IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 1.8.2017

1. **FAO No. 4415 of 2012(O&M)**

ICICI Lombard General Ins. Co. Ltd. ….Appellant

VERSUS

Ranjna and others .....Respondents

Present: Mr. Rajneesh Malhotra, Advocate for the appellant.

Mr. S.P. Chahar, Advocate for respondents No.1 to 3.

None for respondent No.4.

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.7.

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2. **FAO No. 4416 of 2012(O&M)**

ICICI Lombard General Ins. Co. Ltd. ….Appellant

VERSUS

Ranjna and others .....Respondents

Present: Mr. Rajneesh Malhotra, Advocate for the appellant.

Mr. S.P. Chahar, Advocate for respondents No.1 to 3.

None for respondent No.4.

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.7.

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3. **FAO No. 4417 of 2012(O&M)**

ICICI Lombard General Ins. Co. Ltd. ….Appellant

VERSUS

Smt. Pushpa Luthra and others .....Respondents

Present: Mr. Rajneesh Malhotra, Advocate for the appellant.

Mr. Kulvir Narwal, Advocate for respondents No.1 to 4.

None for respondent No.5.

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.8.

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4. **FAO No. 5446 of 2012(O&M)**

Reliance General Ins. Co. Ltd. ….Appellant

VERSUS

Ranjna and others .....Respondents

Present: Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for the appellant.

Mr. S.P. Chahar, Advocate for respondents No.1 to 3.

None for respondent No.4.

Mr. Rajneesh Malhotra, Advocate for respondent No.6.

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5. **FAO No. 5447 of 2012(O&M)**

Reliance General Ins. Co. Ltd. ….Appellant

VERSUS

Smt. Pushpa Luthra and others .....Respondents

Present: Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for the appellant.

Mr. Kulvir Narwal, Advocate for respondents No.1 to 4.

None for respondent No.5.

Mr. Rajneesh Malhotra, Advocate for respondent No.7.

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6. **FAO No. 5448 of 2012(O&M)**

Reliance General Ins. Co. Ltd. ….Appellant

VERSUS

Ranjna and others .....Respondents

Present: Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for the appellant.

Mr. S.P. Chahar, Advocate for respondents No.1 to 3.

None for respondent No.4.

Mr. Rajneesh Malhotra, Advocate for respondent No.6.

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7. **FAO No. 3955 of 2012(O&M)**

Smt. Pushpa Luthra and others ….Appellants

VERSUS

Ranjit Singh and others .....Respondents

Present: Mr. Kulvir Narwal, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.5.

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<u>CORAM</u>: <u>HON'BLE MRS. JUSTICE REKHA MITTAL</u>

<u>REKHA MITTAL, J.</u>

This order will dispose of the aforesaid appeals as these have emerged out of the same award dated 16.02.2012 passed by the Motor Accidents Claims Tribunal, Jhajjar (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Om Parkash Luthra, Umed Singh and Rajwanti wife of Umed Singh in a motor vehicular accident that took place on 16.03.2010.

Om Parkash Luthra, Umed Singh and Rajwanti were travelling in Wagon-R Car bearing No.HR-14-C-4339 and the car was driven by Umed Singh (since deceased). As per plea of the claimants, accident took place due to rash and negligent driving of Trolla No.HR-38-J-3587 driven by Ranjit Singh, owned by M/s ISD Logistics Pvt. and insured with ICICI Lombard General Insurance Company Ltd. The car driven by Umed Singh was owned by Savinder Kumar and insured with The Reliance General Insurance Company Ltd.

The Tribunal held driver of both the vehicles involved in the accident guilty of contributory negligence to the extent of 50% each. With regard to death of Umed Singh, the Tribunal assessed his income at Rs.5,000/- per month, deducted 1/3rd for personal expenses, applied a multiplier of 11 to compute loss of dependency at Rs.4,40,000/-. An amount of Rs.20,000/- was awarded for funeral expenses making total compensation to Rs.4,60,000/-.

With regard to death of Rajwanti, the Tribunal assessed her income at Rs.4,000/- per month, deducted 1/3rd for personal expenses, applied a multiplier of 13 and computed loss of dependency to the tune of Rs.4,16,000/-. By adding an amount of Rs.20,000/- towards funeral expenses, an amount of Rs.4,36,000/- was awarded in favour of the claimants.

