

In the High Court of Punjab and Haryana at Chandigarh

- 1.** **F.A.O No. 4978 of 2016 (O&M)**
Date of Decision: 12.10.2017

SBI General Insurance Company LimitedAppellant

Versus

Alka Sharma and othersRespondents
- 2.** **F.A.O No. 4979 of 2016 (O&M)**

SBI General Insurance Company LimitedAppellant

Versus

Amit Saini and othersRespondents
- 3.** **F.A.O No. 4980 of 2016 (O&M)**

SBI General Insurance Company LimitedAppellant

Versus

Aliya Khatun and othersRespondents
- 4.** **F.A.O No. 4988 of 2016 (O&M)**

SBI General Insurance Company LimitedAppellant

Versus

Pritam Singh and othersRespondents
- 5.** **F.A.O No. 5226 of 2016 (O&M)**

SBI General Insurance Company LimitedAppellant

Versus

Harpreet Kaur and othersRespondents

6.

F.A.O No. 5227 of 2016 (O&M)

SBI General Insurance Company Limited

.....Appellant

Versus

Ajay Kumar and others

.....Respondents
7.

F.A.O No. 5228 of 2016 (O&M)

SBI General Insurance Company Limited

.....Appellant

Versus

Aman Sharma and others

.....Respondents
8.

F.A.O No. 5798 of 2016 (O&M)

Amit Saini

.....Appellant

Versus

Rohit Kumar and others

.....Respondents
9.

F.A.O No. 6078 of 2016 (O&M)

Harpreet Kaur and others

.....Appellants

Versus

Rohit Kumar and others

.....Respondents
10.

F.A.O No. 7801 of 2016 (O&M)

Pritam Singh

.....Appellant

Versus

Rohit Kumar and others

.....Respondents

11. Civil Revision No. 5730 of 2016 (O&M)

SBI General Insurance Company LimitedAppellant

Versus

Vivek Sharma and othersRespondents

12. Civil Revision No. 5734 of 2016 (O&M)

SBI General Insurance Company LimitedAppellant

Versus

Yogesh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Vandana Malhotra, Advocate
for SBI General Insurance Company Ltd.

Mr. Paul S. Saini, Advocate
for the appellant (in FAO-6078-2016) and
for respondent No. 1 (in FAO-5226-2016).

Mr. Virender Rana, Advocate
for the appellants (in FAO-5798-2016 and 7801-2016)

Mr. Ankur Gupta, Advocate
for IFFCO Tokio General Insurance Company Ltd.
(in FAO Nos. 4978, 4979, 4980, 4988,
5226, 5227, 5228 and 7801 of 2016 and
CR Nos. 5730 and 5734 of 2016)

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for IFFCO Tokio General Insurance Company Ltd.
(in FAO Nos. 5798 and 6078 of 2016)

ANITA CHAUDHRY, J

These are seven appeals and two revisions filed by SBI General

Insurance Company Limited and three appeals filed by the claimants against

the award dated 30.4.2016 passed by the Motor Accident Claims Tribunal, Amabla arising out of an accident which occurred on 31.3.2015.

The students and staff members of SDDI Global College were proceedings in their college bus bearing registration No. HR-68A-2180 driven by Pawan Kumar. At about 7.30/8.00 A.M. when the bus was near Rajpura on Saha-Shahzadpur Road, a dumper/tipper bearing registration No. HR-37C-8635 driven by Rohit Kumar came from the opposite direction. Pawan Kumar slowed his bus and came to the extreme side of the road as he noted the dumper coming to the wrong side of the road but it struck against the bus at a very high speed. The tipper was loaded with mud. All the passengers in the bus sustained grievous injuries and some of them died on the spot. Some of deaths took place on account of suffocation as the mud flew into the bus after the window panes were shattered. The FIR was registered against Rohit driver of the tipper on the statement made by Vikas Choudhary. The claimants filed several claim petitions alleging that the accident had occurred on account of rash and negligent driving of the tipper driver.

The Tribunal consolidated all the matters and disposed of all the claims vide a common award placing the liability for payment of compensation upon both the drivers holding both the drivers to have contributed equally. It accepted the statement of the driver of the tipper who had stated that the bus driver could have avoided the accident had he been in control of his bus. It is this finding which has been disputed by the insurance company of the bus.

