

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

(1.)

**FAO No.5343 of 2015 (O&M) In/And
XOBJC-128-CII-2016
Date of Decision: 11.09.2017.**

New India Assurance Co.Ltd.

... Appellant

Versus

Rajinder Kaur and Others

... Respondents

(2).

FAO No.6450 of 2015 (O&M)

Shakal

... Appellant

Versus

New India Assurance Co.Ltd. and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.C. Gupta, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent Nos.1 to 4.

Mr. Vikram Bali, Advocate
for respondent No.6.

AVNEESH JHINGAN J. (ORAL)

These are three cases arising out of award dated 10.04.2015 passed
by Motor Accident Claims Tribunal, Rupnagar (in short 'the Tribunal').

FAO No.5343 of 2015 has been filed by the Insurance Company in
which notice of motion was issued vide order dated 28.09.2015 only with regard

to calculating the compensation by deducting income tax component.

The Cross-objection No.128-CII-2016 has been filed by respondent Nos.1 to 4 for enhancement of the amount of compensation awarded.

FAO No.6450 of 2015 has been filed by the owner of the truck, challenging the recovery rights being given to the Insurance Company.

These three cases are inter-connected and are being disposed of by this common order.

Kamaljit Singh 32 years old Senior Lineman of Punjab State Electricity Board met with an accident on 17.09.2013. He was coming to his village on Motor Cycle bearing registration No.PB-16-B-3623. The Motor Cycle was being driven on the left-side at a very slow speed. When Kamaljit Singh reached near village Ghanaru his Motor Cycle struck against a Truck bearing registration No.PB-02-AV-8927. The said truck was parked in the middle of the road without parking light or indicator. As a result of the accident Kamaljit Singh suffered multiple injuries. He was taken Civil Hospital, Anandpur Sahib, he was referred to PGI, Chandigarh. He died on his way to PGI, Chandigarh.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the widow, two minor children and mother of the deceased. The Tribunal after considering the evidence and witnesses awarded a sum of ₹ 47,83,768/- along with 9% per annum interest.

Aggrieved by the said award, these three cases have been filed.

The three basic questions which arise in these cases are:-

1. Whether the Tribunal while calculating amount of compensation should have deducted income tax?
2. Whether the compensation awarded by the Tribunal needs to be

enhanced?

3. Whether the Insurance Company should have been granted recovery rights on the grounds that validity of driving licence of the driver of the offending truck was doubtful?

Dealing the first issue: counsel for the appellant (Insurance Company) argued that the Tribunal while calculating the annual income should have deducted the income tax. The counsel for the claimants has not been able to put any serious objection to the said proposition. The said issue is covered in favour of appellant (Insurance Company) by the judgment of the Apex Court in case *Shyamwati Sharma and Others Vs. Karam Singh and Others, 2010(3) R.C.R. (Civil) 741: (2010) 12 SCC 378*. The Hon'ble Apex Court has held as under:-

“While considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that “while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments, of loans etc., should not be excluded from the income. The deductions towards income tax/surcharge alone would be considered to arrive at the net income of the deceased.”

As per law enunciated, the income tax should have been deducted while making the calculation of compensation by Tribunal. So far as the appeal of the Insurance Company is concerned, the same is allowed that while computing compensation, the income tax has to be deducted.

With regard to issue No.2, certain facts are required to be noticed for the disposal of the appeal.

The deceased was 32 years old and was employed as Senior Lineman with Punjab State Electricity Board. He while going on his Motor

Cycle struck against stationary truck which was wrongly parked without indicator and parking light. As a result of the accident, he suffered injuries and ultimately succumbed to injuries. FIR No.109 dated 18.09.2013 in this regard was registered under Sections 283, 304-A and 427 IPC at Police Station, Anandpur Sahib.

The claimants apart from other evidence produced the salary slip of the deceased, Exhibit P2. From the salary slip, it was established that gross salary of the deceased was ₹ 24,940/- per month. As per decision of Hon'ble Apex Court, only income tax is to be deducted from gross salary.

