

FAO-2657-2000(O&M) &
FAO-2768-2000(O&M)

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

(1) FAO-2657-2000(O&M)

Smt.Usha Rani and others

...Appellants

Versus

Suresh Kumar and others

...Respondents

(2) FAO-2768-2000(O&M)

Mangat Singh

...Appellant

Versus

Suresh Kumar and others

...Respondents

Date of Decision:-19.12.2018

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Aseem Aggarwal, Advocate
for the appellants in FAO-2657-2000 and
for respondents No.4 to 7 in FAO-2768-2000.

Mr.R.S. Longia, Advocate
for the appellant in FAO-2768-2000 and
for respondent No.4 in FAO-2657-2000.

Mr.Rajesh Kumar Sharma, Advocate
for the respondent No.3 – Insurance Company.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-2657-
2000 filed on behalf of appellants Smt.Usha Rani and others and FAO-
2768-2000 filed on behalf of appellant – Mangat Singh, which have arisen

out of the same accident.

On account of death of Sh.Gulshan Kumar in a motor vehicular accident, his legal heirs i.e. wife – Usha Rani, minor children i.e. son Binay Manchanda and daughter Meena as well as mother – Smt.Kaushaliya had brought a claim petition under Sections 166 and 140 of the Motor Vehicles Act against respondents i.e. Suresh Kumar – driver (respondent No.1), Jai Narain – owner (respondent No.2), United Insurance Company Ltd. - insurer(respondent No.3) of TATA Sumo No.DL-8CB-7812 (hereinafter referred to as TATA Sumo) besides Mangat Singh – driver(respondent No.4) and Jagat Singh @ Jagta – owner (respondent No.5) of tractor-trolley No.HYQ-2402 (hereinafter referred to as tractor trolley) seeking compensation to the tune of Rs.10 lacs.

As per the version of the claimants, on 31.1.1998, Gulshan Kumar was travelling in a TATA Sumo vehicle driven by respondent No.1 – Suresh Kumar going to Delhi; that Suresh Kumar was driving the abovesaid TATA Sumo in a rash and negligent manner and at about 6:45 p.m., when the said vehicle reached near Shankar Rice Mill in the area of village Ban, Police Station Ladwa, the tractor trolley driven by respondent No.4 – Mangat Singh against traffic rules and without blowing horn came from Ladwa side and it hit TATA sumo, as a result of which the persons travelling in the TATA Sumo including Gulshan Kuamr suffered injuries; that Gulshan Kumar succumbed to the injuries at the spot. As such, the claimant had filed petition seeking compensation.

Notice of the petition was given to respondents, who put in appearance. Respondents No.1 and 2 filed a joint written statement in

which while admitting the accident, it is contended that it was caused due to rash and negligent driving of tractor trolley by respondent No.4. It was further contended that a criminal case was registered against respondent No.4 – Mangat Singh on the basis of statement of Inderjit. Such respondents conceded that the TATA Sumo in question was being driven by respondent No.1 Suresh Kumar and it was owned by respondent No.2 Jai Narain.

In the written statement filed by respondent No.3, it denied that TATA Sumo was insured at the relevant time. The remaining assertions in the claim petition were also not admitted.

Whereas respondent No.4 in the written statement submitted by him came up with a version that on 31.1.1998, he had parked the tractor trolley on the extreme left side of kucha portion of the road near Shankar Rice Mill village Ban for taking water and other persons were sitting in the tractor trolley, however respondent No.1 Suresh Kumar driving TATA Sumo in question came from Yamuna Nagar side for going towards Delhi in a rash and negligent manner and it hit the parked tractor trolley by going on wrong side of the road; that respondent No.4 was not guilty in any manner and a false FIR was got registered against him in collusion with the police. It was submitted that tractor in question was not insured. Remaining assertions in the petition were denied.

Respondent No.5 owner of the tractor trolley had died during pendency of the claim petition though his LR was already on record.

