

FAO No. 132 of 2013,
FAO No. 1576 of 2013,
FAO No. 2200 of 2013 and
FAO No. 2201 of 2013 :1:

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 132 of 2013 (O&M)
Date of decision : 24.11.2017

Hemant Kumar
.....Appellant

Versus

Kultar Singh and others
.....Respondents

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FAO No. 1576 of 2013

Hemant Kumar and another
.....Appellant

Versus

Kultar Singh and others
.....Respondents

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FAO No. 2200 of 2013

Pepsu Road Transport Corporation, Patiala
.....Appellant

Versus

Hemant Kumar and others
.....Respondents

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FAO No. 2201 of 2013

Pepsu Road Transport Corporation, Patiala

.....Appellant

Versus

Hemant Kumar and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Anupam Singla, Advocate
for the appellant in FAO No. 2200-2201 of 2013.

Mr. R.D Yadav, Advocate for the appellant
in FAO No.132 and 1576 of 2013.

Mr. Gaurav Sharma, Advocate for respondent no.1 in
FAO No.132 and 1576 of 2013.
for respondent no.3 in FAO No.2200 of 2013 and
for respondent no.2 in FAO No.2201 of 2013.

Mr. R.D Yadav, Advocate for respondents no. 1 and 2
in FAO No. 2200 in 2013 and respondent no.1 in
FAO No. 2201 of 2013.

Mr. Ashok Kumar Singla, Sr. DAG, Punjab in all
FAOs.

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RITU BAHRI, J.

C.M No. 609-CII of 2013 in
FAO No. 132 of 2013

C.M is allowed subject to all just exceptions.

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Through this common judgment, four appeals bearing no. FAO
No. 132 of 2013 (titled, “Hemant Kumar vs. Kultar Singh and others), FAO
No.1576 of 2013 (titled, “ Hemant Kumar and another vs. Kultar Singh and
others), FAO No. 2200 of 2013 (titled, “Pepsu Road Transport corporation,

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Patiala vs. Hemant Kumar and others), FAO No.2201 of 2012 (“Pepsu Road Transport Corporation, Distrcit Patiala vs. Hemant Kumar and others”) shall be decided as a common question of law arises for determination in these appeals.

Appellants have filed the present appeals against the award dated 1.12.2012 passed by the Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as ‘the Tribunal’), whereby in **claim petition no. 248 of 2010**, titled, ‘**Hemant Kumar vs. Kultar Singh and others**’, an amount of Rs.10,000/- was awarded as compensation on account of injuries suffered by the claimant and in **claim petition no. 250 of 2010** titled “**Hemant Kumar and others vs. Kultar Singh and others**” a compensation of Rs.7,35,000/- was awarded to the claimants on account of death of Rinky Devi in a motor vehicular accident on 2.10.2010.

Facts not in dispute, between the parties, are that on 2.10.2010 at about 5:00 p.m, Hemant Kumar along with his wife namely Rinky Devi (since deceased) was going to her paternal home from Village Nandrapur Bass while driving motorcycle No. HR-36-H-5984. His wife Rinky Devi was travelling as pillion rider. At about 5:00 p.m when they reached near Masani Sabi Bridge on National Highway No.8, Dharuhera, the offending vehicle which was being driven by Kultar Singh rashly and negligently at a very high speed in a zigzag manner came from back side and hit the motorcycle and caused the accident in question. Due to the collision, both motorcyclists fell down on the road and the tyre of the offending vehicle ran over upon the head of Rinky Devi and she died at the spot, whereas Hemant Kumar sustained serious and grievous injuries on his person. On the basis

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of the statement of Hemant Kumar, a case vide FIR No. 312 dated 2.10.2010 was registered at police station Dharuhera in respect of the accident.

Hemant Kumar filed **claim petition No.248 of 2010** seeking compensation on account of injuries suffered by him in the accident and Hemant Kumar and Smt. Savitri Devi, husband and mother-in-law of the deceased, filed **claim petition No. 250 of 2010 seeking** compensation on account of death of Rinki Devi, who was stated to be 19 years old at the time of accident.

The claim petitions were contested by Kultar Singh and Pepsu Road Transport Corporation, Patiala (respondents no. 1 and 2 in the claim petition) and they filed their joint written statement, wherein they controverted the allegations and pleaded that a wrong FIR had been registered by the police in connivance with the claimants. From the pleadings of the parties, following issues were framed vide order dated 7.5.2011:-

1. Whether petitioner Hemant Kumar had sustained injuries and Rinky Devi had died in a vehicular accident that took place due to rash and negligent driving of Punjab Roadways bus bearing registration No. PB-11-AN-6202 by respondent no.1 as alleged in the petitions?
OPP

2. If issue no.1 is proved whether the petitioner of

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*claim petition No.248 of 3.12.2010 is entitled to
compensation? If so to what amount? OPP.*

*3. If issue no.1 is proved, whether the petitioners
of claim petition No.250 of 03.12.2010 are
entitled to compensation? If so to what amount?
OPP*

*4. Whether respondent no. 1 was not holding an
effective driving licence on the date of accident?
If so its effect? OPR-3.*