Learned counsel for the claimants argued that the deceased was a Government employee and was aged 34 years. He according to his age would have got due promotion etc. with the passage of time and future prospects should have been added.

The learned counsel for the Insurance Company opposed the said future prospects by stating that 30% had already been added by the Tribunal. Hence, no further addition will be justified.

The Hon'ble Supreme Court in case of ***Rajesh and Others Vs. Rajbir Singh and Others, 2013(9)SCC 54*** has held as under:-

“Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to take it applicable also to the self-employed and persona on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be

income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonableness. There shall normally be no addition thereafter.”

As per the above decision 50% addition is to be made for future prospects. The Tribunal has applied a multiplier of 16 which is not in dispute.

As per discussion above the calculation of the compensation amount is made as under:

₹ 24940 X 12 = ₹ 2,99,280

Add 50% on account of future prospects = ₹ 1,49,640/-.

Less income tax (as agreed by both the counsel)= ₹ 26692

₹ 105557/- less 1/4th deduction for self expenses.

₹ 3,16,671/- Dependency

Applying the multiplier of 316671 X 16 = ₹ 50,66,736/-.

The net result is that the compensation amount awarded by the Tribunal ₹ 46,68,768/- is enhanced to ₹ 50,66,736/-.

The Tribunal has granted ₹10,000/- for funeral expenses and expenses for last rites. The said expenses awarded are on lesser side. Same are enhanced to ₹ 25,000/-.

Loss of consortium and transportation expenses have already been awarded.

The Tribunal has not granted any compensation under the head; loss of love & affection and loss of estate.

As per Hon'ble Apex Court in ***Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767***, held as under:

*“17. Further, the High Court has erred in awarding only ₹ 5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award ₹1,00,000/- towards loss of estate according to the principles laid down in the case of **Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation, 2014 (2) R.C.R.(Civil) 876; 2014 (3) Recent Apex Judgments (R.A.J.) 112; 2014 (5) SCALE 479, ₹ 25,000/- towards funeral expenses and ₹ 1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013 (3) R.C.R. (Civil) 170; 2013(3) Recent Apex Judgments (R.A.J.).659; (2013) 9 SCC 54.*****

*18. Further, we award ₹ 1,00,000/- each to the appellant-children towards loss of love and affection due to the loss of their father(deceased) as per the decision of this Court in the case of **Juju Kuruvila & Ors. vs. Kunjujamma Mohan & Ors., 2013(3) R.C.R. (Civil) 817 : 2013(4) Recent Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166. Further, a sum of ₹ 50,000/- is awarded to each of the appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of **M Mansoor & Anr. vs. United India Insurance Co.Ltd., 2013 (4) R.C.R.(Civil) 729 : 2013(5) Recent Apex Judgments (R.A.J.) 516 : 2013 (12) SCALE 324.*****

A perusal of the above decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the Heads- loss of estate, funeral expenses and loss of consortium and also awarded compensation under the head of loss of love, care and guidance to the minor

children.

The Hon'ble Apex Court in *Rajesh and others Versus Rajbir Singh and others*, 2013 (9) SCC 54, has held as under:

“The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of ₹ 2500/- to ₹ 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased.”

A perusal of the above decision shows that the compensation awarded under the heads mentioned therein is to be increased from time to time.

As per decision of the Hon'ble Apex Court, stated above, the Tribunal should have awarded compensation for loss of love and affection as the deceased was survived by two minor children and old mother.

Accordingly, ₹ 1,00,000/- is awarded for the loss of love and affection and ₹ 50,000/- for loss of estate.

