In the High Court of Punjab and Haryana at Chandigarh

(I) FAO No. 1136 of 2000 (O&M)
Date of Decision:- 6.7.2018

Mannat Johal and others ......Appellants

Versus

Darshan Singh and others .....Respondents

(II) FAO No. 1434 of 2000 (O&M)

National Insurance Co. Ltd. ......Appellant

Versus

Surinder Kaur Johal and others .....Respondents

(III) FAO No. 1435 of 2000 (O&M)

National Insurance Co. Ltd. ......Appellant

Versus

Ramanjit Kaur Johal and others .....Respondents

CORAM: **HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. V. Ramswaroop, Advocate,
for the appellants (in FAO-1136 of 2000),
for respondents No.5 to 7 (in FAO-1434-2000),
for respondents No.1 to 3 (in FAO-1435-2000).

Mr. Sandeep Suri, Advocate,
for appellant (in FAO-1434-2000 & FAO-1435-2000),
for respondent No.3 (in FAO-1136-2000).

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GURVINDER SINGH GILL, J.

1. This judgment shall dispose of the above mentioned three appeals as all the said appeals are directed against the same award i.e. award dated 27.1.2000 passed by Motor Accident Claims Tribunal, Chandigarh. The matter pertains to award of compensation on account of death of Rajpal Singh Johal in a

vehicular accident. While one claim petition was filed by parents of the deceased, another was filed by the widow and minor children of the deceased. Both the aforesaid claim petitions were clubbed together and consolidated issues were framed on 6.11.1998 by the learned Tribunal which were ultimately accepted by the learned Tribunal vide award dated 27.1.2000. The widow and children of deceased have filed appeal seeking enhancement of compensation. The insurance company has also challenged the award passed by the learned Tribunal by filing two separate appeals.

2. The facts, stated in brief, as per claim petition filed by widow and children of the deceased are that deceased Rajpal Singh Johal, who was working as a General Manager (Marketing) of the Punjab Wireless System Limited PUNWIRE, Mohali had gone to Assam and North East along with his family in December 1995 while availing LTC. The family was to return from Guwahati to Delhi by air on 30.12.1995. The family left their hotel at Kaziranga by car bearing registration No. HPS-7070 for Guwahati which was being driven by the deceased. While his wife Ramanjit Kaur Johal was sitting by his side on the front seat, their minor children Rattan Amol Singh and Mannat were sitting on the rear seat. At about 1.00 P.M. when they were near Police Post Bagari, one oil tanker bearing registration No.AS-01-9526 came from the opposite direction which was being driven by respondent No.2 Jagdish Singh in a rash and negligent manner and at a high speed and the same rammed into the car by coming on the wrong side as a result of which Rajpal Singh Johal sustained serious injuries while Ramanjit Kaur also sustained some injuries. The injured were taken to a nearby Rural Hospital in

a jeep which was passing by but Rajpal Singh Johal succumbed to his injuries on way to hospital.

3 The claimants asserted that the gross annual salary and perks of Rajpal Singh Johal were ₹3,21,801.60/- at the time of accident and that he was due for promotion in January, 1996 to the post of Associate Vice President and upon promotion his salary would have been about ₹3,50,500/- including gratuity and superannuation benefits. The claimants thus claimed compensation to the tune of ₹1,25,00,000/-.

4. Respondent No.1, driver of the oil tanker in question was proceeded against ex-parte. Respondent No.2 Darshan Singh, owner of the oil tanker, in his written statement admitted the factum of accident but took a plea that the same had been caused due to rash and negligent driving on part of the deceased himself. Respondent No.3-insurer of the tanker in question denied the factum of accident. However, an alternate plea was taken that if the tanker in question is found to be involved in the accident, the same had not been caused on account of negligence of respondent No.1. Respondent No.3 further asserted that respondent No.1 was not possessing a valid driving licence. While denying all material averments made in the claim petition a prayer for dismissal of the same was made.

5. The mother of the deceased who has been arrayed as respondent No.4 in the claim petition filed by the widow and children of the deceased supported the case of the claimants. In the claim petition filed by parents of deceased they also prayed for award of compensation to the tune of ₹1,25,00,000/-. The owner and insurer filed separate written statements in the said claim petition wherein they have taken identical stand as taken by them in the other claim

petition. The driver was however proceeded against ex-parte even in the said claim petition. The widow and children of the deceased who were arrayed as respondents No.4 to 6 in the claim petition filed by the parents admitted the factum of accident but have taken a stand that the parents of the deceased were not dependent upon the deceased.