On the pleadings of the parties following issues were framed:

1. Whether the accident resulting into the death of Gulshan Kumar

was caused due to rash and negligent driving of tractor trolley by its driver respondent no.4? OPP.

2. Whether the claimants are the legal heirs of deceased and are entitled for compensation, if so how much and from whom? OPP.
3. Whether the claimants have no locus standi to file the present petition? OPR.
4. Whether the claimants are estopped from filing the present claim petition by their own act and conduct? OPR.
5. Whether the deceased was gratuitous passenger in the vehicle in question, if so its effect? OPR3.
6. Whether the respondent no.1 was not holding a valid driving licence at the time of accident, if so its effect? OPR3.
7. Whether the claim petition is bad for misjoinder and non-joinder of necessary parties? OPR-3.
8. Relief

Both the parties led evidence in support of their respective claims.

During the course of evidence, the claimants examined PW1 Inderjit and PW2 Usha Rani besides tendering certain documents.

On the other hand the respondents examined respondent No.4 Mangat Singh as RW1, Mukesh, Ahlmad as RW2, Balkar Singh as RW3 and Satguru Saran as RW4.

After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants and against respondents, issue No.2 in favour of claimants and against the respondents, issue No.3 against the

respondents, issue No.4 in favour of the claimants and against the respondents, issue No.5 in favour of the claimants and against respondent No.3, issue No.6 in favour of claimants and against the respondent No.3, issue No.7 in favour of the claimants and against the respondent No.3, as a result the claim petition was accepted with costs and compensation to the tune of Rs.1,28,400/- was awarded to the claimants, payable by respondents No.1 to 3 jointly and severally observing that though the payment would be made by respondent No.3 and a sum of Rs.85,600/- was ordered to be paid by respondent No.4 (total compensation to the tune of Rs.2,14,000/-) along with interest @ 12% per annum from the date of filing of the petition till the date of actual realization.

The claimants and respondent No.4 – Mangat Ram were dissatisfied with the said award dated 19.5.2000 and they have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

As far as **FAO-2657-2000** is concerned, it is made out from the record that deceased Gulshan Kumar was aged about 35-36 years and was working as a labourer in Biswas Transport Company. The Tribunal considering the rates fixed by Deputy Commissioner, Yamuna Nagar with regard to wages paid to an unskilled labourer had taken his earnings as Rs.1,600/- per month. The Tribunal had though noticed that counsel for respondent No.3 had given suggestion to petitioner /claimant Usha Rani

when she stepped into the witness-box that her husband was not earning more than Rs.2,000/- to Rs.3,000/- per month. On analysis of evidence, the Tribunal has taken the income of deceased to be Rs.1,600/- per month. Therefore, no interference with taking of such income of the deceased is called for.

However, no addition has been made in the income on account of future prospects. In light of law laid down by Hon'ble Supreme Court in authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, wherein it was observed that in case the deceased was self-employed or on a fixed salary, an addition of 25% is to be made between the age of 40 to 50 years. Thus making such addition to income of deceased is taken to be Rs.2,000/- per month.

In this case the Tribunal has deducted 1/3rd of the amount towards personal expenses of the deceased. However, in view of the law enunciated by the Apex Court in landmark authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, where a deceased was married and number of dependent members was 4 to 6, deduction should be 1/4th. In this case the number of dependents was four. Considering the poor economic condition of the family, the deceased working as a labourer having small earning, it is all the more plausible that he would be spending less amount for himself, rather most of his income would be spent in looking after the family. Therefore, the deduction of 1/4th is to be made towards personal expenses. Doing that the dependency of the claimants comes out to $2,000 - 400 = 1600 \times 12 = 19,200/-$. Applying the multiplier of 16, the total dependency

comes out to $19,200 \times 16 = 3,07,200/-$.