I have heard counsel for the parties at great length and have

FAO Nos. 4978, 4979, 4980, 4988, 5226, 5227 and 5228 of 2016

The submission on behalf of the SBI General insurance Company Limited is that the liability could not have been placed on them as the entire fault was of the tipper driver. The counsel has submitted that the accident had occurred in morning around 7.30 A.M. and medical report of the tipper driver was produced before the Tribunal and it was found that he was drunk. The counsel referred to the FSL report. The counsel further submitted that the claimants were seeking compensation from the tipper driver and had alleged that he was at fault but the Tribunal called for criminal file and went through the photographs and accepted the statement of the tipper driver and highlighted some contradictions in the statement of the claimants and apportioned the liability equally among both the insurance companies which is illegal and should be set aside. The counsel had further submitted that the police had prepared a site plan which is available on the record and it can be seen that the bus was on its own side and towards the edge of the road at the time of accident and the tipper/dumper coming from the opposite direction came to the wrong side all of a sudden and in front of the bus and toppled over and mud flew into the bus causing suffocation leading to deaths. It was urged that the plea taken by the tipper driver was that another vehicle had come from the side road and was entering the main road and in order to avoid an accident, the tipper driver had to swerve and the accident occurred. It was urged that it is the tipper driver who came to the wrong side and it was head-on collision between the bus and the tipper and it was not a case of contributory negligence and no issue was framed nor any evidence was led by the tipper driver. It was urged that except the bare statement of the tipper driver that another vehicle had come from the

side road, there was no evidence to support him and the Tribunal had wrongly disbelieved the statement of the claimants. It was urged that the Tribunal referred to the statement of Pawan Kumar and highlighted the fact that there was an admission that the driver side of the tipper was not damaged and disbelieved the version that it was a head-on collision though it had the occasion to go through the photographs. It was urged that the investigating officer was not examined and there was no evidence to support the statement of the tipper driver and he was drunk and he did not know where he was driving and he was driving at a breakneck speed and the tipper turned turtle. It was contended that to hold the bus driver to be negligent it was first to be shown that there was any breach of any duty on the part of bus driver and it was not shown that he had failed to use reasonable care for safety and the Apex Court in ***Parmodkumar Rasikbhai Jhaveri versus Karmasey Kunvargi Tak 2002 AIR (SC) 2864*** had elaborately dealt with a similar issue and had set aside the finding regarding contributory negligence. Reliance was also placed upon (i) ***Municipal Corporation of Greater Bombay versus Shri Laxman Iyer and another 2003 AIR (SC) 4182***, (ii) ***Khenyei versus New India Assurance Co. Ltd. and others 2015 AIR (SCW) 3169***, (iii) ***State Tr. P.S.Lodhi Colony New Delhi versus Sanjeev Nanda 2012 AIR (SC) 3104*** and (iv) ***Suo Motu Writ Petition No. 10020 of 2009*** reported in ***2011(7) RCR (Civil) 2167***.

On the other hand the submission on issue of negligence, the counsel appearing for IIFCO Tokio General Insurance Company Limited urged that the finding recorded by the Tribunal is based on evidence and the Tribunal had meticulously gone through the evidence and had also called

for the criminal trial file and had seen the photographs and found that there

were contradictions in the statement made by Pawan Kumar- the bus driver. It was urged that merely because the FIR was registered against the tipper driver would not mean that his negligence had been established and the Court had to go through the evidence to find out the manner in which the accident had occurred. It was urged that the tipper driver in order to save itself turned on the right because a tractor trolley entered the highway from the side road and the bus driver had seen the tipper coming and to avoid a collision it should have slowed down or could have taken the bus on the extreme left or to the *kacha* portion and, therefore, he was equally liable. It was urged that the bus was being driven at a high speed and both the vehicles were damaged. Reliance has been placed upon ***Anguri Devi and others versus Lakhvinder Singh alias Lakha and others (2017-3) 187 Punjab Law Reporter 86.***

No argument was submitted by the claimants' side on this aspect.

