

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

(1) FAO No.1610 of 2004 (O&M)

Keshar Singh and others

..... Appellants

Versus

Karam Singh @ Karma and others

..... Respondents

(2) FAO No.1767 of 2004 (O&M)

Keshar Singh and others

..... Appellants

Versus

Karam Singh @ Karma and others

..... Respondents

Date of Decision: 14.08.2018

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Rakesh Nagpal, Advocate for the appellants.

Service of respondent Nos.1 to 3 dispensed with,
vide order dated 11.07.2018.

Mr. D.P.Gupta, Advocate for respondent No.4/Insurance Co.

MAHABIR SINGH SINDHU, J.

This order shall dispose off the aforementioned two appeals, which have arisen out of the common impugned Award dated 31.01.2004, passed by learned Motor Accident Claims Tribunal, Kaithal (*for short 'the Tribunal'*), for enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988 (*for short 'the Act'*).

(2) Claimant/appellant No.1 Keshar Singh is the husband of deceased-Nikki & father of deceased-Pargat Singh and claimants/appellants Nos.2 to 6 are the minor daughters of Keshar Singh.

Respondent No.1 is the driver, respondent Nos.2 and 3 are owners and respondent No.4 is the Insurer of the offending vehicle. It is clarified that before learned Tribunal, respondent Nos.2 and 3 Joginder Singh and Bhim Singh were impleaded as respondent Nos.2(i) and 2(ii) and for convenience in this order, both the owners of the offending bus shall be referred as respondent Nos.2 and 3, whereas Insurer as respondent No.4.

(3) Brief facts of the case are that two claim petitions bearing MACT Case Nos.63 and 64 of 2002 were filed by the claimants/appellants with the averments that on 14.09.2002 at about 9:00 PM, deceased-Nikki wife of claimant/appellant No.1, aged 35 years, along with her only son/deceased-Pargat Singh, aged 1½ years, was coming back to their Village Landa Heri after getting blessings of Guga Mari/Guga Peer, Bagarh, District Jhunjhunu (Rajasthan) in a Bus bearing registration No.PB-13-C-8487 (*for short 'the offending bus'*) along with 50-60 passengers including men, women and children of Jodhwa and Arnoli Villages. The offending bus was being driven by respondent No.1-Karam Singh @ Karma in a very rash and negligent manner and when it reached near the bridge of river near Village Kamaspur after crossing the Samana towards Naya Gaon, then driver of the offending bus lost control and as a result thereof, the offending bus fell into a ditch and many persons were injured. Nikki and her son-Pargat Singh with some other persons suffered injuries and died in the said accident. The matter was reported to the police by one Hardam Singh, r/o Village Landa Heri and FIR No.329 dated 14.09.2002, under Sections 279, 337, 338 and 304-A, IPC was registered at Police Station Samana, District Patiala (Punjab).

(4) Upon notice, respondent Nos.1, 2 and 3 (driver and owners respectively) filed their joint reply and denied the assertions made in the claim petition. The factum of the accident is not denied, however, it is submitted that this happened all of a sudden due to mechanical problem and the same was on account of unavoidable circumstances beyond the control of respondent No.1/driver. Thus, it is claimed that there was no negligence on the part of driver and FIR in question is alleged to have been registered on the basis of false and concocted story. This is an admitted fact that deceased were travelling in the offending bus and had gone for paying obeisance at Guga Mari/Guga Peer, Bagarh, District Jhunjhunu. The assertion regarding transportation and funeral expenses have been denied and further submitted that the offending bus was insured with respondent No.4/United India Insurance Company Ltd. at the relevant time in the name of one Raj Kumar and later on, the same was transferred in favour of respondent Nos.2 and 3 (Joginder Singh and Bhim Singh), vide endorsement dated 25.01.2002 on payment of requisite charges to the Insurer.