In the claim preferred by Smt. Pushpa Luthra and others with regard to death of Om Parkash Luthra, the Tribunal assessed his income at Rs.35,253/- per month, deducted $1/3^{rd}$ for personal expenses and Rs.3,84,000/- per annum towards income tax liability, applied a multiplier of 11 and computed loss of dependency at Rs.28,16,000/-. The widow was awarded an amount of Rs.20,000/- for loss of consortium and an amount of Rs.20,000/- was awarded for funeral expenses to the claimants, making total compensation to Rs.28,56,000/-.

FAO Nos.4415, 4416 and 4417 of 2012 have been preferred by the Insurance Company of the Trolla bearing No.HR-38-J-3587 involved in the occurrence.

FAO Nos.5446, 5447 and 5448 of 2012 have been preferred by Reliance General Insurance Company Ltd. (insurer of Wagon-R car bearing No. HR-14-C-4339).

FAO No.3955 of 2012 has been preferred by claimants Pushpa Luthra and others seeking enhancement of compensation.

Counsel representing the insurance company of Trolla has challenged correctness of findings of the Tribunal attributing 50% negligence to Ranjit Singh, driver of the Trolla by contending that Ranbir Singh PW-1, an alleged eye-witness to the occurrence in his cross examination, had stated to the following effect:-

> "….The truck was standing on its correct side of the road and the car struck against the truck after coming on wrong side."

It is argued with vehemence that if the car was brought on the wrong side of the road by its driver and struck against the truck that was being driven on the correct side of the road, no negligence, in the circumstances, can be attributed to the Trolla, therefore, owner, driver and insurer of the trolla are entitled to be exonerated of their liability to pay compensation.

Counsel representing the insurance company of Wagon-R car, on the contrary, would urge that statement of Ranbir Singh PW-1 has to be read as a whole and the insurer of Trolla cannot derive any advantage to its contention by picking a sentence from testimony of the said witness. According to counsel, Ranjit Singh, driver of Trolla did not appear in the witness box either to controvert statement of Ranbir Singh PW-1 nor to say something as to how the occurrence in question took place when otherwise there is no dispute raised by the driver, owner and insurer of the Trolla with regard to involvement of the Trolla in accident resulting in sustaining of injuries by three occupants of the car who actually succumbed to the injuries on the spot. It is further submitted that findings of the Tribunal attributing 50% negligence to driver of Wagon-R car are liable to be set aside by holding driver of the Trolla being exclusively liable for causing the accident due to his rash and negligent driving. In addition, it is argued that on the basis of FIR lodged in regard to the occurrence, driver of the Trolla was put to trial, sufficient to prove that it was only the Trolla driver who was responsible for causing the accident due to his rash and negligent driving .

I have heard counsel for the parties, perused the paper-book and the records.

The Tribunal framed issue No.1 in the following terms:-

"i) Whether the accident occurred due to rash and negligent driving of vehicle No. HR-38-J-3587 by respondent No.1? OPP"

The claimants examined Ranbir Singh PW-1 to discharge the onus of issue No.1. Ranbir Singh tendered into evidence his duly sworn affidavit Ex.PW1/A and FIR Ex.P1. A relevant extract from his testimony with regard to manner in which the occurrence in question took place reads as follows:-

> "That on 16.03.2010 I along with Sukhbir and Anil were travelling in a Car No.DL-3C-AG-6675 and another car No.HR-14C-4339 was also driving (sic) by Umed Singh (since deceased) along with his wife Rajwanti and Om Parkash Luthra. I was followed (sic) the car of Umed Singh deceased. The car of Umed Singh was 45-50 feet ahead of over (sic) car. Both cars crossed Madana Chock, when we were at a distance of 1 K.M. from village Chamanpur at about 9.30 PM then all of sudden a Trolla No.HR-38J-3587 came from the side of Jhajjar/opposite direction at a very high speed. It was being driven by its driver rashly and negligently and hit Trolla into the Wagon-R Car No.HR-14C-4339 after coming on the wrong side of its (sic) road. Ranbir stopped his car and found Umed Singh, Rajwanti and O.P. Luthra occupants or (sic) Wagon-R Car were the seriously injured and he tried to save them but they succumbed at the spot. The driver of the offending Trolla fled away leaving behind his Trolla No. HR-38J-3587 at the site of accident. The said accident was caused due to sole rash and negligent driving by the respondent No.1 after coming on the wrong side of road, whereas the

> Wagon-R car was going on its correct side at a slow speed and followed the traffic rules at the time of said accident. A formal FIR was registered by me against the respondent No.1 driver of Trolla No.HR-38J-3587 in the P.S. Beri vide FIR No.60 dated 17.03.2010 U/S 279, 304A IPC."