6. The parties were put to proof the following consolidated issues which were framed by the learned Tribunal on 6.11.1998:

> "1. Whether Surinder Kaur and Gurbax Singh Johal are legal representatives of Rajpal Singh Johal deceased? OPP.
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> 2. Whether Smt. Ramanjit Kaur, Master Rattan Amol Singh and Ms. Mannat Kaur are legal representatives of Rajpal Singh deceased as alleged? OPP.
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> 3. Whether Raj Pal singh died in a motor vehicular accident caused by rash and negligent driving of Tanker No.AS-01-9526 as alleged? OPP.
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> 4. Whether the persons who are proved to be legal representatives of Raj Pal Singh Johal deceased are entitled to claim compensation, if so, how much and from which of respondents? OPP.
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> 5. Whether Raj Pal Singh deceased was guilty of contributory negligence? OPR.
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> 6. Whether the respondent No.2 (i.e. Jagdish Singh) did not hold a valid driving licence? If so, its effect? OPR-3
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> 7. Whether the correct address of the driver and owner of the Tanker No.AS-01-9526 has not been given? OPR.
>
> 8. Whether the claim petition is bad for non-joinder of necessary parties, if so, its effect? OPR.

9. Relief."

7. Both the parties led oral as well as documentary evidence in support of their case.

8. The learned Tribunal upon appraisal of the evidence on record held that the accident in question had been caused on account of rash and negligent driving on part of respondent No.1 and accordingly awarded compensation to claimants to the tune of ₹37,71,000/- vide award dated 27.1.2000. While the claimants filed appeal seeking enhancement of compensation, the insurer has assailed the award by filing two separate appeals praying therein that the award be set aside.

9. I have heard the learned counsel for the parties and with their assistance have gone through the impugned award. The learned counsel for the insurance company while assailing the impugned award has submitted that the oil tanker bearing registration No. AS-01-9526 cannot be said to be involved in the alleged accident in which Rajpal Singh Johal lost his life as the registration number of the said tanker is not mentioned in FIR. I have considered the aforesaid submission. In the present case PW-2 Ramanjit Kaur Johal, widow of the deceased who was traveling in the car being driven by the deceased and was sitting on the front seat by the side of the deceased has stepped into the witness box and has specifically deposed about the registration number of the tanker in question. She has specifically stated that while her husband was driving the car steadily on the left side of the road, the offending tanker bearing registration No. AS-01-9526 came from the opposite side which was being driven rashly and negligently and at a high speed and which rammed into their car by coming on wrong side as a result of which deceased received

serious injuries and ultimately succumbed to his injuries. The claimants have also placed on record a copy of the FIR as Ex.P-9 and a copy of the investigation report as Ex.P-10. The photographs of the place of occurrence have also been brought on record as well as a copy of report filed by the police under Section 173 Cr.P.C.

10. There is no evidence to the contrary. Rather Darshan Singh owner of the tanker in question, in his written statement has virtually admitted the factum of accident. The driver of the oil tanker has not stepped into witness-box to rebut the aforesaid assertions. In these circumstances mere delay in lodging the FIR or omission to mention the registration number of tanker in the FIR loses significance in the absence of any evidence to rebut the testimony of PW-2 Ramanjit Kaur Johal, who was herself traveling in the car in question which met with an accident. I do not find any infirmity in the findings of the learned Tribunal on issue No.3 to the effect that the accident in question had been caused as a result of rash and negligent driving on the part of the driver of tanker bearing registration No. AS-01-9526 and the same are hereby affirmed.

11. During course of arguments learned counsel for the insurance company submitted that since the claimants must have received huge amount on account of gratuity, insurance benefits etc. on account of death of the deceased, therefore, the compensation needs to be scaled down. I have considered the aforesaid submission. There is no concrete evidence on record to establish receipt of any ex-gratia, financial assistance received by the claimants so as to justify any reduction in the above assessed compensation.

Consequently the aforesaid submission is found to be devoid of merits and is repelled.