It would be relevant to reproduce the concluding paragraphs of the judgment passed by the Tribunal where it deals with the negligence:-

“39. After considering the statement dated 16.2.2016 Ex.P41 of Pawan Kumar, this Tribunal is of the view that version of PW10 Pawan Kumar is not believable, as had it been a case of head-on-collision, the driver side of the Tipper would have damaged totally as impact of the accident was such that many persons travelling in the Bus died and other occupants of the Bus suffered grievous injuries. The case file of criminal case titled as “State versus Rohit” was also summoned at the time of arguments in this case and photographs of Tipper bearing registration no. HR37C/8635 are on that judicial file, from which it is apparent that driver side of the Tipper even did not hit the Bus and so version of claimants specifically PW10

(driver of bus) regarding head-on-collision is totally false. The photographs on record of criminal case file speak otherwise and substantiate the arguments raised by ld. counsel for respondents no.1 to 3.

40. *Sudden crossing of the road by a human being or a child; sudden presence of a stray animal on the road; bursting of tyre due to some alien sharp edge article lying on the road; sudden collapse of the bridge; fall of electric wires; tornado; storm; flush of rain water from cloud burst, etc. are a few illustrative circumstances in which driver of a vehicle can possibly lose control. In any such like sudden events, the driver would try to control the vehicle and may apply sudden brakes, which, instead of stopping the vehicle, may over turn it or cause slip thereby the vehicle might go out of the driver's control. Such kind of accident, happening of which is beyond the control of a driver, may be termed as an "act of God". However, where the vehicle was in sound roadworthy condition and was driven with an ordinary care, it shall always be expected that it will not go out of control of the driver, yet if any such thing happens, heavy onus shall lie upon either the driver or the owner of the vehicle to divulge that special knowledge of the relevant facts to explain as to why and how the vehicle went out of control of the driver. In the absence of any such explanation, the maxim 'res ipsa loquitur' would undoubtedly be attracted, as held by the Hon'ble Supreme Court in **Krishna Bus Service Ltd. vs. Smt. Mangli and others AIR 1976 SC 700.***

41. *The site plan prepared by police after the accident is on record as Ex.P40, from which it is clear that there was a curve near the place of accident and so the version of RW1 Rohit Kumar is believable that in order to avoid the accident with tractor, he had applied brakes and the tractor turned turtle. However, considering the fact that he was also driving at very high speed and that had he been driving at moderate speed, he could have controlled the vehicle. The principle of res ipsa*

loquitur applies to this case and it can be safely concluded that respondent no.4 was also responsible and had contributed in causing the accident. It is a clear cut case of contributory negligence. From photographs on record, it is apparent that the sand/soil entered the Bus up to about six feet from front of the Bus and it speaks about the speed, at which respondent no.1 was driving the Bus.

42. *The claimants and their witnesses had tried their best to prove that it was head-on-collision and respondent no.1 was responsible for the accident. However after perusing entire record and statements of witnesses in criminal case titled as 'State versus Rohit', it is clear that there was a curve near the place of accident and somehow on applying brakes, the Tipper turned turtle on the road, which shows that respondent no.1 was driving the Tipper at high speed and had he been driving at moderate speed, he could have controlled his vehicle, but failed to do so. But on the other hand, it is also clear that respondent no.4 Pawan Kumar was driving the Bus at such a high speed that mud loaded in the Tipper entered the Bus, as clear from admissions made by the witnesses and photographs clicked after the accident, which are on record of criminal case file. The quantity of sand/soil entered the Bus was so much that the occupants of the Bus felt suffocated and this suffocation was also the result of some deaths. Had respondent no.4 been driving the College Bus at moderate speed and in a careful manner, even if the Tipper had turned turtle in front of the Bus, the accident could have been avoided. So this can be safely concluded that respondent no.4 Pawan Kumar, driver of the Bus, was also responsible in causing of the accident and so accident was the result of negligence on the part of respondent no.1 (Rohit Kumar) and respondent no.4 (Pawan Kumar) and it is a case of contributory negligence. Both drivers were equally responsible for the accident.*

43. *After considering the entire evidence on record, it is held that claimed have successfully proved that Aman Sharma, Ajay*

Kumar, Pritam Singh, Yogesh, Pawan, Vivek and Amit Saini had suffered injuries in the accident in dispute and Deepak Sharma, Parminder Singh, Aamir Furqan and Manish Kumar died due to the injuries suffered in the accident in question.

