

FAO-6333-2014 and connected appeals

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

- | | | |
|----|---|----------------|
| 1. | FAO-6333-2014
Date of decision: 8.2.2017 | |
| | Oriental Insurance Company Ltd. | ...Appellant |
| | Versus | |
| | Taranjit Kaur and others | ...Respondents |
| 2. | FAO-6334-2014 | |
| | Oriental Insurance Company Ltd. | ...Appellant |
| | Versus | |
| | Gurmail Singh and others | ...Respondents |
| 3. | FAO-8899-2014 | |
| | Taranjit Kaur and another | ...Appellants |
| | Versus | |
| | Vinod Kumar and others | ...Respondents |
| 4. | FAO-8900-2014 | |
| | Gurmail Singh | ...Appellant |
| | Versus | |
| | Vinod Kumar and others | ...Respondents |

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Neeraj Khanna, Advocate
for the Insurance Company

Ms.Amanpreet Kaur, Advocate for
Mr.HNS Gill, Advocate for the claimants

Ms.Eshjyot Walia, Advocate
for owner of the offending vehicle.

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SNEH PRASHAR, J.

Since, the above captioned four appeals had arisen out of award dated 26.3.2014 passed by learned Motor Accident Claims Tribunal, Fatehgarh Sahib (for short 'the Tribunal') by virtue of which, the claim petition bearing MACT No.49 of 24.8.2010 filed by Taranjit Kaur and her minor daughter Harashdeep Kaur and claim petition having MACT No.56 of 10.9.2010 filed by Gurmail Singh paternal uncle of deceased Jaswant Singh, who lost his life in a motor vehicular accident on 29.6.2010, were decided, they have been taken up together for disposal by way of this judgment.

The brief facts of the case are that on 29.6.2010 at about 6/6.30 A.M. Jaswant Singh driving his Bajaj Chetak Scooter bearing registration No. PB-23C-6569 was going from his village towards Chandigarh for duty and one Mohan Singh was following him on his scooter. At about 7.30 AM when Jaswant Singh was trying to cross the road near Bus Stand Sanghol, a Tata 407 bearing registration No.HP-62-4567 (for short 'the offending vehicle'), came from the side of Khamano being driven in a rash and negligent manner and struck against the scooter of Jaswant Singh. As a result of accident, Jaswant Singh fell down and suffered multiple injuries. Mohan Singh took him to Civil Hospital, Khamano from where he was shifted to Apollo Hospital, Ludhiana but he succumbed to the injuries on 6.7.2010. On the statement of Mohan Singh, First Information Report No.63 dated 30.6.2010 under Section 279/337/ 304-A of the Indian Penal Code was

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Two claim petitions were filed by legal heirs of deceased Jaswant Singh, one by his widow and minor daughter and other by his paternal uncle, which were allowed by learned Tribunal vide award dated 26.3.2014 and a sum of Rs.18,75,000/- was awarded to the claimants. The driver, owner and Insurer of the offending vehicle were held jointly and severally liable to pay the compensation amount.

Being dissatisfied, the claimants filed the appeals i.e. FAO-8899-2014 and 8900-2014 for enhancement of the compensation, whereas by way of FAO-6333-34-2014, the Insurance company challenged the finding with regard to the accident.

The submissions made by Mr.Neeraj Khanna, Advocate representing the Insurance Company, Ms.Amanpreet Kaur, Advocate for the claimants and Ms.Eshjyot Walia, Advocate for the owner of the offending vehicle i.e. Tata 407 have been considered and record perused.

The only point raised during arguments by learned counsel for the Insurance Company is that CW4 Mohan Singh was the only witness examined by the claimants for proving the cause of accident. He was presented as an eye witness of the accident, however, a bare reading of his testimony would show that he had in fact reached the site after the accident had taken place and was not an eye witness of the accident. He admitted in his cross-examination that the accident had taken place before his arrival and that some passengers, who were to board the bus from the bus stand, were there and had told him that the accident had taken place. It was also stated by him that he did not know the vehicle

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and the driver, who caused the accident and that he had not told the number of the vehicle or name of the driver to the police. He further stated that he had not mentioned the number and name of the driver of the offending vehicle in his affidavit and that the affidavit was not read over to him.