12. On the other hand learned counsel for claimants while assailing the impugned award so as to seek enhancement of the compensation has drawn the attention of this Court to the testimony of PW-1 Rajiv Mahajan, Manager (P&A) of PUNWIRE, Mohali which has been referred to in the impugned award. PW-1 Rajiv Mahajan has proved the details in respect of the gross annual emoluments (Ex.P-3) of the deceased as on 1.12.1995 which are as follows:

"Monthly Emoluments:

Basic Pay	:	₹10,670.00
Dearness Allowance	:	₹925.00
Variable Dearness Allowance	:	₹725.80
Conveyance Allowance	:	₹3,700.00
Performance Linked Spl. Pay	:	₹1,500.00
Company Leased Accommodation	:	₹5,500.00
Total	:	₹23,020.80

Annual = ₹23,020.80 P x 12 = ₹2,76,249.60

Annual Benefits

LTC	:	₹13,820.00
Medical	:	₹13,820.00
Bonus	:	₹6,000.00
Furnishing Allowance	:	₹5,000.00
Leave encashment	:	₹6,910.40

₹45,552.00

Additional Benefits

Superannuation Gratuity

Total Annual Gross Salary	:	₹3,21,801.60
+ Benefits	:	(₹276249.60 + ₹45,552)

13. PW-1 Rajiv Mahajan further deposed that there were six General Managers of different Departments of PUNWIRE and the deceased was one of them and that all others have been promoted to the post of Associate Vice President and that in case Sh. Rajpal Singh Johal was alive, he would have been promoted as Associate Vice President in the year 1995 and his emoluments would have been raised. The raised emoluments (Ex.P-4) are as follows:

"Monthly Emoluments:

Basic Pay	:	₹11,580.00
Dearness Allowance	:	₹1925.00
Variable Dearness Allowance	:	₹787.80
Conveyance Allowance	:	₹3,700.00
Performance Linked Spl. Pay	:	₹1,500.00
Company Leased Accommodation	:	₹5,500.00

Total	:	₹24,992.30 x 12
		= 2,99,907.60

Annual Benefits

LTC	:	₹15,792.30

Mohan Singh
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I attest to the accuracy and authenticity of this document
Chandigarh

Medical	:	₹15,792.30
Bonus	:	₹6,000.00
Furnishing Allowance	:	₹5,000.00
Leave encashment	:	₹7,896.15
Total	:	₹50,480.75

<u>Additional Benefits</u>

Superannuation Gratuity

Total Annual Gross Salary : ₹3,50,388.35
Including Benefits : (₹2,99,907.60 + ₹50,480.75/-)

14. PW-1 Rajiv Mahajan has further deposed that subsequently the emoluments of Associate Vice President stood revised w.e.f. December, 1996 vide Ex.P-5 as under:

<u>“Emoluments:</u>

Basic Pay	:	₹13,800.00
Dearness Allowance	:	₹1,925.00
Variable Dearness Allowance	:	₹429.00
Conveyance Allowance	:	₹3,700.00
Company Leased Accommodation	:	₹9,900.00
LTC	:	₹1,346.90
Medical	:	₹1,346.90
Bonus	:	₹500.00
Leave encashment	:	₹673.10
C.P.F.	:	₹1,615.40

House Maint. Allowance	:	₹416.64
Superannuation	:	₹1,211.60
Gratuity	:	₹776.65
Total	:	₹37,640.80”

15. In other words consequent upon revision of emoluments, the annual gross salary including emoluments would work out to ₹4,51,689.60/- (₹37,640.80 x 12 = ₹4,51,689.60). The learned counsel for the claimants has submitted that though, there was concrete evidence to the effect that there had been an increase of emoluments of Associate Vice President in the year 1996 which stood increased to ₹4,51,689/- as per Ex.P-5, but the Tribunal has erroneously ignored the said evidence.

16. I have considered the aforesaid submission. The learned tribunal assessed the annual income of deceased as ₹3,51,000/- i.e. the income of an Associate Vice-President, as per statement Exhibit P-4, though he had not been promoted to the said post so far. The learned Tribunal fell in error in assessing income of deceased on the basis of his anticipated promotion. As per dictum of Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi, 2017 ACJ 2700* “future prospects” of increase in income have certainly to be taken into account while assessing compensation to be awarded to the dependents of the deceased. While in some cases there could be evidence regarding prospects of increase in income, in others there may not be direct evidence in this regard. In the present case the document Ex.P-5

duly proved by PW-1 Rajiv Mahajan shows that after about a year of death of the deceased the salary of the contemporaries of the deceased stood increased substantially which would fortify the claim of the claimants regarding the bright future of the deceased.