Under the conventional heads, the claimants have been awarded a sum of Rs.9,200/- on account of funeral expenses, loss of consortium and loss of estate. However, in light of the law laid down in *National Insurance Company Limited Versus Pranay Sethi and Ors.*(supra), a sum of Rs.15,000/- on account of loss of estate, Rs.40,000/- on account of loss of consortium and Rs.15,000/- as funeral expenses, total amounting to Rs.70,000/- is granted making the amount Rs.3,77,200/-(3,02,200 + 70,000).

In that way, the enhanced amount comes to Rs.1,63,200/-. The appellants/claimants shall be entitled to recover the enhanced amount from respondents in the same manner as in the original award. The liability of respondents shall also be exactly the same as given in the original award so would be the apportionment between them. The appellants/claimants would be entitled to interest at rate of 7.5% per annum from the date of filing appeal till actual payment.

With such modification, the **FAO-2657-2000** is allowed partly.

As far as **FAO-2768-2000** is concerned, appellant - Mangat Singh – respondent No.4 is challenging the finding recorded by the Tribunal as regards issue No.1 wherein the Tribunal has found it to be a case of contributory negligence on the part of driver of TATA Sumo as well as tractor trolley apportioning the compensation awarded between the owner, driver and insurance company of both the vehicles. However, the tractor trolley was not insured at the relevant time.

Learned counsel for the appellant Mangat Ram has submitted that the Tribunal has wrongly recorded that it was a case of head on collision when the photographs of the place of accident and test reports of the vehicles showed otherwise, which have not been taken into consideration. The driver of the TATA Sumo vehicle had not appeared in the witness-box to state on oath that he was not at fault in happening of the incident and rather it was on account of fault of respondent No.4 that the mishap had taken place. He has further contended that without appreciating the evidence properly and taking into consideration the facts and circumstances of the case, the Tribunal wrongly found it to be a case of contributory negligence and at best it was a case of composite negligence. In support of his such contentions, he has referred to various authorities.

First being **Raju and others Versus Sukhwinder Singh and others, 2006(4) RCR(Civil) 82** by a Co-ordinate Bench of this Court wherein it was observed that if the driver of the offending vehicle does not come forward to deny his negligence, then adverse inference is to be drawn in favour of the claimants and he is presumed to be negligent.

The second authority pressed into service on that very point was **K.K. Jain and another Versus Masroor Anwar and others, 1990 ACJ 299.**

He had further referred to authority **Oriental Insurance Company Limited Versus Smt.Parveen Juneja, 2002(1) RCR(Civil) 18** by a Division Bench of this Court. It was a case where the accident had taken place between a Maruti car and stationary tractor trolley. The

contention of the insurance company that there was contributory negligence of driver of tractor was not found to be tenable observing that victims admittedly were not driving the car and even if there was any negligence of driver of tractor trolley then also it is a case of composite negligence and not contributory negligence. In that way the claimant can choose to sue any of tort-feasors.

On that very point, he had referred to authority **Sushila Bhadoriya and others Versus M.P. State Road Transport Corporation, 2005(2) RCR(Civil) 177** by the Full Bench of Madhya Pradesh High Court i.e. of Gwalior Bench.

Whereas the last authority referred to by learned counsel for the appellant was **Khushro S. Gandhi Versus N.A. Guzder, AIR 1970, Supreme Court 1468** wherein it was observed that in case of joint tort-feasors, suit against one was compromised and decree passed, the other tort-feasors are not released and their liability is joint and several.