44. After considering entire evidence on record and keeping in view the above discussion, it is held that accident was not the result of rash and negligent driving of respondent no.1 only, but respondent no.4 had also contributed in causing of the accident and both drivers were equally responsible in causing the accident on that day. It is a case of contributory negligence. Issue no.1 is decided accordingly.”

The above (Para 42) would show that the Tribunal was looking for evidence from the record of the criminal trial rather than relying upon the evidence led before it. The site plan which the Tribunal is referring to is available on this file and does not show any curve on the road.

A perusal of the claim petitions show that though the owner driver and insurer of both the vehicles were impleaded as party but it was specifically pleaded that the accident took place due to sole rash and negligent driving of respondent No. 1-Rohit Kumar. The FIR was also against respondent No. 1 i.e. tipper driver Rohit Kumar. PW-4 Pritam Singh had stated that the tipper driver came from the opposite direction at a high speed and when their driver saw the tipper coming towards them, he slowed down and took his vehicle to the extreme left hand side of the road but the tipper came on the wrong side and struck against the bus. He had stated that their bus was not overloaded and every passenger had a seat. He denied that the accident occurred near the T-point. He denied that a tractor trolley had suddenly come from the side road on to the main road. He denied that the tipper driver had applied brakes but admitted that it turned

turtle. He had also stated that when the tipper turned turtle, the mud flew

into the bus. He had also stated that the police reached the spot and had called a crane which lifted the tipper to place it on its wheels.

Similar was the statement made by Amit Saini PW-5. He had stated that the road was wide enough for two vehicles to pass and there was no divider or separator in between. He too maintained that they had not noticed any tractor trolley coming on the road from the side road. He had also stated that the bus was driven at a normal speed and on its correct side.

It would not be necessary to refer to the statements of other witnesses as they had made similar statements but it is important to notice the statement of Pawan Kumar as the Tribunal had noticed some contradictions in his statement. In his affidavit Pawan Kumar PW-10 had stated that the tipper driver was coming at a high speed and was driving the vehicle in a rash and negligent manner and on seeing the tipper coming towards his side, he slowed down the speed of the bus and took his vehicle to the extreme left side of the road but the dumper struck against the bus as it came to the wrong side and seven people died at the spot while others sustained injuries. He had stated that he also received injuries in the accident.

A perusal of the cross-examination conducted on Pawan Kumar shows that he had denied all the suggestions made to him by the respondent side. His statement was doubted by the Tribunal as he had stated that the driver side of the tipper struck against the driver side of the bus. The Tribunal could not have rejected the testimony of Pawan Kumar as being false or contradictory.

The Tribunal partly relied upon the statement made by Rohit

Kumar and accepted the fact that a tractor trolley came from the side road

and that was the reason the tipper swerved towards its right and then came in the lane in which the bus was coming. The respondents failed to examine any witness who could vouch for RW-1 that a tractor trolley had come from the side road. No one appeared in the witness box to vouch for him. The respondents could have examined the investigating officer and could have placed copy of the challan to show that there was reference to it in any statement made to the police.

The accident did not take place near the side road. The tipper had crossed the side road and it is thereafter that the accident had occurred. The file of the criminal trial was called to see the photographs and a perusal thereof shows that the tipper was in a mangled state and it is difficult to find from the photographs the exact spot where the accident occurred. None of the photographs have been taken from a distance. There are close-up photographs of the two vehicles. It is difficult to even see as to which side of the tipper is facing the bus as the vehicle is damaged beyond recognition. The statement of Pawan Kumar could not have been rejected simply because he had stated that the side of the tipper struck against his right side. The accident had occurred in split seconds and Pawan Kumar had also sustained injuries and the impact of the accident was very severe. For a driver to recall the minute details would have been difficult.

The tipper driver was drunk. The FSL report shows that the liquor content was 57.5 mg%. Rohit was drunk at the time of the accident. He alone was at fault. He was under the influence of liquor. The alcohol content in the blood exceeded 30 mg in 100 ml of blood. It is case of drunken driving. There was no breach of any legal duty on the part of

Pawan Kumar-the bus driver. The blame could not be placed upon him. He

had taken all standards of care and had taken his vehicle to the left side and had slowed down his bus in whatever time he got. It is the offending vehicle i.e. the vehicle driven by Rohit Kumar that came in front of the bus. The failure as attributed to the bus driver is that he failed to take his bus to the extreme left side of the road and did not apply brakes. The accident had occurred in split seconds. Mere failure to avoid the collision by taking some extraordinary protection does not by itself constitute negligence. It is necessary to refer to ***Swadling versus Cooper, 1931 A.C. 1*** wherein it was held as under:-

"Mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence: the plaintiff has no right to complain if in the agony of the collision the defendant fails to take some step which might have prevented a collision unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances."