Separate reply was filed by respondent No.4-Insurance Company and, *inter alia*, submitted that claim petition has been filed on the basis of collusion between the claimants and respondent Nos.1, 2 and 3 as neither the driver was holding a valid driving license; nor the offending bus was being run in accordance with the terms and conditions of the Insurance Policy. Even the factum of accident as well as travelling of the deceased with the offending bus were also denied.

(5) On the basis of pleadings of both the parties, learned Tribunal

framed the following issues:-

- “ 1. Whether the accident dated 14.9.2002 at about 9 PM in the area of village Kamaspur resulting into death of Nikki and Pargat Singh took place due to rash and negligent driving of Bus No.PB-13C-8487 driven by respondent No.1 Karam Singh as alleged? OPP.*
- 2. If issue No.1 is proved, whether the claimants/LRs of deceased Nikki are entitled to compensation, if so, to what amount and from whom? OPP.*
- 3. If issue No.1 is proved, whether claimants of petition No.64 of 2002 are entitled for compensation on account of death of Pargat Singh, if so, to what amount and from whom? OPP.*
- 4. Whether the claimants have no locus-standi to file the present claim petition as alleged? OPR*
- 5. Whether respondent No.1 was neither driver nor was having driving licence valid? OPR-3*
- 6. Whether the vehicle in question was being driven in contravention of terms and conditions of policy of Insurance and against provisions of Motor Vehicle Act? OPR-3*
- 7. Relief. ”*

The appellants/claimants, in order to prove their case, examined Keshar Singh (claimant No.1) as AW-1, Bhira Singh (AW-2) and also produced following documentary evidence:-

- Ex.P-1 : Copy of FIR*
- Ex.P-2 : Copy of Post-Mortem Report of Nikki Devi*
- Ex.P-3 : Copy of Post-Mortem Report of Pargat Singh*
- Ex.P-4 : Copy of police report under Section 173 Cr.P.C.*

Respondents Nos.1 and 2, in support of their case, examined respondent No.1-Karam Singh as RW-1 and also produced following documents:-

- Ex.R-1 : Copy of Driving Licence*
- Ex.R-2 : Certificate of Insurance*
- Ex.R-3 : Copy of Insurance Cover Note*
- Ex.R-4 : Copy of Registration Certificate*
- Ex.R-5 : Copy of Certificate of fitness of vehicle*

Ex.R-6 : Transfer Receipt

Mark A : Verification report of Driving Licence

Respondent No.4/Insurance Company did not lead any evidence, but produced the Insurance Policy of the offending bus (Ex.R-7).

(6) Learned Tribunal, while deciding Issues Nos.1, 2 and 3, came to the conclusion that accident in question took place due to rash and negligent driving of the offending bus by respondent No.1 and eight persons including Nikki and her son-Pargat Singh died in the said accident. Learned Tribunal, further came to the conclusion that deceased-Nikki was 35 years of age at the time of accident and being household lady, her annual income was assessed as ₹ 15,000/- and further made a deduction of 1/3rd for her basic requirements of life. Keeping in view her age, multiplier of 16 was applied and after taking into consideration the annual dependency of ₹ 10,000/-, learned Tribunal awarded compensation of ₹ 1,60,000/- (₹ 10,000 x 16). In addition, ₹ 10,000/- was awarded for funeral expenses and loss of consortium etc.

Learned Tribunal further came to the conclusion that as per the testimony of AW1-Keshar Singh, deceased-Pargat Singh was 11 months' child at the time of accident and awarded a compensation of ₹ 50,000/- plus funeral expenses of ₹ 2,000/-.

While deciding Issue Nos.4, 5 and 6, learned Tribunal came to the conclusion that respondent No.1 was having a valid and effective driving license and the offending bus was duly insured with respondent No.4 at the time of accident and Fitness Certificate of the offending bus has also been duly proved as Ex.R-5. Resultantly, these Issues were decided against

respondent No.4 and in favour of the claimants/appellants. Ultimately, learned Tribunal awarded compensation of ₹ 1,70,000/- on account of death of Nikki and ₹ 52,000/- in the case of deceased-Pargat Singh (minor). In addition, interest @ 9% per annum was also granted from the date of filing of the claim petitions till its realization.

