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

**FAO No.3143 of 2012**
**Date of Decision.01.12.2017**

United India Insurance Co. Ltd. ........Appellant

Vs

Jaswinder Kumar Sharma and others ........Respondents

2. **FAO No.2729 of 2012**

Jaswinder Kumar and others ........Appellants

Vs

Ajay Kumar and others ........Respondents

3. **FAO No.1691 of 2013**

Mona Verma ........Appellant

Vs

Ajay Kumar and others ........Respondents

4. **FAO No.6529 of 2012**

Anjali ........Appellant

Vs

Ajay Kumar and others ........Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. V. Choudhari, Advocate
for the appellant in FAO No.3413 of 2012 and
for respondent No.3 in FAO Nos.6529, 2729 of 2012 and 1691 of 2013.

Mr. Vikram Bali, Advocate
for the appellant in FAO No.2729 of 2012.

Mr. Nempal, Advocate for
Mr. R.K. Bagga, Advocate
for the appellant in FAO No.1691 of 2013.

Mr. Sawan Chaudhary, Advocate for
Mr. Vikram Singh, Advocate
for the appellant in FAO No.6529 of 2012.

Mr. G.D. Gupta, Advocate
for respondent No.1 in FAO No.1691 of 2013.

Mr. R.S. Madan, Advocate and
Mr. Gopal Mittal, Advocate
for respondent No.8 in FAO No.3143 of 2012 and
for respondent No.6 in FAO No.6529 and 2729 of 2012 and
1691 of 2013.

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**AMIT RAWAL J.(ORAL)**

**C.M. No.31657-CII of 2012 in FAO No.6529 of 2012**

For the reasons stated in the application delay of 517 days in filing the appeal is condoned but the appellants shall not be entitled for interest for the aforementioned period.

Application is allowed.

**Main cases**

This order of mine shall dispose of four appeals, out of which three appeals bearing Nos.2729 of 2012, 6529 of 2012 and 1691 of 2013 have been filed by the claimants i.e. Jaswinder Kumar Sharma and others, Anjali and Mona Verma respectively seeking enhancement of compensation and one appeal bearing No.3143 of 2012 at the instance of the insurance company challenging the award passed by the Tribunal on the ground that the Tribunal has failed to apportion the liability, instead it ordered that the respondents in the claim petition shall be jointly and severally liable.

All the counsel are *ad idem* that as far as the appeal of insurance company in FAO No.3413 of 2012 with regard to Jaswinder Kumar Sharma is concerned, it is a second round of litigation whereas this Court in FAO bearing No.5935 of 2011 titled as "United India Insurance Co. Ltd. Vs. Jatinder Garg and others" along with other connected matters, in respect of the same accident, had apportioned the liability of both the vehicles to the extent of 50:50 and modified the Award passed by the Tribunal whereby the liability was apportioned in the ratio of 70:30. The aforementioned finding of this Court rendered in the judgment referred to above attached with FAO No.3413 of 2012 filed on behalf of the insurance company *viz-a-viz* fastening the liability reads as under:-

> *"While deciding Issue Nos. 1 & 2, the Ld. Tribunal in paras 11, 13 and 14 of the judgment noted as under:-*
>
> *"11. In order to prove issue No.1 the claimants examined PW4 Namita Mittal who deposed that she used to school at Raipur Rani in Maxi Cab bearing registration No. HR-68T 7984. They usually traveled in the Maxi Cab. She deposed that on 3.4.2008, she along with her colleagues namely Krishana, Sunita Chauhan, Jatinder Mohini, deceased-Santosh Garg, Smt. Aarti Verma, Anjali and Smt. Mukta etc. boarded the maxi cab bearing No. 68-T-7984. She used to catch the maxi cab from Tau Devi Lal Stadium near her house. At about 7.22/7.30 AM when they reached near Nadda Sahib Gurudwara their jeep in which they were travelling met with an accident with the truck No. HP-12-C-6827 which was coming from the opposite direction. PW4 further deposed that the driver Ajay Kumar (respondent No.1) was driving the maxi cab at a very high speed and rashly and negligently. He was warned by them many times to drive the vehicle at slow speed as it was raining outside. However, he did not listen to them. When he was taking a turn while overtaking a vehicle near Nadda Sahib he struck the jeep with the above mentioned truck. According to PW4 the accident in question took place due to the composite negligence of both the drivers i.e respondent No.1 as well as respondent No.5 Bhagat Ram. The injured were taken to General*