The witness was cross-examined by counsel representing the driver and owner of Trolla. He denied the suggestion that no accident took place due to rash and negligent driving of respondent No.1 or the deceased himself was driving his vehicle in a rash and negligent manner and caused accident after coming on wrong side. He was further cross-examined by counsel representing the insurer of Trolla. In his cross-examination by counsel for the insurance company, he has deposed to the following effect:-

> "The incident took place at about 9.00 p.m. It is correct that on the spot the truck was standing on his correct side of the road and the car struck against the truck after coming on wrong side. It is wrong to suggest that no accident took place due to the rash and negligent driving of respondent No.1. It is correct that I have not seen the driver till today so cannot tell the same (sic) and address of the driver of the truck……
> It is wrong to suggest that I am deposing falsely being the real brother of the deceased; or that I have not witnessed the alleged accident; or that I was introduced as eye witness in collusion with the local police, petitioners and respondents."

He was further cross-examined by a counsel representing the owner and insurer of the car. A relevant extract from his cross examination reads as follows:-

> "….It is wrong to suggest that I was not present on the spot. It is wrong to suggest that car bearing registration No.HR-38J-3587 was not involved in the alleged accident and deceased not sustained injuries in the same way as alleged in the affidavit."

Indisputably, the driver of Trolla did not appear in the witness box to rebut testimony of Ranbir Singh or to explain as to how the accident took place. Umed Singh was the driver of car involved in the accident and unfortunately succumbed to the injuries sustained in the occurrence. Ranjit Singh - driver of the Trolla was the best witness to explain as to how the two vehicles collided resulting in sustaining of injuries to three occupants of car. The very fact that Ranjit Singh withheld himself from the witness box without any justification is a strong circumstance to draw an adverse inference against him that he caused the accident due to his rash and negligent driving while driving Trolla bearing No. HR-38-J-3587.

Perusal of the aforesaid extract from the affidavit of Ranbir Singh would make it evident that he made a categoric deposition that the accident took place as driver of Trolla brought it on the wrong side of the road and struck against Wagon-R car going on its correct side.

The question for consideration is whether a single sentence in statement of the witness in cross examination highlighted by counsel for the insurance company of the Trolla is sufficient to exonerate the driver, owner and insurer of Trolla of its liability or to attribute 50% or entire negligence to the driver of Wagon-R Car No.HR-14C-4339.

As per the settled position in law, statement of a witness has to be read as a whole for the purpose of correct appreciation of its evidentiary value. If the sentences are picked from here and there in isolation or in other words, divorced from the remaining deposition it may result in miscarriage of justice. Perusal of the extract reproduced hereinabove from testimony of Ranbir Singh would indicate that either some mistake was committed at the time of recording of his cross examination or some confusion was created because of putting a consolidated question with regard to location of two vehicles at the spot after the occurrence. If the witness had admitted the factum that the car struck against the truck after coming on wrong side, there was no reason for him to deny in the same breath that no accident took place due to rash and negligent driving of respondent No.1 (driver of Trolla). It is also undisputed position of the case that on the basis of FIR registered at the instance of Ranbir Singh, on completion of investigation by the police, challan was presented against Ranjit Singh for committing offence punishable under Section 279 and 304-A IPC. Counsel(s) for the parties have expressed their inability to say something about outcome of the criminal proceedings.

Taking into consideration testimony of Ranbir Singh PW-1 as a whole, factum of driver of Trolla having faced criminal proceedings coupled with the factum that he has withheld himself from the witness box without any justifiable reason, it is difficult to affirm findings of the Tribunal that 50% negligence can be attributed to driver of Wagon R Car No.HR-14C-4339 or driver of Trolla No.HR-38J-3587 was not solely responsible for causing the accident due to his rash and negligent driving. In this view of the matter, findings of the Tribunal on issue No.1 are modified by holding that the accident occurred due to rash and negligent driving of vehicle No.HR-38-J-3587 by Ranjit Singh – respondent No.1. Resultantly, it is held that the accident occurred due to sole rash and negligent driving of vehicle No.HR-38-J-3587 by driver of aforesaid vehicle and accordingly issue No.1 is answered against the driver, owner and insurer of said vehicle. That being so, appeals filed by the insurance company of Trolla No. HR-38-J-3587 to challenge the findings of the Tribunal on issue No.1 are accordingly dismissed whereas the appeals preferred by the insurance company of Wagon-R car No.HR-14C-4339 to challenge the findings on said issue are allowed.