Learned counsel contends that while it is proved from the deposition of CW4 Mohan Singh that he had not witnessed the accident, there is no other ocular or documentary evidence of the claimants to prove the occurrence of the accident as well as the allegation that the accident occurred due to rash and negligent driving of Vinod Kumar – driver of the offending Tata 407.

The argument of learned counsel for the Insurance Company may appear to be attractive but is devoid of merit. The accident took place on 29.6.2010 at 7.30 AM on GT Road near bus stand and without any loss of time after the accident, a Daily Diary Report consisting of all relevant and necessary particulars sufficient for identification of the offending vehicle as well as cause of accident was recorded on the statement of CW4 Mohan Singh and it was on the basis of the DDR, that the First Information Report No.63 dated 30.6.2010 under Sections 279/337/ 304-A of the Indian Penal Code was registered. It was mentioned by CW4 Mohan Singh, lodger of the DDR that Jaswant Singh (since deceased) was going from his village towards Chandigarh for duty on his Bajaj Chetak scooter bearing No.PB23C-6569 and he (Mohan Singh) was following him and was about 10 steps (5 karams) behind him. CW4

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Mohan Singh may have deposed when he appeared in the witness box that the accident had already taken place before his arrival at the site but it was not his version that he had not witnessed the accident. In his cross-examination, he categorically stated that he had lodged the report with the police with regard to the accident and that his statement was recorded by the police. His statement that people present at the spot had told him about the accident or that the driver of the offending Tata 407, who had caused the accident, was not known to him, cannot be interpreted to mean that he had not witnessed the accident. It was he, who had taken the injured (deceased) to the hospital from the site of accident. The First Information Report registered on the statement of CW4 Mohan Singh in respect of the accident was proved by him.

Respondent No.1 Vinod Kumar driver of offending Tata 407 did not dare to appear in the witness box to controvert the statement of eye witness CW4 Mohan Singh. No other evidence was led by the respondents including the Insurance Company, to rebut the testimony of CW 4 Mohan Singh as well as the documentary evidence i.e. the First Information Report etc. proved by the claimants.

In view of the above, the findings recorded with regard to death of Jaswant Singh son of Gurdial Singh due to rash and negligent driving of Tata 407 bearing No.HP-63-4567 by its driver Vinod Kumar, call for no intervention.

The next issue is regarding enhancement of the compensation sought by the claimants. Jaswant Singh was serving in Chandigarh Police and was 49 years old at the time of his death.

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Perusal of the award shows that no amount was added to the actual monthly income of the deceased computing promotional prospects. Following the ratio in **Sarla Verma and others vs. DTC and another 2009 ACJ 1298**, since the deceased was 49 years old, there had to be an addition of 30% to the actual income of the deceased on account of loss of promotional prospects.

The claimants are the widow, minor daughter and paternal uncle-foster father of deceased Jaswant Singh, who were all dependent on him. There being three dependents, deduction of 1/3rd towards personal and living expenses of the deceased was rightly made by learned Tribunal. No amount has been awarded to the minor daughter on account of loss of love, care and guidance, therefore, a sum of Rs.one lac is allowed to her. A sum of Rs.50,000/- is allowed to the paternal uncle of the deceased on account of loss of love and affection.

Accordingly, the total compensation comes to Rs.23,70,600/- i.e. Rs.15,500/- (monthly income) + 30% (future prospects) – 1/3rd (deduction on account of personal and living expenses of the deceased) x 12 x 13 + Rs.2,75,000/- (under conventional heads including the amount already awarded). The enhanced amount of Rs.4,95,600/- (23,70,600- 18,75,000) shall be paid to the claimants within 45 days from the date of receipt of the certified copy of this judgment, failing which, it shall carry interest

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@ 7.5 % per annum from the date of filing of the appeal, till its realisation.

Appeals bearing FAO-6333 & 6334 of 2014 filed by the Insurance Company are dismissed whereas FAO-8899 & 8900 of 2014 filed by the claimants are partly allowed and the impugned award is modified as indicated above.

8.2.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No