

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

**Date of Decision:- 14.12.2017**

**1. FAO No. 8684 of 2015(O&M)**

Magma HDI General Insurance Co. Ltd. ....Appellant

Versus

Babu Ram & Ors. ...Respondents

**2. FAO No. 3465 of 2016 (O&M)**

Babu Ram & Ors. ....Appellants

Versus

Rupas Masih & Ors. ...Respondents

**CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN**

Present: Mr. Rajneesh Malhotra, Advocate, for the appellant.

Mr. Jasbir Singh Mor, Advocate, for respondent Nos. 1 to 3.

**AVNEESH JHINGAN, J. (Oral)**

These are two appeals filed against the award dated 23.09.2015 passed by Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal'). FAO No. 8684 of 2015 has been filed by the insurance company challenging the issue of involvement of the offending vehicle and the quantum of compensation. FAO No. 3465 of 2016 has been filed by the claimants for enhancement of compensation.

On 01.05.2014, Vicky, aged 25 years, along with his uncle Sushil Kumar was returning from Pehowa on a motor-cycle bearing registration No. HR-41C-7258. The motor-cycle was being driven by Vicky. At about 7:00 PM near Motor Market Gate, Bhatt Majra, Pehowa, it was alleged that

a rashly and negligently driven truck bearing registration No. HR-65-7476 (for short, 'the offending vehicle') over-took the motor-cycle and gave a wrong cut towards the motor-cycle. As a result the motor-cycle struck against the truck and Vicky along with his motor-cycle fell on the pucca portion of the road and the truck passed over his head. Sushil Kumar, a pillion rider, fell on the kacha portion of the road. The truck driver fled away from the scene of the accident. FIR No. 172, dated 02.05.2014 was registered at Police Station Pehowa, District Kurukshetra.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased. The Tribunal after appreciating the facts and considering the evidence decided that the offending vehicle was involved in the accident and it was because of rash and negligent driving of the offending vehicle that accident occurred. A sum of Rs.15,87,200/- was awarded as compensation along with interest @9% per annum. The said amount awarded included Rs.25,000/- for funeral expenses and for transportation of dead body; Rs.1,00,000/- for loss of estate and Rs.1,50,000/- for loss of love and affection.

Aggrieved of the said award the present appeals have been filed.

I have heard learned counsel for the parties; perused the paper-book and the relevant record and documents produced by the counsel.

Learned counsel for the insurance company argued that the accident occurred on 01.05.2014 and a FIR was recorded on 02.05.2014 on the statement of Sushil Kumar, uncle of the deceased and the said FIR was against unknown vehicle. He further contended that the statements of

Sushil Kumar and Surender Kumar are not worth reliance as both were related to the deceased. He further contended that in such a major accident Sushil Kumar, who was on the same motor-cycle, did not suffer any injury and Sushil Kumar himself admitted in his cross-examination that he had not noted the truck number. Hence, the claimants failed to prove involvement of the offending vehicle.

Learned counsel for the claimants argued that the accident occurred on 7:00 PM on 01.05.2014. The deceased was taken to the hospital and the FIR was recorded at 12.35 am that is why the date of the FIR was recorded as 02.05.2014. He contended that in the morning after recording of the FIR, the statement of Surender Kumar was recorded and he was the person who followed the truck and noted the registration number and the name of the driver. He further contended that on same very day i.e. 02.05.2014 a supplementary statement of Sushil Kumar was recorded in which the truck number and name of the driver were duly mentioned. It was result of the supplementary statement of Sushil Kumar that the truck driver was apprehended on 13.05.2014.

The legal position regarding the onus under Section 166 of the Act is well settled.

The Hon'ble Apex Court in case of ***Surender Kumar Arora and another Vs. Manoj Bisla and others, 2012 (4) SCC 552*** has held that initial onus of proving the involvement of the vehicle and rash and negligent driving of the offending vehicle is on the claimant. It has further been held that the onus casted under Section 166 of the Act is not to the extent that the claimants have to prove beyond reasonable doubt the involvement of the

vehicle. The evidence is to be tested on the principle of preponderance

In the present case there were two eye-witnesses to the accident, Sushil Kumar, who was a pillion rider on the same motor-cycle. No doubt he admitted in his cross-examination and the statement that as the back cover of the truck was open (dala), he was not in a position to note the registration number of the truck but his statement duly explains the happening of unfortunate event.