Counsel for the insurance company has not advanced any arguments to challenge assessment of compensation at Rs.4,36,000/- with regard to death of Rajwanti. However, counsel for the respondents/claimants has submitted that compensation awarded by the Tribunal is liable to be enhanced. For this purpose, it has been argued that the Tribunal has wrongly deducted 1/3rd towards personal expenses of the deceased which is contrary to what has been held by a Division Bench of this Court in **Paramjit Singh and another vs. Dalbag Singh @ Bagga and others, 2014 (3) RCR (Civil) 1027**. It has further been argued that compensation awarded under conventional heads needs re-look and enhancement.

Counsel(s) representing the insurance company would urge that as no appeal has been preferred by the claimants seeking enhancement of compensation, their claim for enhancement is not tenable when otherwise the Tribunal has awarded adequate compensation to the claimants.

No doubt the claimants have not preferred any appeal seeking enhancement of compensation. There cannot be any dispute about the settled position in law that the Tribunal has an onerous obligation to assess just and reasonable compensation to make good the loss suffered by the victim family. In this regard, reference can be made to observations of Hon'ble the Supreme Court of India in the landmark judgment **Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**. Once an appeal has been preferred by the insurance company to challenge the award, Court in exercise of its statutory appellate jurisdiction can exercise all the powers available to a Tribunal particularly in view of provisions of Code of Civil Procedure, 1908 and the fact that provisions of Motor Vehicles Act, 1988 are a benevolent social legislation, therefore, is competent to examine correctness of findings of the Tribunal both from the point of view of the appellant(s) as well as respondent(s).

The Tribunal has assessed income of the deceased at Rs.4,000/- per month by taking into consideration value of her services as a house-maker. In the light of Division Bench judgment of this Court, no deduction towards personal expenses is to be made in the present scenario. After disallowing deduction made by the Tribunal, loss of dependency comes to Rs.6,24,000/- (Rs.4000 x 12 x 13). The claimants are awarded an amount of Rs.25,000/- for funeral expenses. The deceased left behind two sons and a daughter and the youngest child was minor and filed the application for compensation through his elder brother Rike. The claimants are entitled to an amount of Rs.2,25,000/- (to be shared equally) for loss of love and affection of their mother. In this manner, total compensation comes to Rs.8,74,000/- and the additional amount is Rs.4,38,000/- (Rs.8,74,000/- - Rs.4,36,000/-) payable to the claimants with interest at the rate of 7.5% per annum from the date of petition till realisation. The amount falling to share of the minor claimant shall be deposited in a Fixed Deposit Receipt for three years or till he attains the age of majority whichever is later. The claimants shall not be entitled to raise any loan against the Fixed Deposit Receipt.

With regard to death of Umed Singh, counsel for the appellant has not advanced any arguments to challenge assessment of compensation by the Tribunal. However, counsel for the respondents/claimants has submitted that compensation assessed by the Tribunal warrants enhancement.

Counsel for the claimants has submitted that the Tribunal has adopted a multiplier of 11 despite holding that the deceased was 50 years old. It is further argued that the admissible multiplier would be 13 in the light of judgment of Hon'ble the Supreme Court in **Smt. Sarla Verma's case** (supra). The claimants are entitled to benefit of increase in income for future prospects to the extent of 30%. Compensation awarded under conventional heads needs enhancement.

Counsel for the insurance company has supported the award with the submission that Tribunal has assessed adequate compensation.

The application for compensation was filed by the daughter and two sons of Umed Singh. The Tribunal has assessed his income at Rs.5,000/- per month. As per the findings of the Tribunal, Umed Singh was 50 years of age. The admissible multiplier for the age bracket of 46-50 years is 13 as per the judgment **Smt. Sarla Verma's case** (supra). The Tribunal has not extended benefit of additional income for future prospects as the deceased was 50 years old. The claimants shall be entitled to additional income to the extent of 15% in the light of judgment **Rajesh and others Vs. Rajbir Singh and others, 2013 ACJ 1403**. In this manner, loss of dependency comes to Rs.5,98,000/- [Rs.7,80,000/- (Rs.5,000/- x 12 x 13) + Rs.1,17,000/- (15% future prospects) - Rs.2,99,000/- (1/3rd towards personal expenses)]. Under the conventional heads, the claimants shall be entitled to an amount of Rs.25,000/- for funeral expenses, Rs.2,25,000/- (to be shared equally) for loss of love and affection, care and guidance of their father, Rs.25,000/- for loss of estate. In this manner, total compensation comes to Rs.8,73,000/- and additional amount is Rs.4,13,000/- (Rs.8,73,000/- - Rs.4,60,000/-) payable to the claimants with interest at the rate of 7.5% per annum from the date of petition till realisation. The amount falling to share of the minor claimant shall be deposited in a Fixed Deposit Receipt for three years or till he attains the age of majority whichever is later. The claimants shall not be entitled to raise any loan against the Fixed Deposit Receipt.