The amount awarded by the Tribunal are enhanced as below:-

<i>Head</i>	<i>Amount awarded by the Tribunal</i>	<i>Now awarded by this Court</i>
Loss of dependancy	₹ 46,68,768/-	₹ 50,66,736/-
Funeral expenses	₹ 10,000/-	₹ 25,000/-
Loss of estate	Nil	₹ 50,000/-
Loss of consortium	₹ 1, 00,000/-	₹ 1,00,000/-
Transportation expenses	₹ 5,000/-	5,000/-
Loss of love and affection	Nil	₹ 1,00,000/-
Total	₹ 47,83,768/-	₹ 53,46,736/-

The claimants are entitled to the enhanced amount along with interest at the rate of 6% per annum.

For deciding Issue No.3, the findings recorded by the Tribunal with regard to negligence on the part of respondent-driver are very important. The Tribunal noted that when Kamaljit Singh was going on his Motor Cycle and reached near village Ghanaru, a truck bearing registration No.PB-02-AV-8927 was parked in the middle of the road without any parking light, reflector or indicator, the truck was not visible.

The concept of rash and negligent driving is not directly involved in the present case as the truck was stationary and parked at the time of accident, present is a case of negligent parking of the truck. These findings have not been disputed by any of the party before this Court.

In the case of ***United India Insurance Company Limited Vs. Ram Lal and Others, 2016(3)R.C.R. Civil 910*** this Court held as under:-

“So, when the accident had taken place, the vehicle was stationary and the accident had only taken place due to opening of the door of the car, which hit the motorcycle. Section 126 of the Motor Vehicles Act, 1988 (for short the 'Act'), reads as under :-

“126. Stationary Vehicles. - *No person driving or incharge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.”*

6. As per the aforesaid provision, the incharge of the motor vehicle shall not cause or allow the vehicle to remain stationary in any public place, unless there is in the

driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied. As per the requirement of Section 126 of the Act, even in the stationary vehicle parked in any public place a duly licensed driver should be in the driver seat, unless the mechanism of the vehicle has been stopped and brakes have been applied. It is settled principle of law that the onus is always upon the Insurance Company to establish the violation of the terms and conditions of the insurance policy. So, it was for the appellant-Insurance Company to establish that the mechanism of the vehicle was operating though it was stationary when the accident took place, but no such evidence has been adduced by the appellant-Insurance Company. Surjit Singh respondent No.4 has stepped into the witness box as RW-1 but he has not been even cross-examined on this aspect as to whether at the time of the accident the mechanism was stopped or not. This witness has stated that the car was parked on the road in katcha portion in Sabji Mandi area of Mukerian. He along with Mandeep Singh driver of the said vehicle was standing outside the said car in order to purchase vegetables and fruits. Mandeep Singh also had some work in the bank. So, it is not believable that when a person is going to the market to purchase the articles, he will keep the mechanism of the vehicle in start condition. The obvious conclusion is that the vehicle was parked by stopping its mechanism. If that was so, the fact that respondent No.4 Surjit Singh was not having the driving licence to drive the car will be of no legal consequence in view of the provisions of Section 126 of the Act.”

A perusal of the above said decision makes it clear that if the vehicle concerned was stationary then the issue regarding validity of the driving licence cannot be raised by the Insurance Company.

The reason behind was that the vehicle was not being driven at the

time of accident. In such circumstances issue of validity of the driving licence will not be taken into consideration. There is a possibility that at the time of accident, the driver may not be there in the vehicle. Therefore, the Insurance Company cannot run away from its liability by raising such a plea.

For the reasons mentioned above the appeal of the owner of truck is allowed.

Net result is that FAO No.5343 of 2015 filed by the Insurance Company is allowed, so far as the issue of deduction of income tax from the amount of dependancy of the claimants is concerned.

The Cross-objection No.128-CII of 2016 filed by the claimants for enhancement of the amount of compensation are partly allowed and the amount of compensation is enhanced in the terms stated above.

FAO No.6450 of 2015 filed by the owner of the offending truck is allowed and recovery rights given to the Insurance Company by the Tribunal vide the impugned award are set aside.

September 11, 2017
rekha

(AVNEESH JHINGAN)
JUDGE

whether speaking/reasoned
whether reportable

Yes/No
Yes/No