*Hospital, Sector 6, Panchkula.*

*13. PW9 Sunita Chauhan is one of the claimants who was also one of the passengers traveling in the maxi cab at the time of accident in question and who suffered injuries. She also corroborated the testimonies of PW1 and PW8. During cross-examination she deposed that the accident took place due to negligence on the part of the maxi cab driver. PW13 Mrs. Aarti Verma is also one of the claimants as well as injured. She also deposed that the accident in question had occurred due to contributory negligence of both the drivers. During cross-examination by the learned counsel for the respondents she deposed that 15 persons were traveling in the maxi cab in question and the accident had occurred due to contributory negligence of both the vehicle. Further, during cross-examination, she deposed that she was sitting on rearmost seat of the maxi cab.*

*14. PW16 Meenakshi is another injured as well as claimant in this case. She also deposed that on 3.4.2008 at about 7 AM when she along with other 7-8 colleagues were travelling in the maxi cab being ( No. HR (T)-7984), the driver Ajay Kumar while driving the maxi cab rashly and negligently and at a high speed hit against the truck bearing registration No. HP-12-C-6827 which was coming from the opposite direction, near Gurudwara Nadda Sahib on National Highway. She also deposed that the accident in question had occurred due to contributory negligence of both the drivers. During cross-examination she also reiterated her above statement. PW18 Anjali is another claimant/injured in this case. She in her affidavit Ex.PW17/A also corroborated the testimonies of the above mentioned witnesses. During cross-examination, she deposed that from her seat ( in the maxi cab) she was able to see* *the vehicles coming from opposite direction. Further, during cross-examination she deposed that both the vehicles were being driven at a fast speed.*

*A perusal of the above statements shows that all the witnesses deposed that the it was a case of contributory negligence and the drivers of both the vehicles i.e maxi cab and truck were responsible in causing the accident. The Ld. Tribunal has erroneously fastened the liability of 70% on the driver of maxi cab and that of 30% on the driver of truck.*

*Admittedly on 3.4.2008 an accident between the maxi cab and the truck was occurred in which three lady teachers lost their lives and 14 persons received multiple injuries. A perusal of the record shows that the seating capacity of the maxi cab is of 8 passengers, wherein it was carrying 15 passengers. While taking a sharp turn at a high speed, it hit against a truck coming from the opposite direction. It was head on collusion. It is a case of clear cut contributory negligence. The drivers of both the vehicles should be fastened with liability of 50% - 50%, as they were negligent in driving their respective vehicles and causing the accident. The maxi cab was plying in violation of the terms and conditions of the insurance policy, therefore, the respondent No. 3 is not liable to pay the compensation. Three passengers lost their lives whereas some passengers became permanent/partial disabled. In view of the above, the findings on Issues No. 2 and 3 arrived at by the Ld. Tribunal are modified to the extent that drivers of both the vehicles are equally negligent and responsible in causing the accident and they are fastened with liability of 50-50. The appeals are allowed. The Insurance Companies of both the vehicles are granted the recovery rights. The statutory amount deposited by the Insurance Companies be placed at the disposal of the Learned Tribunal* *for adjustment or disbursement according to law.*

Therefore, the appeal of the insurance company is allowed and the finding of the Tribunal on the issue of liability is modified to the extent of 50:50 between both the vehicles instead of 70:30 and recovery rights are provided to the appellant-insurance company against the owner, owing to the fact that there was breach of terms and conditions of the insurance policy. The statutory amount of ₹25000/- shall be transmitted to the Tribunal for part satisfaction of the award passed by the Tribunal to the extent of 50%.

Now I shall be taking up the case of Anjali, who at the time of the accident was travelling in the maxi cab bearing registration No.HR-68 (T) 7984 insured with the United India Insurance Co. Ltd. driven by Ajay Kumar and owned by Swaran Kumar. She suffered 20% permanent disability in relation to upper and lower limbs as per Ex.PW16/A and she remained admitted in PGI from 4.4.2008 to 15.4.2008 and further follow up treatment from 22.09.2009 to 26.09.2009. She was operated upon for skull injuries and right thigh bone.