The Tribunal was not justified in holding that it was a case of contributory negligence. There was no plea on behalf of the respondents nor any issue was framed. The bus driver had taken whatever measures he could take in the given circumstances and the evidence is clear that the accident occurred on account of tipper driver's fault. It cannot be said to be an act of God. The reference to it in para 40 of the judgment of the Tribunal is misplaced. Even if it is for a moment accepted that there was a turning, the tipper driver was driving his vehicle at a high speed and was unable to control his vehicle and the driver turned to the right and came in the lane which was occupied by the bus driver and struck against the bus head-on and turned turtle. The bus driver could not have avoided the consequence

as there was hardly any time. The accident was so sudden and had occurred

in split seconds. The bus driver could not be saddled with any liability. It is not a case of contributory negligence. The accident occurred on account of negligence of the tipper driver alone. The finding recorded by the Tribunal on issue No. 1 has to be set aside. The insurance company had raised this issue in all the appeals filed by them. It is held that the compensation amount was to be paid by the owner/driver/insurer of tipper bearing registration No. HR-37C-8635. The amount had already been paid by SBI General Insurance Company Limited to the claimants and it is for IFFCO Tokio General Insurance Company Limited to pay back the entire amount to the appellants-SBI General Insurance Company Limited within three months failing which the amount would be paid with interest @ 6% from the date of the order till it is actually paid.

Coming to FAO-4978-2016, the issue of negligence and the question whether the amount was to be paid by SBI General Insurance Company Limited or by IFFCO Tokio General Insurance Company Limited has been considered above. Another point raised by the insurance company in FAO No. 4978-2016 also was with respect to the compensation. It was their plea that the amount in excess had been awarded. It is necessary to deal with that argument as well.

Manish Kumar was a student of B.Tech Electrical and was 26 years old. The claimants were his parents. They had stated that their child was bright and he was a student of Ist Semester and after he had completed his education he would have got a minimum salary of Rs. 40,000/- per month. The Tribunal had assessed the income as Rs. 12,000/- per month considering the course he was pursuing, holding that his prospects were

bright and added 50% to that amount towards future prospects. The

deceased was unmarried, a deduction of 50% was made and after applying the multiplier of 17, the compensation was calculated as Rs. 12,24,000/-. Rs. 1,00,000/- each was awarded to both the parents for loss of love and affection and Rs. 25,000/- was allowed for last rites. A total compensation of Rs. 14,49,000/- was ordered which was to be shared by both the claimants in equal share.

The submission on behalf of SBI General Insurance Company Limited is that the deceased was not earning and he was only in the Ist year and there was no material before the Court to assess that he would have successfully cleared his course and with high standards and would have got a job, and the income assessed at Rs. 12,000/- per month was on the higher side. It was also submitted that there could be no addition towards future prospects and the multiplier should have been used keeping the age of the mother and the father was not dependant upon the son. It was also submitted that the addition of Rs. 1,00,000/- each for love and affection to both the parents could not have been given.

The submission on behalf of the claimants was that though, the deceased was not earning but a notional income has to be taken and the minimum wages were around Rs. 7,000/- per month, therefore, the income assessed cannot be faulted with. It was urged that the deceased could have got a regular appointment and addition of 50% towards future prospects was rightly considered.

The minimum wages in 2015 were Rs. 5812/-. The deceased was a student of the first year. He would have taken few years to complete his education and considering the job scenario, it is with great difficulty that

the youth are able to find a job. I would take the notional income to be

Rs. 9,000/- per month.

No addition towards future prospects can be made as the income is notional. It is only when the deceased is a government employee or in regular service getting increments every year that the matter can be considered. The Tribunal had also faulted by applying the multiplier considering the age of the deceased. The age of the mother was to be considered. No amount could have been added for loss of love and affection to the parents.

