

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

1. FAO-1329-2011 (O&M)
Date of decision: 12.01.2018

Balwinder Kaur and others Appellants

Versus

Asha and others Respondents

2. FAO-1202-2011 (O&M)

Asha and others Appellants

Versus

Balwinder Kaur and others Respondents

3. FAO-1687-2011 (O&M)

Joginder Singh and another Appellants

Versus

Balwinder Kaur and others Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Ishan Cooner, Advocate for
Mr. J.S.Cooner, Advocate
for the appellants in FAO-1329-2011
for respondents No.1 to 4 in FAO-1202 & 1687-2011.

Mr.R.K.Moudgil, Advocate
for respondents No.1 to 4 in FAO-1329-2011

for the appellants in FAO-1202-2011 and
for respondents No.6 to 8 in FAO-1687-2011.

Mr.D.S.Nain, Advocate
for the appellants in FAO-1687-2011

Ms. Vandana Malhotra, Advocate
for IFFCO TOKIO General Insurance Company Ltd.

Ms. Anamika Mehra, Advocate
for New India Assurance Company Ltd.

Avneesh Jhingan, J.

In an unfortunate accident between two motorcycles, Jiwan, Charanjit, Nirmal Singh, Hashpreet Singh and Jaspreet Kaur lost their lives. On 22.02.2009, Nirmal Singh was driving motorcycle bearing registration No.HR-09B-6876. On the said motorcycle, Balwinder Kaur (sister of Nirmal Singh) and her two minor children were pillion rider. Satpal Singh brother-in-law of Nirmal Singh i.e. husband of Balwinder Kaur was following them on his motorcycle. While going towards village Nalvi, (P.S.Shahabad) Kurukshetra i.e. Shahabad to Thol, the motorcycle bearing registration No.HR-07K/6453 driven by Jiwan Kumar on which the pillion rider was Charanjit Singh, struck the motorcycle driven by Nirmal Singh. As a result of the accident, all six persons fell down. Nirmal Singh, Charanjit Singh and Hashpreet Singh died on the spot. Jiwan Kumar, Balwinder Kaur and Jaspreet Kaur were taken to CHC, Shahabad. Jiwan Kumar and Jaspreet Kaur died in the hospital. FIR No. 58 dated 22.02.2009 was registered against Jiwan Kumar at Police Station Shahabad.

Three claim petitions were filed by the legal heirs of Jiwan Kumar, Nirmal Singh and Charanjit Singh. The legal heirs of Nirmal Singh and Jiwan Kumar filed the claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The legal heirs of Charanjit Singh filed a claim petition under Section 163-A of the Act. The Tribunal passed a

common award dated 07.06.2010 in three claim petitions. The claim petition filed by the legal heirs of Jiwan Kumar, in MACT Case No.38 of 2009 was dismissed by the Tribunal holding that the accident occurred due to rash and negligent driving of Jiwan Kumar and hence, the claim petition under Section 166 of the Act is not maintainable. The other two claim petitions were allowed and a sum of Rs.6,22,000/- alongwith interest @ 9% was awarded to legal heirs of Nirmal Singh i.e. Balwinder Kaur and others in MACT Case No.78 of 2009 and a sum of Rs.4,18,000/- alongwith interest @ 9% was awarded to legal heirs of Charanjit i.e. Joginder Singh and another in MACT Case No.47 of 2009.

The present three appeals have been filed against the aforesaid award. FAO No.1202 of 2011 has been filed by the legal heirs of Jiwan Kumar being aggrieved of the dismissal of their claim petition. FAO Nos i.e 1329 and 1687 of 2011 have been filed for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper book and record.

FAO-1202 of 2011

Learned counsel for the appellants contended that the Tribunal erred in dismissing the claim petition. His grievance is that the Tribunal has relied upon the witness Satpal Singh who was related to Nirmal Singh. He argued that Satpal Singh's evidence cannot be relied upon.

The contention raised by learned counsel for the appellants cannot be accepted for two reasons. Firstly, Satpal Singh was eye witness to the accident. He stated that he was following the motorcycle being driven by Nirmal Singh. It was on his statement that FIR was registered. The said

witness was duly cross-examined. As per his statement, the accident occurred due to sole rash and negligent driving of Jiwan Kumar. No contradictory material or witness was produced. There was no occasion for the Tribunal to doubt the said evidence.