Learned counsel for the appellant-Anjali submits that the compensation of ₹48,900/- has been awarded whereas the claimant being 36 years of age and serving as Teacher, had suffered 20% permanent disability *viz-a-viz* dislocation of waist bone and disfigurement of the face. In this regard, he has drawn attention of this Court to the finding rendered by the Motor Accident Claims Tribunal with regard to injuries, which reads as under:-

> "*…30. Now coming to the permanent disability suffered by claimant-Anjali which is 20% in relation to upper and lower limbs*

*as shown in Ex.PW16/A. Though in the testimony of the claimant nothing has come on record that the injuries suffered by her has affected her earning capacity or her day to day activities but in view of her testimony that her side waist bone has been totally dislocated and it cannot be cured with operation and further that due to 50 stiches on his skull/forehead the shape of her face has been disfigured for throughout her life, I deem it appropriate to award a sum of Rs.20,000/- on account of loss of amenities viz. disfiguration of face of claimant-Anjali."*

The Tribunal, thus, not assessed the compensation in correct perspective with regard to pain and suffering, loss of amenities of life, disfigurement of face, special diet and attendant charges. Therefore, the award passed by the Tribunal is liable to be modified and the compensation deserves enhancement.

As regards the appeal preferred by Ms. Mona Verma, learned counsel for the appellant submits that the Tribunal has awarded a sum of ₹1,15,404/-, out of which ₹10,000/- provided towards hospitalization, pain and suffering, ₹6000/- for special diet and transportation, ₹45,324/- towards expenditure incurred on treatment and ₹30,000/- for loss of amenities of life and ₹24,080/- for loss of income for the period of two months.

She had suffered multiple and grievous injuries on her person including fractures of sacrum bone and pelvis, tibia and fibula bones of left leg. The amount of ₹10,000/- for hospitalization and pain and suffering is on meager side. Loss of earning capacity should have been assessed by applying the multiplier suitable to the age of the injured, much less, nothing has been provided for loss of amenities of life, thus, there is scope for enhancement.

As regards the appeal bearing No.2729 of 2012 with regard to enhancement of compensation for death of one Sunita, who unfortunately died at the age of 48 years, learned counsel appearing for the appellants submits that she was drawing a salary of ₹12,148/- per month, being a a teacher in GMS, Pyarewala, District Panchkula. Owing to the policy of the Government, salary of the deceased except allowances till she attained the age of 55 years, is to be given to the family of the deceased. This fact has been proved through the testimony of PW-2 Rajesh Kumar Pathak, who proved on record the memo dated 4.3.2010 Ex.R1 qua the same. The calculation while assessing the compensation has not been done correctly by the Tribunal. In this regard, he has drawn attention of the Court to paragraph 17 of the award, which reads as under:-

> *"17. The deceased was a Government employee and she died at the age of 48 years. Therefore, the future increase in income of the deceased is also liable to be taken into consideration while assessing the dependency of the claimants. The Ho'ble Supreme Court of India in case titled* ***Smt. Sarla Verma Versus Delhi Transport Corporation (SC) 2009(3) RCR (Civil) 77*** *has observed that "in view of imponderables and un-certainties they are in favour of adopting as a rule of thumb, and addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where deceased had a permanent job and was below 40 years. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50*

*years." But in the case in hand, claimant No.1 Jaswinder Kumar (PW-1) has admitted in his cross examination that Sunita was Government employee and after her death he is getting her full salary except allowances and he will get the full salary of Sunita upto the year 2015. PW-2 Rajesh Kumar Pathak has also placed and proved on record the memo dated 4.3.2010 Ex.R1 showing that the claimants are entitled to get the monthly Financial Assistance. Thus, in this way the claimants are only entitled to 30% increase. The salary of deceased Sunita is treated as Rs.12,148/- and in view of the law laid down in* ***Sarla Verma's case*** *(supra) the increase of 30% in the salary of deceased Sunita is liable to be presumed to be Rs.3644/- per month (Rs.12,148/-x30%) i.e. Rs.43,728/- per annum (Rs.3644/-x12=Rs.43,728/-)."*

He further relies upon the judgment rendered by a Coordinate Bench of this Court in FAO No.5258 of 2015 decided on 30.08.2017 titled as "*The Oriential Insurance Company Ltd. Vs. Neelam and others"* wherein this Court while distinguishing the judgment of Hon'ble Supreme Court passed in ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others 2016(9) SCC 627*** held that pensionary benefits available to family of a deceased employee are not amenable to deduction for computing loss of dependency, thus, urges this Court that only 50% of the salary to be paid to the family under Rule 5(2) of the Haryana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006 ought to have been deducted out of assessed compensation.

I have heard learned counsel for the parties, appraised the paper book and of the view that the compensation in all three aforementioned cases is liable to be increased.