Taking the income to be Rs. 9,000/- and making a deduction of 50%, the contribution would have been 4500/-. The compensation would be Rs. $4500 \times 12 \times 14 = 7,56,000/-$. To this, a sum of Rs. 25,000/- should be added for funeral expenses, Rs. 10,000/- for transportation and Rs. 50,000/- for loss of love and affection for the mother. The total of this comes to Rs. 8,41,000/-. This amount would be payable only to the mother i.e. Alka Sharma. We were told that the amount has already been paid by SBI General Insurance Company Limited. IFFCO Tokio General Insurance Company Limited would pay back the entire amount paid by SBI General Insurance Company Limited within three months failing which SBI General Insurance Company Limited would be entitled to interest @ 6% from the date of the order till it is actually paid. The excess amount paid to the claimants would be returned/deposited within three months before the Executing Court failing which they will have to pay interest @ 6% from the date of the order which can be withdrawn by IFFCO Tokio General Insurance Company Limited.

In **FAO-4980-2016**, appellant-SBI General Insurance Company

Limited has also disputed the amount awarded to the claimants for the death

of Aamir Furqan. The deceased was a Guest Lecturer and was getting salary of Rs. 19,240/- per month. The claimants had pleaded that he was getting salary of Rs. 25,000/- per month but the salary certificate was considered and from the admission made by PW-13 that he was not a regular employee, the income was rightly taken at Rs. 19,240/- per month.

The submission on behalf of the insurance company is that the deceased was unmarried and the multiplier of 18 has been applied and the father could not be dependant on the son as he was in the age group of 40-45 years and the multiplier has been wrongly applied.

The claimants side had urged that the Tribunal had already taken a lower income and there should be no deduction.

The deceased was 24 years old. The parents and the younger brother were the claimants. The Tribunal had declined compensation to the younger brother. It had taken the income which was given in the salary certificate but had wrongly applied the multiplier of 18. Since the parents were the claimants, therefore, age of the mother should have been taken into account and the calculations will have to be made again.

Taking the income to be Rs. 19,240/- and applying a deduction of 50%, since the deceased was a bachelor, the amount available would be Rs. 9620/- per month and the compensation would be $\text{Rs. } 9620 \times 12 \times 15 = 17,31,600/-$. To this, a sum of Rs. 1,00,000/- should be allowed for loss of love and affection to the mother and Rs. 25,000/- for the last rites which raises the total to Rs. 18,56,600/-.

The award is, thus, to be modified and the amount which was payable to claimants No. 1 and 2 in this FAO would be Rs. 18,56,600/-.

Since the responsibility of payment of compensation has been held to be

that of IFFCO Tokio General Insurance Company Limited, IFFCO Tokio General Insurance Company Limited would pay back the entire amount to the SBI General Insurance Company Limited, which has been paid to the claimants within three months failing which the SBI General Insurance Company Limited would be entitled to interest @ 6% from the date of the order till it is actually paid. The excess amount paid to the claimants would be returned/deposited within three months before the Executing Court failing which they will have to pay interest @ 6% from the date of the order which can be withdrawn by IFFCO Tokio General Insurance Company Limited.

In FAO Nos. 5227 and 5228 of 2016, the SBI General Insurance Company Limited besides the liability had also disputed the amount awarded.

I find that the amount awarded to the claimants was not excess. As regards liability, that aspect has already been addressed above.

Accordingly, the appeals filed by SBI General Insurance Company Limited i.e. ***FAO Nos. 4978, 4979, 4980, 4988, 5226, 5227 and 5228 of 2016*** are partly allowed on the terms noted above.

FAO-6078-2016 (O&M)

Taking up the appeal filed by the claimants bearing No. FAO-6078-2016, the claim petition had been filed by Harpreet Kaur and others for the death of Parminder Singh who was 32 years old. The claimants were the widow, minor child and the parents. Parminder Singh was an Assistant Professor working in a private education society namely Mahaprabhu Ram Mulkh Hitech Education Society. The claimants had produced his salary certificate. The appointment letter was proved by

Amarjit PW-13. The salary certificate Ex. P3 shows that he was appointed in the institute on 12.1.2015 and had worked till the end of March 2015. The appointment letter suggests that though the appointment was regular but it was subject to ratification by the selection committee and after confirmation by Kurukshetra University. Clause-6 of the appointment letter (Annexure P-4) suggest that three months notice or three months salary had to be given in case the appointee wanted to leave for any reason and if the management did not want to keep him, they were bound to follow the same rule of notice of three months.