So far as contention raised by learned counsel for the insurance company that in such a major accident Sushil Kumar escaped without injury has no substance. It has come on record that Vicky who was driving the motor-cycle as a result of the impact fell on the pucca portion of the road and his head was crushed under the tyre of the truck and Sushil Kumar fell on kacha side of the road. This is the reason that Sushil Kumar suffered no major injury.

Surender Kumar, who deposed as PW-3 happened to be on the site of the accident and on coming to know that the truck driver fled away he chased the truck. Ultimately he found the said truck parked in the dark place near Anaj Mandi, there he noted the registration number and the name of the driver. His statement is corroborated by supplementary statement of even Sushil Kumar as he admitted that the truck number and name of the driver was given to him by Surender Kumar.

Though the delay in filing the FIR is not fatal but in the present case there is no delay in filing the FIR, it is because of the timing of the day that the date has changed from 1<sup>st</sup> to 2<sup>nd</sup> May. The perusal of the statements show that the statements were recorded after registration of the FIR and

moreover the supplementary statement which duly gives the detail of the offending vehicle was also recorded on the same day. In such circumstances, merely because both the eye-witnesses were related to the deceased their statements cannot be discarded on this ground alone. There was no evidence on record because of which the said statements or evidence should not be taken into consideration.

Learned counsel for the insurance company has argued that the Tribunal erred in assessing the monthly earning of the deceased as Rs.8100/-. He argued that the minimum wages prevalent at that time in the State of Haryana was around Rs.6,000/-. The claimants had failed to establish the earning of the deceased, in such circumstances, the Tribunal should have relied upon the minimum wages prevalent at that time in the State of Haryana. He further contended that 50% have been wrongly awarded for future prospects as there was no established income, no future prospects should have been awarded. His grievance is that compensation for loss of love and affection has been wrongly awarded and the amounts awarded under conventional heads are on the higher side.

On the other hand learned counsel for the claimants has defended the award and in his appeal for enhancement to argued that it was claimed that the deceased was running a Kariyana shop and was earning Rs.50,000/- per month and Tribunal assessed the lower income.

The claimants had claimed that the deceased was running a Kariyana shop but the said claim was a bald statement and was not substantiated before the Tribunal. Even today in appeal, learned counsel for the claimants is not in a position to establish the earning of the deceased. In

such circumstances, the contention raised by the learned counsel for the insurance company has to be accepted and reliance will have to be placed on the minimum wages prevalent in the State of Haryana in May 2014. The compensation will be recalculated later in the order by taking the monthly income of the deceased as Rs.6000/-.

The Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014**, decided on 31.10.2017 has held that where deceased was self-employed or was on a fixed salary and was below 40 years of age, 40% future prospects should be awarded. It has further been held that no amount is to be awarded for loss of love and affection and only Rs.15,000/- is to be awarded for loss of funeral expenses and Rs.15,000/- for loss of estate.

The contention raised by the learned counsel for insurance company that since there was no established income, no future prospects should be awarded deserves rejection, in view of the decision of Hon'ble Apex Court in **Hem Raj Vs. Oriental Insurance Company Ltd, in Civil Appeal No. 19603 of 2017, decided on 22.11.2017**. In the said decision, it has been held that even where the income is assessed on the basis of minimum wages prevalent at the time of accident in such cases also future prospects have to be added.

Keeping in view the above discussion and the law cited, the compensation is recalculated as under :-

|                      |   |               |
|----------------------|---|---------------|
| Annual earning       | = | Rs.72,000/-   |
| 40% future prospects | = | Rs.28,800/-   |
| Total                | = | Rs.1,00,800/- |

|                                   |  |               |
|-----------------------------------|--|---------------|
| 1/2 deduction for self-expenses = |  | Rs.50,400/-   |
| Applying multiplier of 18 =       |  | Rs.9,07,200/- |
| Loss of estate =                  |  | Rs.15,000/-   |
| Funeral Expenses =                |  | Rs.15,000/-   |
| Total =                           |  | Rs.9,37,200/- |

The award dated 23.09.2015 is modified to the extent that the amount awarded of Rs.15,87,200/- by the Tribunal is reduced to Rs.9,37,200/-.

Since there was a stay operating in favour of the insurance company, the claimants would be entitled to the amount determined along with interest as awarded by the Tribunal from the date of filing of the claim petition till realisation.

Both the appeals are, accordingly, disposed of.

**December 14, 2017**  
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**(AVNEESH JHINGAN)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No