

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

1. F.A.O No. 3383 of 2015 (O&M)

Aarifa and ors.

...Appellants

Versus

Maqsood and ors.

...Respondents

2. F.A.O No. 8658 of 2015 (O&M)

Hardeep Singh

...Appellant

Versus

Aarifa and ors.

...Respondents

Date of decision:- 27.09.2017

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Aashish Gupta, Advocate
for the appellants in FAO No. 3383-2015 and
for respondent Nos. 1 to 4 in FAO No. 8658-2015

Mr. S.K. Bawa, Advocate
for respondent No. 2 in FAO No. 3383-2015.
and for the appellant in FAO No. 8658-2015

Mr. Rajnish Malhotra, Advocate
for the Insurance Company

Mr. Naveen Sharma, Advocate
for respondent No. 6 in in FAO No. 8658-2015
and for respondent No. 1 in FAO No. 3383-2015

RITU BAHRI J. (Oral)

C.M. No. 27305-CII-2015 in FAO No. 8658-2015

For the reasons mentioned in the application, delay of 190 days
in filing of the present appeal is condoned.

The application stands disposed of.

C.M. No. 27306-CII-2015 in FAO No. 8658-2015

The application is allowed as prayed for. Accordingly, route permit dated 16.07.2013 is taken on record as Annexure A-1 and is allowed to be read as additional evidence in the present appeal.

FAO Nos. 3383 and 8658 of 2015

1. This order shall dispose of the above two appeals, having arisen out of the impugned Award dated 10.03.2015 passed by the learned Motor Accident Claims Tribunal, Mewat (for short 'the Tribunal').

2. FAO No. 3383-2015 has been filed by the claimants for enhancement of the compensation amount and FAO No. 8658-2015 has been preferred by the driver against the impugned award granting the recovery rights to the Insurance Company against the present appellant.

3. The facts in brief are that on 10.06.2014, the complainant Juber driver of vehicle NO. RJ-14GF-1685 along with his conductor Hamid @ Hamid Khan started their journey from Surat (Gujrat) to Delhi after loading goods and another vehicle of the same company bearing No. RJ-14GC-8365 was also going on and both are coming together. On 12.06.2014 at about 3 A.M both the vehicles were parked at kachcha portion of the road and deceased went to the driver of another vehicle for receiving the amount of diesel and when he was coming towards his vehicle, a vehicle bearing registration No.HR-55S-3693 being driven by respondent No. 1-Maqsood in rash, negligent and zigzag manner came from front side and hit the deceased Hamid @ Hamid Khan. Due to this impact, he fell down on the road and sustained grievous injuries on the vital parts of the body of the deceased.

The deceased was taken to Jaipur Hospital but he died on the way

4. The learned Tribunal after going through the evidence led by the parties took the income of the deceased at Rs.5200/- per month to be that of a skilled labourer and deducted 1/4th towards dependency. The monthly income of the deceased came out to be Rs.3900/- and multiplier of 18 was applied. Rs.25,000/- were awarded on account of last rites performance and Rs.50,000/- were awarded towards loss of consortium. Thus, the Tribunal awarded the compensation of Rs.09,17,400/- to the claimants. However, The respondent-Insurance Company were given recovery rights to recover the awarded compensation amount from respondent No. 2 driver of the offending vehicle as the vehicle in question was not having the valid permit and fitness certificate at the time of alleged accident.

5. Learned counsel for the appellant in FAO No. 8658-2015 at the very outset contended that the learned Tribunal has wrongly held that the present appellant is are liable to pay the compensation on the sold ground that appellant was not having the valid permit and fitness certificate. Reference has been made to route permit dated 16.07.2013 of the offending vehicle issued by Ministry of Road Transport and Highways. This permit was not placed on record before the Tribunal as the appellant-Hardeep Singh was proceeded against ex parte before the Tribunal.

6. Learned counsel for respondent No. 3-Insurance Company has not disputed the above fact and even has not filed any reply and thus this permit is taken to be true.

7. The learned counsel for the claimants-appellants in FAO No. 3383-2015 contends that the compensation awarded by the learned Tribunal

is on the lower side and deserves to be enhanced, in view of the judgment "*Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77*", "*Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54*" and "*Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459*", "*Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520 and Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193*."

8. On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the appeal filed by the claimants on the ground that the Tribunal had already awarded the compensation amount on the higher side.

9. I have heard learned counsel for the parties and perused the record.

RE-ASSESSED COMPENSATION

10. The parties are not in dispute that the accident had taken place and the offending vehicle was fully insured with the Insurance Company. However, since appellant No. 1 was having the valid route permit at the time of accident, the appellant-Hardev Singh is not liable to pay compensation and the Insurance Company is liable to make the payment of entire compensation to the claimants.

11. In the case of claimants, reference at this stage can be made to a judgment passed by Hon'ble the Supreme Court in a case of *New India Assurance Co. Ltd v. Gopali and others, 2012 (12) SCC 198* whereby Hon'ble the Supreme Court in an old case of 1992 had taken the monthly

income of deceased at Rs.3000/- and cut of 1/10th was imposed, keeping in view the fact that a person having a minimum income of Rs.3000/- could not think of spending 1/3rd of his income on himself.

12. Reference at this stage can further been made to a judgment of Hon'ble the Supreme Court of India in a case of *Jakir Hussein vs. Sabir and others, 2015 ACJ 721* wherein Hon'ble the Supreme Court has held that the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage may at times fail to meet the requirements that are need to maintain the basic quality of life since it is not inclusive of factors of cost of living index.

8. Keeping in view the above mentioned judgments, the compensation has to be re-assessed as follows :-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.8000
(ii)	50% of (i) above to be added as future prospects=	Rs.8000+Rs.4000=Rs.12000/-
(iii)	1/10 of (ii) deducted as personal expenses of the deceased=	Rs.12000-1200=Rs.10800/-
(iv)	Compensation after multiplier of 18 is applied	10800X12X18=Rs.23,32,800/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of love and affection to minor daughter	Rs.1,00,000/-
(vii)	Loss of love and affection to brother and sister	Rs.1,00,000/- (Rs.50000/- each)
(viii)	Funeral charges	Rs.25,000/-
(ix)	Total Compensation awarded	Rs.26,57,800/-
	Enhanced amount of compensation	Rs.26,57,800-Rs.9,17,400=Rs.17,40,400/-

The appeals are partly allowed and the award dated 10.03.2015 is modified to the extent that the appellant-Hardeep Singh (in FAO No. 8658-2015) is not liable to pay compensation and the Insurance Company is liable to pay the enhanced amount of compensation of **Rs.17,40,400/-** shall

be payable within a period of forty five days 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 a case of *Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539*.

Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellant-Hardeep Singh at the time of filing of appeal, vide demand draft No. 501699 dated 17.12.2015 in the Registry of this Court be returned to him.

27.09.2017

G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No