hearing learned counsel for the parties, issues No.1 to 3 were decided in favour of the claimants and against the respondents. Resultantly, the claim petitions were partly allowed and in MACT No.2, titled as ***“Megha @ Meghna Chawla and others v. Rajesh Kumar and others”***, after deducting 50% on account of contributory negligence, an amount of ₹5,93,000/- (including funeral expenses, loss of consortium and medical expenses) was awarded on account of death of Mahesh Kumar Chawla whereas in MACT No.3, a sum of ₹4,33,000/- (including funeral expenses and loss of consortium) was awarded as compensation on account of death of Rajesh Kumar Wadhwa.

13. Dissatisfied with the award dated 17.02.2006 passed by Tribunal, Pushpa Rani and others filed FAO No.4746 of 2006 whereas Megha @ Meghna and others filed FAO No.4747 of 2006, for the enhancement of compensation. Insurance company also filed appeals bearing FAO Nos. 2910 and 2911 of 2006, being dissatisfied with the quantum of compensation awarded to the claimant(s).

14. Assailing the impugned award dated 17.02.2006 with regard to the quantum of compensation awarded by Id. Tribunal on account of death of Mahesh Kumar Chawla, it has been ebulliently argued by learned counsel for the appellants-claimants that the same is absolutely unjust and

inadequate. Only a meagre amount of ₹4,08,000/- has been awarded on account of demise of a young person aged about 30 years. No compensation has been awarded on account of loss of love and affection to any of the claimants whereas only a sum of ₹15,000/- has been awarded on account of funeral and last rites of the deceased besides a sum of ₹10,000/- only under the head of loss of consortium and ₹1,60,000/- towards medical treatment expenses. Not only this, Id. Tribunal has wrongly concluded that Mahesh Kumar Chawla also contributed towards the accident and has wrongly deducted 50% of the amount on account of contributory negligence. In fact, there is no cogent and convincing evidence available on file that the motorcycle was being driven by Mahesh Kumar Chawla at the time of accident in a rash and negligent manner or that he contributed towards the accident in any manner. Even, the Id. Tribunal has assessed the income of the deceased on a lower side i.e. to the tune of ₹6000/- per month. In fact, there is sufficient evidence available on record that deceased was earning a sum of ₹7000/- per month from his business of handloom trading. Thus, the compensation deserves to be enhanced suitably by treating the income of the deceased to the tune of ₹7000/- per month by reversing the findings recorded by Id. Tribunal with regard to the contributory negligence.

15. As far as the compensation awarded in MACT No.3, is concerned, the contention of learned counsel for the appellants is that the deceased was hale and hearty and aged about 33 years at the time of his accident. His income has been assessed only to the tune of ₹3000/- per month and by after deduction of 1/3rd towards the personal expenditure,

dependency has been worked out to the tune of ₹2000/- per month and ₹24,000/- per annum and by applying the multiplier of 17, only a meagre sum of ₹4,08,000/- has been awarded. Nothing has been paid on account of loss of love and affection whereas meagre amount has been awarded to the tune of ₹10000/- towards loss of consortium and a sum of ₹15,000/- was awarded on account of transportation, funeral expenses and last rites, which deserve to be suitably enhanced.

16. On the other hand, learned counsel for the insurance company has argued with vehemence that the impugned award whereby the compensation has been awarded is absolutely against the evidence available on file and settled canons of law. Mis-appreciation of evidence as well as legal proposition has resulted into miscarriage of justice. In fact, bus No. DL-IPA-5642 was not involved in the accident. A criminal case was got registered against respondent No.1 involving bus No.DL-IPA-5642 by the claimants in connivance with respondent No.1 as well as Police just to extract compensation. No accident took place with bus in question. PW-2 Vipin Kumar while appearing in the witness box before the Tribunal has categorically stated that he could not note down the registration number of the offending bus. It has further been deposed by him that Highway Police arrived at the spot within 10/15 minutes of the accident but he did not tell the number of alleged offending bus to the police. Similarly, Rajesh Kumar, driver of the offending bus while appearing in the witness box as RW-1 has stated that he has been falsely implicated and arrested in the criminal case registered against him after about 1½ month of the accident. He has categorically deposed that no accident was caused by him and further that

his bus bears the name of Pal Travelers and nothing more has been mentioned outside the bus in order to connect it with the Panipat Refinery but the Id. Tribunal has wrongly discarded the statement of Rajesh Kumar (RW-1) and has also discarded the statement of PW-2 Vipin Kumar, which was favourable to the case of the insurance company. In fact, it was some unknown vehicle which has caused the accident. Though, there is no convincing and cogent evidence to establish the fact that the accident took place due to rash and negligent driving of bus in question by its driver, yet the liability has been fastened upon the insurance company. In fact, insurance company is liable to be outrightly absolved from the liability to pay the compensation. It has further been contended by learned counsel for the insurance company that income of both the deceased namely Rakesh Kumar Wadhwa as well as Mahesh Kumar Chawla has been wrongly assessed. In fact, Rajesh Kumar Wadhwa was 33 years of age at the time of his death whereas Mahesh Kumar Chawla was aged about 37 years but while assessing the compensation, Id. Tribunal has wrongly adopted the multiplier of 17. As far as the grant of compensation in both the cases under the other heads is concerned, claimants have already been adequately compensated by awarding compensation on account of funeral expenses and last rites as well as loss of consortium.