5. Relief.

Issue no.1 was decided in favour of the claimants by the Tribunal by holding that it stood proved that the accident in question during which deceased Rinky Devi lost her life and Hemant Kumar suffered injuries was the result of rash and negligent driving of the offending vehicle by Kultar Singh (respondent no.1 in the claim petitions). It was observed by the Tribunal that statement of PW-1 Hemant Kumar supporting the averments of the claim petitions is the important piece of evidence as he witnessed the occurrence. He gave a vivid account of acts of rashness and negligence on the part of the driver of the offending vehicle and moreover he stood the test of cross-examination successfully. Moreover, during cross-examination, Kultar Singh, driver of the offending vehicle admitted that he was facing criminal trial for causing the accident in question and that he did not lodge any complaint to the higher authorities of the police regarding his false implication in the criminal case. Copy of post mortem

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report of deceased Rinky Devi (Ex. PB) also proved the factum of death of Rinky Devi as it was stated in it that the injuries were such as could be sustained in a vehicular accident. The evidence was sufficient to arrive at a finding that the accident was caused by Kultar Singh, driver of the offending vehicle. It was further observed that even if Hemant Kumar was not having any driving licence at the time of the accident, no inference can be drawn that he was driving the offending vehicle negligently and carelessly and in this context, reliance was placed upon *State of U.P through the Collector, Deoria and others vs. Vidyawati Singh and another, 1994 ACJ 553.* Reliance was also placed upon *Lakhu Singh vs. Uday Singh 2008(1) LJR 209* to hold that the registration of the FIR and trial of the accused in criminal case is sufficient to prove that the accident had taken place. Reference was also made to a case of *Bansi Yadav and others vs. Krishan Kumar, 2004 (3) LJR 599*, wherein it was observed that the FIR is a public document and in a proceeding under the Act where the tortuous liability is to be fixed on preponderance of probability, it is admissible in evidence.

After hearing counsel for the parties and going through the evidence on record, in **claim petition No.248 of 2010**, Tribunal awarded a lumpsum amount of Rs.10,000/- as compensation to Hemant Kumar under the heads of medical expenses, pain and suffering, transportation etc. on account of injuries suffered by him in the accident.

In **claim petition No. 250 of 2010**, the monthly income of the deceased was assumed to be Rs.5000/- per month as in the absence of any conclusive proof of income, the monthly earning of the deceased was

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treated equivalent to a casual labourer. Hence the annual income arrived at Rs.60,000/-. Out of this 1/3rd amount was deducted towards personal and living expenses of the deceased from her annual income. Therefore, annual dependency came to Rs.40,000/-. As per the PMR (Ex. PB), the age of deceased at the time of death was held to be in the age group of 18-20 years. Therefore after applying multiplier of “18”, the amount of compensation came to Rs. 7,20,000/-. An amount of Rs. 5000/- was awarded on account of transportation, Rs.5000 as funeral expenses and a sum of Rs.5000/- was awarded as loss of consortium. Hence the claimants were held entitled to a total compensation of Rs.7,35,000/-. Moreover it could not be proved that the offending vehicle was being driven in violation of the terms and conditions of the insurance policy. Pepsu Road Transport Corporation failed to prove that Kultar Singh was not holding a valid and effective driving license at the time of accident. As such driver of the offending vehicle and Pepsu Road Transport Corporation, Patiala were jointly and severally held liable to pay the compensation amount.

Feeling dissatisfied with the award of the Tribunal Hemant Kumar filed FAO No. 132 of 2013 and Hemant Kumar along with his mother filed FAO No. 1576 of 2013 for enhancement of the compensation awarded by the Tribunal and Pepsu Road Transport Corporation filed FAO No.2200 of 2013 and FAO No.2201 of 2013 pleading that the amount of compensation awarded in the claim petitions is wholly unjustified.

I have heard counsel for the parties. The fact of accident is admitted and proved. Rinki Devi died on account of injuries suffered by her in the accident.

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After hearing counsel for the parties and going through the case, I am of the opinion that in claim petition No.248 of 2010 a lumpsum amount of Rs.10,000/- has rightly been awarded as compensation to Hemant Kumar under the heads of medical expenses, pain and suffering, transportation etc. on account of injuries suffered by him in the accident, since the claimant had not placed on record any evidence with regard to the injuries suffered by him. Hence, FAO No.132 of 2013 stands dismissed.

In the peculiar facts and circumstances of the case in claim petition No.250 of 2010, to meet the ends of justice, the compensation awarded on account of death of Rinki Devi, is hereby reassessed in view of the judgments of, '*Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77*' and '*National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No. 25590 of 2014 (decided on 31.10.2017)*' as under:-
Accordingly, the compensation is re-assessed as under:-

s.n	HEADS	CALCULATION
(I)	Income	Rs.5000/- per month
(ii)	40% of (i) above to be added as future prospects	[Rs.5000+2000/-] Rs. 7000/- per month
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	[Rs.7000/-]- [Rs.2333/-] =Rs.4667/- per month
(iv)	Compensation after multiplier of 18 was applied	[Rs.4667/-x12x18] Rs.10,08,072/-
(v)	Compensation under the conventional heads	Rs.70,000/-
	TOTAL COMPENSATION AWARDED	Rs.10,78,072/-
	Enhanced amount of compensation	(Rs.10,78,072/-)- (Rs.7,35,000/-) =Rs.3,43,072/- rounded off as Rs.3,43,000/-

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The enhanced amount of compensation of **Rs.3.43,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of *Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539*. Remaining conditions of liability and disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the FAO No.1576 of 2013 is partly allowed.

There is no illegality or infirmity in the judgment of the tribunal hence, in view of all that has been discussed above, FAO Nos. 2200 and 2201 of 2013 are hereby dismissed.

24.11.2017

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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No