Harpreet Kaur while appearing as PW-1 had stated that her husband was getting Rs. 25,000/- per month and he was also taking tuitions and was able to earn Rs. 10,000/- more per month. The Tribunal noted in para 59 of the award that Parminder Singh was not a regular employee and was a Guest Lecturer though, there is no reference to this in the appointment letter or any other document. Perhaps the cross-examination of PW-13 Amarjit was not properly considered, it related to Aamir Furkan when the witness had stated that he had joined as a Guest Lecturer. The Tribunal had taken the salary at Rs. 24,000/- per month and made a deduction of 1/4th and applied the multiplier of 16. Rs. 1,00,000/- was allowed to claimant No. 1 for loss of consortium, Rs. 1,00,000/- each for loss of love and affection for claimants No. 2 to 4 which included both the parents and Rs. 25,000/- was allowed for last rites.

The submission on behalf of the appellants is that there should have been some addition towards future prospects and the compensation be enhanced.

The SBI General Insurance Company has also filed an appeal

i.e. FAO-5226-2016 and had contested the award besides their liability. The submission by the counsel was that the deceased was not a regular appointee nor he was working in a government department. It was a private society and his services could be terminated after three months notice. It was also urged that the Tribunal had not correctly made the deduction and it should have been $\frac{1}{3}^{\text{rd}}$ as the father was not the dependant.

So far as the future prospects are concerned, the claimants are not entitled to any addition towards future prospects. The deceased was not in government or regular employment. His services could be terminated on three months notice. There were four claimants which included the father. The multiplier has been wrongly applied and the deduction should have been $\frac{1}{3}^{\text{rd}}$. The claimants have been awarded a higher amount. Therefore, the calculations are being made again. Taking the income to be Rs. 24,000/- and making a deduction of $\frac{1}{3}^{\text{rd}}$, the compensation would come to Rs. 30,72,000/-. To this, Rs. 1,00,000/- should be added for loss of love and affection for the child, Rs. 1,00,000/- for loss of love and affection for the mother, Rs. 25,000/- for funeral expenses and Rs. 1,00,000/- for loss of estate. The total compensation comes to Rs. 33,97,000/-. The insurance company namely SBI General Insurance Company Limited has already paid the amount to the claimants. The liability for payment of compensation has been placed upon IFFCO Tokio General Insurance Company Limited. IFFCO Tokio General Insurance Company Limited would pay back the entire amount paid by SBI General Insurance Company Limited within three months failing which SBI General Insurance Company Limited would be entitled to interest @ 6% from the date of the order till it is actually paid.

within three months before the Executing Court failing which they will have to pay interest @ 6% from the date of the order which can be withdrawn by IFFCO Tokio General Insurance Company Limited.

FAO-6078-2016 is dismissed. The award is modified as discussed above.

FAO-5798-2016 (O&M)

Taking up FAO-5798-2016, Amit Saini had sustained fracture on both the legs. He remained admitted in the hospital from 31.3.2015 till 10.4.2015. Amit was a Lecturer in Shree Ram Mulkh Institute. It was claimed that he was earning Rs. 25,000/- per month. He suffered a permanent disability to the extent of 12%. The record reveals that he was discharged from the hospital after 11 days. The Tribunal allowed the following compensation:-

Sr. No.	Head of Compensation	Amount
1.	Permanent disability	Rs. 24,000/-
2.	Pain and suffering	Rs. 25,000/-
3.	Medical expenses	Rs. 67,812/-
4.	Transportation	Rs. 4,856/-
5.	Attendant	Rs. 5,000/-
6.	Special diet	Rs. 5,000/-
7.	Loss of income	Rs. 20,000/-
	TOTAL	Rs. 1,51,668/-

The submission on behalf of the appellants is that there were fractures on both the legs and it takes time to heal and the Tribunal has not considered the disability and the amount awarded for the disability is on the lower side and the amount on other heads are on the lower side.

SBI General Insurance Company had also filed the appeal i.e.

FAO-4979-2016 disputing their liability. That aspect has already been

considered above. It was urged that there was no loss of income and the claimant was working on the same position and on the same salary and the disability was not functional, therefore, the amount which was allowed @ Rs. 2,000/- per disability should not have been granted.