(7) It is argued on behalf of the appellants/claimants that learned Tribunal has committed an error of law while taking into consideration the annual income of deceased-Nikki as ₹ 15,000/- and further making a deduction of 1/3rd in view of the five dependents. It is further argued that in view of the testimonies of AW1 and AW-2, learned Tribunal ought to have accepted the monthly income of deceased as ₹ 4,000/- from the work of Tailoring and Knitting. It is also argued that claimants/appellants are entitled for compensation towards future prospects as well as under other conventional heads in view of the judgment of the Hon'ble Supreme Court in '*National Insurance Company Limited Versus Pranay Sethi and others*', (2017) 16 SCC 680.

On the other hand, learned Counsel for respondent No.4-Insurance Company opposed the contentions and submitted that learned Tribunal has already granted the sufficient amount of compensation and thus, the present appeals deserve to be dismissed. Further submitted that in the absence of any proof of actual income of deceased-Nikki, claimants/appellants cannot taken any benefit from the **Parnay Sethi's case** (supra).

(8) Heard arguments from both sides and perused the record.

(9) Concededly, there is neither any substantive appeal; nor cross-

objections filed by the respondents against the impugned Award and even no argument or grievance has been raised by respondent No.4/Insurer regarding the findings on Issue Nos.1, 4, 5 and 6, therefore, findings on these Issues are affirmed.

(10) The only point for determination in the present appeals is:-

as to what should be the 'just compensation' in view of the facts and circumstances of the present cases?

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(11) There is no dispute that at the time of accident/death, deceased-Nikki was 35 years of age. In claim petition, it is averred that she was self employed, doing the Stitching and Household work and thereby earning ₹ 3,000/- per month.

Respondents denied the assertions made in the claim petition that she was doing the work of Stitching and submitted that deceased-Nikki was only a housewife.

AW-1 Keshar Singh deposed that his wife/deceased-Nikki used to earn ₹ 4000/- per month by tailoring work etc. and they have five daughters and the house expenses were met with the earning of both of them i.e. deceased-Nikki as well as AW 1-Keshar Singh himself.

During cross-examination by respondent Nos.1 and 2, this witness, *inter alia*, stated that “*my wife did not have Course in Tailoring and Knitting, but she had taken training in the Village*”. He denied the suggestion that deceased neither used to do tailoring work; nor earning anything.

Respondent No.4/Insurance Company did not cross-examine

AW-1 on the point of doing Tailoring work by deceased as well as her earning therefrom.

AW 2- Bhira Singh also *inter alia* deposed that he is neighbour of the claimants/appellants and deceased-Nikki was doing tailoring work and used to earn ₹ 3000/- per month.

During cross-examination by respondent Nos.1 and 2, he stated that Keshar Singh has five daughters and one son, who (son) died in the accident in question. Further stated that there were two tailors in their Village at the time of death of Nikki and now there is left only one, who earns about ₹ 3000/- per month. He denied the suggestion that deceased was neither doing the tailoring work; nor earning anything.

During cross-examination by respondent No.4-Insurance Company, AW 2 stated that deceased used to do tailoring work at her own house and he was aware about the earning of deceased being her neighbour. Further stated that he used to visit house of deceased daily and denied the suggestion that he is deposing falsely.

Learned Tribunal had also taken note of the testimonies of both the above witnesses in Paragraphs 11 and 12 respectively of the impugned award in the following terms:-

“ 11. PW 1 Keshar Singh one of the claimants stated that name of his wife was Nikki Devi, aged 35 years. On 14.09.2002, his wife died in road side accident. In that accident, his son Pargat Singh aged 11 months also died. His wife used to earn Rs.4,000/- per month by tailoring work etc. and his house expenses were met with the earnings of his wife as well as of his agricultural work.