Since Anjali has suffered with fracture of shaft humerus and femur left side with dislocation of right hip and operated upon for skull injuries and qua right thigh bone, the Tribunal has not taken into consideration the component of pain and suffering and disfigurement of face. The trauma and agony she gone through is worst than death. The face of a young lady has become a curse of her life. I am of the view that owing to 20% permanent disability on the lower limb and dislocation of waist bone and disfigurement of face, the compensation is required to be re-assessed.

Therefore, I will provide ₹1,50,000/- for pain and suffering and loss of amenities of life and ₹50,000/- for disfigurement of face. I will enhance the amount of ₹4000/- to ₹10,000/- for special diet but retain the transportation charges to the tune of ₹9900/-. I will further provide a sum of ₹10,000/- towards special diet. The Tribunal has provided ₹12,000/- on account of hospitalization, which I will retain. Thus, the total compensation payable shall be ₹2,41,900/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization except the period of delay of 517 days.

As regards the case of Mona Verma aged 30 years at the time of accident, I will provide ₹50,000/- each towards pain and suffering and loss of amenities of life, ₹5,000/- each for attendant charges, special diet and transportation. I will retain the amount of ₹24,080/- assessed towards loss of income and ₹45,324/- for expenditure incurred on treatment. She was stated to be working as guest teacher and earning ₹12,000/- per month. Her disability was assessed as 20% permanent in nature, therefore, I will adopt a multiplier of 17 to assess the loss of future earning for 20% permanent disability as ₹4,89,600/-.

In all, the compensation payable shall be ₹6,74,004/-, which I will round off to ₹6,74,000/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization.

As regards the case of death of Sunita aged 48 years at the time of accident, she was stated to be working as a Teacher and earning ₹12,148/- per month. Therefore, I will provide 30% increase in the salary towards future prospects, make a deduction of 1/3rd towards personal expenses and adopt a multiplier of 13 to assess the loss of dependency as Rs.16,42,368/-. I will further add to it ₹40,000/- for loss of consortium and ₹15,000/- each for loss of estate and funeral expenses, thus, the total compensation shall be ₹17,12,368/-.

As regards the argument of deduction of amount provided under Rule 5(2) of the Haryana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006, I am not in agreement with the view taken by Coordinate Bench of this Court in the judgment referred to above. Rule 5 of 2006 Rules *ibid* provides for the extent of financial assistance which reads as under:-

> *"5.(1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim.,-*
>
> *(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty- five years;*

> *(b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years;*
>
> *(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.*
>
> *(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.*
>
> *(3) The family of a deceased Government employee who was in occupation of a Government residence would continue to retain the residence on payment of normal rent/license fee for a period of one year from the date of death of the employee.*
>
> *(4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.*
>
> *(5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance."*

In view of the aforementioned Rules, the case of the deceased-Sunita falls in clause (c) of Rule 5(1), meaning thereby, the claimants shall be entitled to the pay and allowances that were last drawn by the deceased employee in the normal course without raising a specific claim for a period of seven years. Therefore, the claimants shall receive a sum of ₹10,20,432/- (12,148x12x7) as financial assistance under the aforementioned Rules, which is amenable for deduction from loss of dependency.

As regards the argument of deduction of family pension, as per clause 2 of Rule 5(1) of the 2006 Rules, the family shall be eligible to receive family pension as per the normal rules only after the period during which she receives the financial assistance as above is completed. Therefore, there is no virtue of deducting merely 50% of the salary as computed towards financial assistance from the loss of dependency while assuming that had the Rules of 2006 been not in existence, the family would have been entitled to pension to the extent of 50% in the last drawn pay. In my humble view, it is not the correct appreciation of law. The family shall be eligible to receive family pension only after the period during which it receives the financial assistance as enumerated in Rule 5(1) of the 2006 Rules.

Therefore, the appellants in FAO No.2729 of 2012 shall be entitled to a compensation of ₹6,91,936/- (₹17,12,368-₹10,20,432/-).The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the claim petition till realization, keeping in view the fact that the Tribunal has made a wrong calculation and the claimants are entitled for interest on the difference of amount as now assessed by this Court. The enhanced amount shall be distributed equally between the parties. The liability to pay the compensation shall be apportioned 50:50 between the insurer of the maxi cab and truck involved in the accident.

The awards passed by the Tribunal are modified to the above extent and all the appeals are allowed in the above terms.

**(AMIT RAWAL)**
**JUDGE**

**December 01, 2017**
Pankaj*

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|---|---|
| Whether reasoned/speaking | Yes |
| Whether reportable | No |