

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 7.5.2018

FAO No. 2893 of 2008

Sat Pal and another

---Appellants

versus

Madan Lal and others

---Respondents

FAO No. 2894 of 2008

Gurnam Singh and another

---Appellants

versus

Madan Lal and others

---Respondents

FAO No. 3823 of 2008

Gurvinder

---Appellant

versus

Madan Lal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. R.S.Longia, Advocate
for the appellants in FAO Nos. 2893 and 2894 of 2008**

None for the appellant in FAO- 3823 of 2008

**Ms. Vandana Malhotra, Advocate,
for the insurance company**

Rekha Mittal, J.

This order will dispose of FAO No. 2893, 2894 and 3823 of 2008 as these have emerged out of the same award dated 6.2.2008 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short “the Tribunal”) whereby compensation has been awarded on account of death of Naib Singh, Rajinder Singh and injuries sustained by Gurvinder Singh in a motor vehicular accident that took place on 23.7.2006.

The Tribunal answered issue No. 1 pertaining to rashness and negligence of offending vehicle HR-65-0147 to the effect that accident took place due to contributory negligence of Naib Singh (since deceased) to the extent of 30% who was driving the ill fated motor cycle and Madan Lal respondent No. 1 to the extent of 70%, driver of the aforesaid offending vehicle.

FAO No. 2893 of 2008 has been filed by Satpal and another seeking enhancement of compensation on account of death of Naib Singh, FAO No. 2894 of 2008 has been filed by Gurnam Singh and another for enhancement of compensation qua death of Rajinder whereas FAO No. 3823 of 2008 has been filed by Gurvinder Singh, injured.

FAO No. 2893 of 2008

Counsel for the appellant would urge that the Tribunal has wrongly attributed 30% negligence to deceased Naib Singh when otherwise there is no material on record to substantiate this finding recorded by the Tribunal. It is argued that merely because three persons were travelling on the ill-fated motor cycle driven by Naib Singh is not sufficient to attribute contributory negligence to Naib Singh (since deceased)

With regard to quantum of compensation, it is argued that the

Tribunal has not allowed increase in income for future prospects @ 40%. Multiplier adopted by the Tribunal is liable to be corrected on the basis of age of the deceased. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company would support findings of the Tribunal attributing 30% negligence to Naib Singh who had been driving the ill-fated motor cycle with two persons on its pillion. It is argued that Naib Singh was less than 18 years of age at the time of occurrence and he did not possess licence to drive the motor cycle. The accident in question took place when the motor cycle driven by Naib Singh and the bus driven by Madan Lal were coming from opposite side. She has supported assessment of compensation made by the Tribunal.

The mere fact that three persons were travelling on the motor cycle may not be sufficient to sustain findings of the Tribunal attributing contributory negligence to Naib Singh (since deceased). However, counsel for the claimants has failed to counter contention of the insurance company that Naib Singh did not possess a licence to drive the motor cycle as he was less than 18 years of age. Indisputably, accident took place when both the vehicles involved in the occurrence were coming from opposite direction. In the given scenario, I do not find any reason to interfere in findings recorded by the Tribunal attributing 30% negligence to Naib Singh. I would hasten to add that 30% negligence attributed to Naib Singh would not prejudice right of the claimants in other appeals to seek recovery of entire compensation from the respondents.

Claimants shall be entitled to benefit of future prospects @ 40%. As the deceased was 17 years old, admissible multiplier is 18. In this

context, reference is made to judgments of Hon'ble the Supreme Court **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298, Munna Lal Jain vs. Vipin Kumar Sharma 2015(3) RCR (Civil) 447 and National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**. The Tribunal has allowed deduction for personal expenses to the tune of 1/3rd but the same would be 50% in the light of judgment **Smt. Sarla Verma and others' case (supra)**. In this manner, loss of dependency comes to Rs. 4,08,240/- [2700x12x18= 5,83,200 + 2,33,280 (40%)=8,16,840 - 4,08,240 (50%)].

Under conventional heads, claimants shall be entitled to Rs. 30,000/- namely Rs. 15,000/- for expenses on funeral and another Rs. 15,000/- for loss of estate.

Total compensation is Rs. 4,38,240/- and additional amount is Rs. 2,34,240/-(4,38,240- 2,04,000). Claimants shall be entitled to 70% of the additional amount i.e. 1,63,968/-, payable with interest @ 7.5% per annum from the date of petition till realization, to mother of the deceased.

FAO No. 2894 of 2008

In view of findings recorded qua assessment of compensation in FAO No. 2893 of 2008, claimants shall be entitled to additional compensation of Rs. 1,47,440/- (4,38,240 -2,90,800), payable with interest @ 7.5% per annum from the date of petition till realization. The entire amount of compensation found payable is entitled to be recovered by the claimants from the respondents, subject to adjustment of amount already paid.

FAO No.3823 of 2008

The Tribunal has awarded compensation of Rs. 61,000/-,
detailed hereunder:-

Medical and transportation expenses	Rs. 20,000/-
Pain and Suffering and special diet	Rs. 5,000/-
Disability of 18%	Rs. 36,000/-

Pappu @ Balbir Singh PW3 father of the injured appeared in the witness box and deposed that right leg of Gurvinder Singh was fractured. He also sustained injuries on other parts of body. The injured remained admitted in L.N.J.P. Hospital, Kurukshetra and for five days in PGI, Chandigarh. The injured was a student of 7th class. The Tribunal has reimbursed medical expenses of Rs. 20,000/- against bills qua medical expenses and transportation. The claimant shall be entitled to reimbursement of medical and transportation bills to the tune of **Rs. 25,000/-** (additional amount of Rs. 5000/-).

The injured suffered disability of 18% due to limitation of movement of right knee 15% and muscle wasting right leg 3% proved by Dr. G.D.Mittal, Orthopedic Surgeon, L.N.J.P. Hospital, Kurukshetra. The Tribunal has awarded compensation of Rs. 36,000/- qua disability. The injured was less than 18 years of age. There is no clear evidence for appreciation as to how disability of 18% is to be treated for computing functional disability. The provisions of the Motor Vehicles Act dealing with grant of compensation are a beneficial legislation enacted with an object to compensate the victim as the money can do. There is no dispute that just and reasonable compensation is required to be paid to the victim/victim family. Taking a reasonable view, in the light of materials on record, functional disability is assessed less than 10%. In the light of judgment of

Hon'ble the Supreme Court **Master Mallikarjun vs. Divisional Manager, the National Insurance Company Limited and Another AIR 2014 (SC) 736**, claimant shall be entitled to a sum of **Rs. 1,00,000/-** for pain and suffering, mental and physical torture, hardship, inconvenience, discomforts etc. loss of amenities of life on account of permanent disability. The amount of Rs. 41,000/- qua pain and suffering and for disability to the extent of 18% shall be adjusted out of sum of Rs. 1,00,000/-.

Taking into consideration nature of injuries sustained coupled with period of treatment as an indoor patient, the claimant is awarded a sum of **Rs. 15,000/-** for special diet, transportation charges and services of an attendant. Total compensation is Rs.1,40,000/- (1,00,000 + 25000 + 15000) and the additional amount is **Rs.79,000/-** (1,40,000-61,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeals are partly allowed in the aforesaid terms. All other conditions of the award shall remain intact.

(Rekha Mittal)
Judge

7.5.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No