IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2415 of 2010 (O&M)

The New India Assurance Company Limited ...Appellant

Versus

Poonam and others ...Respondents

and

FAO No.3182 of 2010 (O&M)

Poonam and others ...Appellants

Versus

Ramesh Kumar and others ...Respondents

Date of Decision: January 24, 2018

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Gopal Mittal, Advocate
for the appellant – New India Assurance Company.
(respondent No.6 in FAO No.3182 of 2010)

Mr.Satyendra Chauhan, Advocate for
Mr.Shailendra Jain, Advocate for
the respondents – claimants.
(appellant in FAO No.3182 of 2010)

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of two appeals i.e. FAO No.2415 and 3182 of 2010, arising out of the same award dated 8.12.2009 passed by the Motor Accident Claims Tribunal, Jind (for short 'the Tribunal') awarding compensation of Rs.12,39,000/- for the death of Naresh Kumar in a vehicular accident, involving a Cargo/Canter, a Alto Car and a motorcycle.

FAO No.2415 of 2010 has been filed by the New India Assurance

Company Limited, the insurer of the Alto Car challenging its liability to pay the compensation, whereas, FAO No.3182 of 2010 has been filed by the claimants for enhancement of compensation.

In brief, the facts are that on 26.9.2007, Naresh Kumar was on his way from Kaithal to Jind on his motorcycle No.HR-31A-3366. When he reached in the area of village Guliana, it was hit by one Cargo/Canter No.HR-45-4586, which was in the process of overtaking a bullock-cart and was being driven in a rash and negligent manner by respondent – Ramesh Kumar. As a result of the accident, Naresh Kumar was thrown on the kacha berm on the right side of the road. Before he could get up, an Alto car No.HR-08F-6734, being driven in a rash and negligent manner by respondent Jasbir Singh came at a high speed and crushed Naresh Kumar.

FIR was registered regarding the accident, wherein, drivers of both the offending vehicles, the Canter and Car, were challaned by the Police.

The widow, two minor children and mother of the deceased filed claim petition before the Tribunal seeking compensation.

The Tribunal, considering the evidence led before it, held that the accident was caused due to rash and negligent driving of both the offending vehicles. It assessed the income of the deceased at Rs.8000/- per month on the basis of the salary certificate (Ex.P3), deducted 1/4th towards his personal living expenses and applied multiplier of 17 (6000x12x17=12,24,000). Besides, a sum of Rs.10,000/- was awarded towards 'funeral expenses, loss of estate' and Rs.5,000/- towards 'consortium'. The claimants were awarded compensation of Rs.12,39,000/- along with interest. On the issue of liability to pay the compensation, the Tribunal fastened it to the extent of 60% on the insurer of the Canter, while the remaining 40% on the insurer (appellant in FAO-2415-2010) of the Alto Car.

I have heard learned counsel for the parties and have gone through the records with their assistance.

On behalf of the New India Assurance Company (insurer of the Alto Car), it is argued that the deceased had already fallen on the road due to striking of the motorcycle by the offending Canter, before the Alto car hit him. It is, thus, argued that fastening of liability to the extent of 40% on the insurer of the Alto Car is wrong and against facts.

On the other hand, learned counsel for the claimants has argued that the Tribunal erred in not awarding any future prospects as also the compensation awarded under other conventional heads is on the lower side.

The Tribunal had framed a specific issue regarding the rash and negligent driving by the drivers of both the vehicles as follows:-

> "*Whether the death of Naresh took place due to rash and negligent driving of Canter/Cargo no.HR-45-4586 and Alto car bearing registration no.HR-8F-6734 driven by respondent no.1 and respondent no.4, respectively? OPP"*

The claimants examined HC Krishan as PW3 and Sohan Lal, Criminal Ahlmad in the Court of Additonal Chief Judicial Magistrate, Kaithal as PW4, Sadhu Ram an eye-witness as PW5 and Inspector Ashok Kumar as PW6. PW3 proved the registration of an FIR against drivers of both the offending vehicles, while PW4 proved that drivers of both the offending vehicles Ramesh and Jasbir were facing trial in the Court of Additional Chief Judicial Magistrate, Kaithal for causing the accident. PW6 Inspector Ashok Kumar, who investigated the FIR Ex.P4, stated before the Tribunal that after the investigation, on verifying the facts of the case, he found that both the drivers were liable for causing the accident and accordingly he submitted report under Section 173 CrPC challaning both of them. PW5 Sadhu Ram, the alleged eye-witness, testified that first of all, the Canter hit the motorcycle of the deceased, as a result of which he fell down on the katcha berm of the road and, thereafter, the Alto Car crushed him. These witnesses were subjected to cross-examination on behalf of the insurer of the Alto Car, but their testimonies could not be shaken. The evidence reveals that the Alto Car crushed Naresh Kumar, while he was lying on the katcha berm of the road. Hence, the driver of the Alto Car cannot be absolved of his negligence in driving the car. FIR was registered against the drivers of both the offending vehicles and the Police after investigation, challaned both of them.

This Court in **Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109**, observed about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, as under:-

> *"xxx xxx xxx There is no denial that Radhey Shyam respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case State v. Radhey Shyam. Thus, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of Radhey Shyam respondent in which the claimant suffered injuries. xxx xxx xxx"*

In case of **Mallamma vs. Balaji and others, 2004 ACJ 368**, the Karnataka High Court while reversing the finding of the Tribunal on the issue of negligence, held as under:-

> *"12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the*

conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same."

In a recent case of **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006,** decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

"xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle"

In view of the above factual and legal position, the finding of the Tribunal on issue No.1, is affirmed. Accordingly, the appeal filed by the Insurance Company (FAO-2415-2010) is dismissed.

FAO-3182-2010 :

In view of the decision of the Constitution Bench of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 AIR(SC) 5157,** the compensation is re-assessed as under:-

Sr.No.	**Heads**	**Amount (In Rs.)**
(i)	Income @ Rs.8000/- per month	
	40% of above (i) to be added as future prospects (deceased aged 26 yrs.)	*8000+3200 = 11200/- per month*
(ii)	*Monthly loss of income after deduction of 1/4th of (i) as personal expenses of the deceased (Four dependants)*	*11200-2800 = 8400/-*
(iii)	*Total loss of income after multiplier of 17 is applied*	*8400x12x17 = 17,13,600/-*
(iv)	*Loss of Estate*	*15,000/-*
(v)	*Funeral Expenses*	*15,000/-*
(vi)	*Loss of Consortium (exclusively payable to the widow of deceased)*	*40,000/-*
	TOTAL COMPENSATION	*17,83,600/-*

Accordingly, the appeal filed by the claimants (FAO-3182-2010) is allowed. The Award of the Tribunal is modified to the extent that the claimants – appellants are held entitled to total compensation of Rs.17,83,600/-, that is, Rs.5,44,600/- (1783600-1239000) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

January 24, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No