12. PW-2 Bhira Singh stated that Keshar Singh claimant and his family being his neighbour are known to him. Nikki Devi wife of Keshar Singh was doing tailoring work and used to earn Rs.3,000/- per month. ”

Learned Tribunal did not disbelieve the testimonies of both the above witnesses, but despite that, considered the annual income of deceased-Nikki as ₹ 15,000/- being household lady, which in the opinion of this Court, is not legally sustainable and deserves to be interfered. The testimonies of AW 1 and AW 2, coupled with the averments made in the claim petition, are sufficient proof in the present case to prove the income of the deceased and the same cannot be ignored. For deciding the claim petition under the provisions of Section 168 of the Act, preponderance of evidence on the basis of probabilities is sufficient to form an opinion and strict proof beyond reasonable doubt like a criminal trial is not the requirement being a welfare legislation.

In view of above discussion, there is no hesitation for this Court to hold that deceased-Nikki was doing the Tailoring & Knitting work and earning at least ₹ 3000/- per month, consequently, her annual income would be ₹ 36,000/-.

(12) In the present case, it is duly proved that claimants/appellants Nos.2 to 6 were dependents upon deceased-Nikki as well as her husband/claimant No.1-Keshar Singh, therefore, in view of the judgment of **'Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121'**, deduction of 1/4th is appropriate and resultantly, the annual dependency would be ₹ 27,000/-.

It deserves to mention here that in view of the age of deceased-

Nikki as 35 years, learned Tribunal has rightly applied the multiplier of 16.

Still further, in view of the judgment of **Pranay Sethi's case (supra)**, claimants/appellants are entitled for addition of 40% towards future prospects as well as compensation under other conventional heads i.e. loss of estate, loss of consortium and funeral Expenses.

Thus, in the opinion of this Court, the following amount of compensation would be the “just compensation” on account of death of Nikki:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	<i>Monthly income of the deceased</i>	₹ 3000
(ii)	<i>Annual Income of the deceased</i>	₹ 3000 x 12 = ₹ 36,000
(iii)	<i>1/4th of (ii) deducted for personal expenses</i>	₹ 36,000 - ₹ 9,000 = ₹ 27,000/-
(iv)	<i>40% addition for future prospects</i>	₹ 27,000 + ₹ 10,800 = ₹ 37,800
(v)	<i>Net annual income of the deceased</i>	₹ 37,800
(vi)	<i>Multiplier</i>	16
(vii)	<i>Total Loss of dependency</i>	₹ 37,800 x 16 = ₹ 6,04,800
(viii)	<i>Compensation for loss of estate</i>	₹ 15,000
(ix)	<i>Compensation for loss of consortium</i>	₹ 40,000
(x)	<i>Compensation for Funeral Expenses</i>	₹ 15,000
	<i>Total Compensation</i>	₹ 6,74,800

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(13) It is clearly established that deceased-Pargat Singh was the only son of both deceased-Nikki & claimant/appellant No.1-Keshar Singh and thus, only brother among five minor sisters/appellant Nos. 2 to 6. Therefore, this Court can imagine the loss and trauma caused to the family and as such, in the opinion of this Court, instead of ₹ 52,000/- at least an amount of

₹ 1 Lakh should be awarded as a solace for the death of Pargat Singh (minor).

(14) In view of above, both the above appeals are allowed and the impugned award, passed by learned Tribunal, is modified. The amount of compensation in case of death of Nikki is enhanced from ₹ 1,70,000/- to ₹ 6,74,800/- and ₹ 52,000/- to ₹ 1,00,000/- (One Lakh) for death of Pargat Singh (minor).

Needless to say that the amount of compensation, already paid to the appellants/claimants, shall be adjusted. Other terms and conditions of the impugned award i.e. rate of interest and share of the claimants *inter se* for reimbursement shall remain unaltered and the balance payment be made to the appellants/claimants by respondent No.4-Insurance Company within a period of six weeks from the date of receipt of certified copy of this order.

Disposed off in the above terms.

August 14, 2018
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>