17. After bestowing due consideration to the rival submissions made by learned counsel for the parties and appraisal of evidence and scrutinizing the impugned award, this Court does not find any legal and factual substance in the various contentions raised by learned counsel for the Insurance Company whereas various submissions made by learned counsel

for the appellants-claimants have some force, on the basis of which, the compensation awarded to the dependents of both the deceased deserves to be suitably enhanced.

18. As far as the finding recorded by trial court to the effect that the accident occurred due to the rash and negligent driving of offending bus by its driver respondent No.1 is concerned, there is cogent and convincing evidence available on record to establish that the accident was out come of the rash and negligent driving of bus by respondent No.1. Immediately after the accident, FIR was registered. Perusal of which reveals that the bus belonged to Panipat Refinery though its registration number as well as the name of the driver were missing. After the registration of FIR, investigation was carried out by the police, during which, offending bus as well as its driver were traced. After due investigation, respondent No.1 was charge-sheeted to face trial. Undoubtedly, he is facing the trial in the criminal case registered against him for causing the accident in question. Moreover, there is nothing on record to suggest that respondent No.1, after the registration of FIR against him ever lodged any kind of protest that he has been falsely implicated in the criminal case. So far as, contributory negligence on the part of driver of the bus as well as that of motorcycle is concerned, it was a head on collusion. The drivers of both the offending vehicles were equally duty bound to avoid the accident but they failed to discharge their duties in a facile manner, which ultimately, resulted into accident, in which, both the occupiers of motorcycle lost their lives. Though, it has been alleged during the course of arguments that the FIR was got registered falsely just to extract compensation, in connivance with the claimants and respondent

No.1 as well as police but to the utter surprise, there is no such evidence, from which, even a slightest inference can be drawn. In the instant case, respondent No.3 has miserably failed to adduce any evidence what to talk of cogent and convincing and reliable evidence, oral or documentary to establish that the claimants and respondents No.1 and 2 are either related to each other in any manner or they were earlier known to each other. Moreover, mere assertion in this regard is not suffice to discard the testimony of claimants as well as the witnesses examined by them. Ld. Tribunal has also rightly concluded with regard to the contributory negligence and no interference in this regard by this Court is justified.

19. As regards adequacy of compensation awarded by ld. Tribunal, this Court is of the considered view that the same is neither just nor adequate and is on the lower side. Nothing has been awarded on account of loss of love and affection to the appellants-claimants. Similarly, only a sum of ₹15,000/- has been awarded on account of funeral expenses/last rites besides a sum of ₹10,000/- towards the loss of consortium to the widow of the deceased in both the cases. In view of the observations made in **“Sarla Verma and others v. Delhi Transport Corporation and another” 2009(3) RCR (Civil) 77**, which has subsequently been approved in case captioned as **“Rajesh v. Rajbir”, 2013 (3) RCR (Civil)170**, claimants are entitled to a sum of ₹25,000/- on account of funeral expenses as against a sum of ₹15,000/- whereas ₹1,00,000/- on account of loss of consortium against a sum of ₹10,000/-. Besides it, on account of loss of love and affection, claimants are entitled to a sum of ₹1,00,000/- each in both claim petitions.

However, income of the deceased has been rightly assessed by the 1d. Tribunal. As regards the application of multiplier of 17 is concerned, this Court is of the considered view that it has been rightly applied as deceased-Rajesh Kumar Wadhwa was 33 years of age and not 37 years similarly deceased-Mahesh Kumar Chawla was 30 years of age and not 33 years as has been projected by insurance company. Thus, in *toto* ₹2,00,000/- has been enhanced in each case

20. In the light of what has been discussed above, the appeals preferred by the claimants are partly allowed and appeals preferred by insurance company are dismissed. Appellants-claimants shall be entitled to enhanced amount of ₹2,00,000/- in each case in addition to the compensation already awarded. The respondents-Insurance Company are directed to pay the amount so enhanced within a period of two months from the date of receipt of certified copy of this order and on its failure to make the payment within stipulated period, it would entail interest @ 6% per annum from the date of filing of the claim petition(s) before the Tribunal till its realization.

21. Parties to bear their own cost.

April 26, 2017
sonika

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No