Certificate Ex. P-15 shows that the claimant was getting a salary of Rs. 21,600/- per month. The claimant is working on the same post and there is no loss of income. He has not been demoted. Therefore, no amount is being allowed for the disability as there is no loss. No evidence was led to show the period of leave but it is a matter of common knowledge that when there is a fracture it would need three months rest specially when the fracture is on the legs. The amount allowed on some of the heads is on the lower side. Therefore, the following compensation would be payable to the claimant:-

Sr. No.	Head of Compensation	Amount
1.	Pain and suffering	Rs. 40,000/-
2.	Medical expenses	Rs. 67,812/-
3.	Transportation	Rs. 7,500/-
4.	Attendant	Rs. 10,000/-
5.	Special diet	Rs. 10,000/-
6.	Loss of income (21,600 x 3)	Rs. 64,800/-
7.	Physiotherapy (5,000 x 6)	Rs. 30,000/-
	TOTAL	Rs. 2,30,112/-

The Tribunal had allowed Rs. 1,51,668/- which would be deducted and the amount payable would be Rs. 78,444/- with interest @ 6%. The liability is now of IFFCO Tokio General Insurance Company Limited, the insurer of the tipper, to pay the enhanced amount to the claimants. IFFCO Tokio General Insurance Company Limited would pay

within three months failing which SBI General Insurance Company Limited would be entitled to interest @ 6% from the date of the order till it is actually paid.

FAO-5798-2016 is partly allowed.

FAO-7801-2016 (O&M)

Pritam Singh suffered injuries in this accident. He was working as a Lecturer in SRM College. He suffered fractures in the accident. It was pleaded that he was earning Rs. 10,000/- per month and had spent over Rs. 1,00,000/- on his treatment. It was also pleaded that he was permanently disabled but the Tribunal found that there was no permanent disability. The total claim of Rs. 1,44,527/- was allowed.

The submission on behalf of the appellant is that the claimant remained admitted in the PGI for 10 days and he remained on leave for a long period because of fracture on the left leg and the amount on all the heads was on the lower side.

The claimant had suffered a fracture. This fact is not disputed. A rod was inserted. The claimant had stated that he had spent Rs. 3,00,000/- on his treatment but the bills for a sum of Rs. 1,00,000/- were produced, which have been allowed. It is a known fact that sometimes all the bills are not retained. The claimant failed to produce evidence with respect to the leave taken but he would not have been able to walk for at least three months or with a support and this fact was not considered by the Tribunal. Therefore, I would award following compensation:-

Sr. No.	Head of Compensation	Amount
1.	Medical bills	Rs. 1,10,000/-
2.	Transportation	Rs. 10,000/-

3.	Attendant Charges	Rs. 10,000/-
4.	Loss of income (10,000 x 3)	Rs. 30,000/-
5.	Special diet	Rs. 10,000/-
6.	Pain and suffering	Rs. 25,000/-
7.	Physiotherapy (5,000 x 6)	Rs. 30,000/-
	TOTAL	Rs. 2,25,000/-

The Tribunal had allowed Rs. 1,44,527/- which would be deducted and the amount payable would be Rs. 80,473/- with interest @ 6%. Since the liability has now been placed on IFFCO Tokio General Insurance Company Limited, the insurer of the tipper, they would pay the enhanced amount to the claimant. IFFCO Tokio General Insurance Company Limited would pay back the entire amount paid by SBI General Insurance Company Limited within three months failing which SBI General Insurance Company Limited would be entitled to interest @ 6% from the date of the order till it is actually paid.

FAO-7801-2016 is partly allowed.

CR Nos. 5730 & 5734 of 2016

The issue regarding the liability has already been discussed above. It is IFFCO Tokio General Insurance Company Limited which is to repay the compensation paid by SBI General Insurance Company Limited on the terms noted above.

The insurance company in these two revisions has also disputed the amount of compensation. The Tribunal had allowed Rs. 5591/- only for the injuries in CR-5730-2016 and Rs. 5,000/- in CR-5734-2016 which cannot be said to be excess. Therefore, the finding regarding compensation payable are affirmed.

The revisions are partly allowed.

In view of the discussion made above, all the FAOs and

revisions are disposed of accordingly.

(ANITA CHAUDHRY)
JUDGE

October 12, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No