On the other hand, counsel for the insurance company has referred to authority **Khenyei Versus New India Assurance Co. Ltd. & Ors., 2015(3) PLR 314** wherein the Apex Court had observed as under:

In case all the joint tort-feasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort-feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant

to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

After hearing learned counsel and going through the authorities referred to by them, I find that the contentions raised by learned counsel for the appellant – Mangat Singh are devoid of any force. As per own case of Mangat Singh, he had parked the tractor trolley on the road for the purpose of taking water. While parking the tractor trolley, appellant driver should have ensured that the same did not obstruct the traffic. It is all the more important when width of the road is not much. The accident in this case is said to have taken place at 6:45 p.m. in the month of January when sun sets early and it becomes dark in the evening. It is not case of the appellant that he had left some indicator so that the vehicles coming on the road could know that tractor trolley was parked on the road side. The FIR regarding the accident was also registered against him and he was challaned by the police, which prima facie goes to show that he was responsible for the mishap by his rash and negligent act. The Tribunal has taken into consideration statement of PW1 Inderjit, the complainant in the criminal case, who had stated that the accident had occurred due to contributory negligence of driver of both the vehicles. Rather in that way, some concession had been given to the appellant otherwise as per report given to the police after the accident, he was

responsible for the mishap in which Gulshan Kumar had suffered injuries and had died. Though as has been discussed in para No.9 of the Award, the present appellant had filed a private complaint against TATA Sumo driver Suresh Kumar under Sections 279, 304-A and 427 IPC but there is nothing on record to show as to what was the ultimate fate of that complaint. The Tribunal has analyzed the deposition of PW1 Inderjit in a proper and appropriate manner stating that it appeared that the FIR was lodged by him attributing whole fault to the driver of tractor trolley for the reason that he was occupant of TATA Sumo and his co-occupant namely Gulshan Kumar had sustained fatal injuries and died at the spot. Though when he appeared in the witness-box as PW1, he attributed rashness and negligence to drivers of both the vehicles.

Though learned counsel for the appellant is denying that it was a case of head on collision but then the Tribunal in para No.12 of the Award has discussed statement of the present appellant – respondent No.4 in the claim petition, where while getting his statement recorded before the Tribunal he had stated that while he had parked his tractor trolley on the kacha berm, a TATA Sumo came from Yamuna Nagar i.e. from opposite side at a very fast speed and struck against the trolley on the right side of the tractor trolley, in that way, the colliding vehicles were on different sides. It comes out that the trial Court has taken into consideration the mechanical reports of the tractor trolley and TATA Sumo as has been discussed in para No.12 of the Award. Simply for the reason that driver of TATA Sumo had not appeared before the Tribunal to get his statement recorded does not go to show that he was solely

responsible for the accident.

As regards the authority referred to by learned counsel for the appellant ***Raju and others Versus Sukhwinder Singh and others*** (supra), it had different facts where in a claim petition, the claimants had averred that the accident had taken place due to rash and negligent driving of the offending vehicle, though those contentions were controverted by respondent-driver in his written reply but he had not stepped into the witness box to state so on oath. It was under those circumstances that the observations had been made of drawing adverse inference in favour of the claimants and against such respondent. It was certainly not a case of contributory negligence as has been observed by the Tribunal in the present case.

Similarly, the second authority referred to by learned counsel for the appellant i.e. ***K.K. Jain and another Versus Masroor Anwar and others***(supra) does not help the claimants for those very reasons and in addition to that driver of the dumper had confessed his guilt in the criminal trial.

Regarding third authority referred to by learned counsel for the appellant i.e. ***Oriental Insurance Company Limited Versus Smt.Parveen Juneja*** (supra), that had different facts. Whereas in the instant case contributory negligence clearly comes out to be there.

As regards authority ***Sushila Bhadoriya and others Versus M.P. State Road Transport Corporation*** (supra), which is by Madhya Pradesh High Court, whereas ***Apex Court in Khenyei Versus New India Assurance Co. Ltd. & Ors.***(supra) has very much clarified the position in

that regard.

As regards the authority *Khushro S. Gandhi Versus N.A. Guzder*(supra) that dealt with different proposition of law i.e. in case of joint tort-feasors, when suit against one was compromised and decree passed, the other tort-feasors are not released and their liability is joint and several. Such proposition of law is not involved in the present case.

Thus, *FAO-2768-2000* filed on behalf of appellant – Mangat Singh is found to be without any merit and is dismissed accordingly.

19.12.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No