With regard to death of Om Parkash Luthra, the Tribunal has assessed his income at Rs.35,253/- per month. After deducting income tax liability and 1/3rd towards personal expenses, calculated loss of dependency at Rs.2,56,000/- per annum. A multiplier of 11 was applied and computed loss of dependency to the tune of Rs.28,16,000/-. In addition, an amount of Rs.20,000/- each on account of loss of consortium to the widow and for funeral expenses has been awarded, making total compensation to Rs.28,56,000/-.

Counsel for the appellants would contend that the deceased left behind his widow, two daughters and a minor son (claimants) held to be dependent upon his earning. The admissible deduction, in the given circumstances, would be $1/4^{th}$. Another submission made by counsel is that the Tribunal has not allowed benefit of increase in income for future prospects to the extent of 15%. In addition, it is argued that compensation awarded under conventional heads needs enhancement in the light of judgements of Hon'ble the Supreme Court **Rajesh and others** case (supra) and **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945.**

Counsel has also staked claim for enhancement of compensation on the premise that the deceased owned 59 kanals 16 marlas of land and he had been managing the affairs for giving the land on lease and collecting theka etc. from its cultivators. It is argued that value of services of the deceased towards management of the land is required to be assessed and compensation in this regard is liable to be paid.

Counsel representing the Insurance Company has supported the award by contending that adequate compensation has been awarded.

There is no denial that application for compensation was filed by the widow, two daughters and a minor son of the deceased. All the four claimants have been held entitled to get compensation being dependent upon income of the deceased. Under the circumstances, admissible deduction would be $1/4^{th}$ in place of $1/3^{rd}$.

So far as the plea of the claimants for extending benefit of increase on the basis of future prospects, indisputably, the deceased was 54 years old and a regular employee i.e. Development Officer in United Insurance Co. Ltd., Division Office, Rohtak. Hon'ble the Supreme Court in **Smt. Sarla Verma's case** (supra) has allowed benefit of increase in income for future prospects to a regular employee in case of death before the person attains the age of 50 years. As Om Parkash was more than 50 years of age, contention of the appellants for extending benefit of future prospects is not tenable and liable to be rejected.

Counsel for the parties have not disputed that as salary of the deceased was taxable, statutory deduction of income tax is to be kept in view while assessing loss of dependency. The deceased died in March 2010. Taking into consideration the income exempted from tax in the concerned financial year (Rs.1,60,000/-) , taxable income would be Rs.2,63,036/- at the rate of 10% and tax liability comes to Rs.26,303/- + Rs.789/- (education cess) = Rs.27,092/-. After deducting 1/4th for personal expenses and tax liability, income available for loss of dependency comes to Rs.2,90,185/-. After applying a multiplier of 11, loss of dependency comes to Rs.31,92,035/- [Rs.2,90,185/- x 11].

Under the conventional heads, the appellants shall be entitled to an amount of Rs.1,00,000/- for loss of consortium to the widow, Rs.2,25,000/- for loss of love and affection, care and guidance for the children, Rs.25,000/- for expenses on funeral and another Rs.25,000/- for loss of estate.

The deceased was owner of 59 kanals 16 marlas of land. The land has been left in the hands of claimants. The deceased was a regular employee of United Insurance Co. Ltd. Under the circumstances, claim of the appellants for compensation qua services of the deceased to manage the land is not justified.

In view of the above, total compensation comes to Rs.35,67,035/- and the enhanced compensation is Rs.7,11,035/- (Rs.35,67,035/- - Rs.28,56,000/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable exclusively to widow and minor son of the deceased in equal proportion. The amount falling to share of widow shall be deposited in a Fixed Deposit Receipt for a period of three years and that of the minor for a period of three years or till he attains the age of majority, whichever is later. The claimants shall not be entitled to raise any loan against the FDRs.

The appeals are disposed of in the aforesaid terms.

AUGUST 1, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no