17. However, the increase on account of “future prospects” is to be made on the income which the deceased was getting at the time of his death and not on anticipated increase on account of likelihood of promotion because by taking such anticipated increase into account and then also adding another amount to said income on account of “future prospects” would mean giving the benefit of “future prospects” twice over which certainly is not the spirit of ratio of *Pranay Sethi's case*.

18. Thus, it will not be proper to hold that the salary as mentioned in Exhibit P-4 or Exhibit P-5 was the salary of the deceased, which in fact is the salary which he could have got upon promotion and also on account of subsequent revision of pay scale in the year 1996. It is only the salary which he was drawing as at the time of his death which can be taken into account and which is depicted in Exhibit P-3. As per Exhibit P-3, the annual gross salary including emoluments and other allowances and benefits including company leased accommodation was ₹3,21,801.60. However, I find that in the said statement no deduction towards income tax has been reflected. A perusal of the salary statement Exhibit P-3 indicates that a major component of the salary is in the shape of allowances and benefits like LTC, furnishing allowance, company leased accommodation etc and the monthly basic pay and dearness allowance is about ₹12,000/- only. By a rough estimation it can safely be said that an amount of ₹20,000 approximately must have been

deducted annually from his salary towards income-tax. Thus by taking the said deduction into account, the annual gross salary is held to be ₹ 3 lakhs per annum.

19. Keeping in view the dictum of <u>*Pranay Sethi's*</u> case (Supra), an addition to the extent of 40% needs to be made to the above assessed income of ₹3,00,000/- of the deceased, towards "future expenses". By adding the said 40%, the income works out to Rs.4,20,000/-.

20. In the present case there were five dependents upon the income of the deceased and as such, the deceased could not have been expected to be spending more than 1/4th of his income on his personal expenses. Thus, by deducting the personal expenses, to the extent of 1/4th of income the annual dependency of the claimants upon the income of the deceased works out to ₹3,15,000/-.

21. Now coming to the multiplicand to be applied in the present case, the deceased was aged about 38 years at the time of accident. As per dictum in <u>*Sarla Verma and Others Vs. Delhi Transport Corporation and Another* (2009) 6 SCC 121</u> an appropriate multiplier to be applied would be 15. By applying a multiplier of 15 the compensation would work out to ₹47,25,000/- (₹3,15,000 x 15).

22 In addition to the aforesaid compensation the widow of the deceased is also entitled to an amount of ₹40,000/- towards loss of consortium. The claimants are also entitled to an amount of ₹15,000/- towards funeral expenses and another ₹15,000/- towards loss to estate. Thus, the total compensation works out to ₹47,95,000/-. For the sake of convenience, the aforesaid compensation

is rounded of to ₹48,00,000/-. The claimants are thus entitled to compensation to the tune of ₹48,00,000/-. The said compensation shall be shared by the claimants in the following proportion:

1.	Ramanjit Kaur, widow	₹ 26,00,000/-
2.	Rattan Amol Singh Johal, son	₹ 8,00,000/-
3.	Mannat Kaur Johal, daughter	₹ 10,00,000/-
4.	Surinder Kaur, mother	₹ 2,00,000/-
5.	Gurbax Singh, father	₹ 2,00,000/-

23. The above assessed compensation shall be paid to the claimants along with interest @ 7.5% per annum from the date of filing of the claim petition till realization. Though the prime liability to pay compensation is of the driver and owner of the offending vehicle but since the vehicle was duly insured, therefore, the insurer is bound to indemnify the owner and driver in terms of the insurance policy and thus respondents No.1 to 3 are liable to pay the aforesaid compensation jointly and severally. The impugned award stands modified accordingly.

24. Consequently the appeal bearing No.FAO-1136 of 2000 filed on behalf of the claimants stands accepted whereas the appeals filed on behalf of insurance company i.e. FAO No.1434 of 2000 and FAO No.1435 of 2000 stand dismissed.

(GURVINDER SINGH GILL)
JUDGE

July 6, 2018
(mohan)

Whether speaking/reasoned Yes/No

Whether reportable Yes/No