Apart from the reasons mentioned above, the claim petition was moved by the legal heirs of Jiwan Kumar under Section 166 of the Act.

The Hon'ble Apex Court in case of **Surender Kumar Arora and another Vs. Manoj Bisla and others, 2012 (4) SCC 552** has held that the initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, lies on the claimants.

Admittedly, in the present case not even iota of evidence was produced by Asha and others to prove the rash and negligent driving of motorcycle bearing registration No.HR-09B-6876. The law is well settled that the claimant has to stand on his own legs and to prove his case. The same cannot be proved merely by finding the weakness in the defence.

The claimants in the said claim petition miserably failed to discharge the onus regarding rash and negligent driving of the motorcycle being driven by Nirmal Singh. The evidence of Satpal Singh was accepted in the other two claim petitions. On the one hand, the said evidence has been accepted by legal heirs of Jiwan Kumar in the two other claim petitions and on the other hand the witness is being doubted in the third appeal filed by them against dismissal of their claim petition.

Accordingly, the appeal being, bereft of any merits, is hereby dismissed.

FAO-1687 of 2011

The present appeal has been filed by the legal heirs of Charanjit Singh. The claim petition was filed under Section 163-A of the Act. An amount of Rs.4,18,000/- was awarded. The deceased was 24 years of age at the time of the accident.

Learned counsel for the appellants contended that as per IInd Schedule appended to the Act, the multiplier of 18 should have been applied keeping in view the age of the deceased whereas the Tribunal erred in applying the multiplier of 17.

No other issue has been raised in the present appeal.

Learned counsel for the Insurance Company in view of the IInd Schedule could not raise any serious objection to the contention raised by learned counsel for the appellants. The compensation is recalculated by applying the multiplier of 18. The annual dependency as calculated by the Tribunal is Rs.24,000/-. The recalculation is as under :-

$$\text{Rs.24,000} \times 18 = \text{Rs.4,32,000/-}$$

Rs.10,000/- has already awarded for funeral expenses. The total compensation comes to Rs.4,42,000/-

The award dated 07.06.2010 in MACT Case No.47 of 2009 is modified to the extent that the amount awarded by the Tribunal of Rs.4,18,000/- is enhanced to Rs.4,42,000/-.

The claimants would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is allowed in the aforesaid terms.

FAO-1329 of 2011

The present appeal has been filed by legal heirs of Nirmal Singh for enhancement of compensation awarded of Rs.6,22,000/-. The deceased was 34 years of age at the time of accident.

Learned counsel for the appellants argued that the monthly income of the deceased was assessed as Rs.4,000/- treating him to be a daily wager. His grievance is that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side.

No dispute has been raised by the parties with regard to the income assessed, deduction made for self expenses and multiplier applied.

Learned counsel for the Insurance Company argued that since the deceased was treated as a daily wager and was having no established income, no future prospects should be awarded.

The contention raised by learned counsel for the appellants deserves acceptance in view of the latest decision of the Hon'ble Apex Court in **National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017** and **Hem Raj vs. Oriental Insurance Company Ltd. in Civil Appeal No.19603 of 2017, decided on 22.11.2017.**

As per the above decisions, 40% future prospects are to be awarded in case where the deceased was below 40 years of age and the amount of Rs.70,000/- is to be awarded under the conventional heads i.e Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium.

In **Hem Raj's case (supra)**, the Hon'ble Apex Court has held that

where the income is assessed on the basis of minimum wages prevalent at the time of accident even in such cases future prospects have to be added.

In view of above referred decisions and aforementioned reasons, the compensation awarded by the Tribunal is modified to the following extent.:-

Since there is no dispute of loss of dependency calculated as Rs.6,12,000/-, 40% of the same is awarded as future prospects i.e. Rs.2,44,800/-. The Tribunal has awarded Rs.10,000/- for funeral expenses whereas the amount of Rs.70,000/- is to be awarded under the conventional heads i.e Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium. The said amount is enhanced by Rs.60,000/-

The award dated 07.06.2010 in MACT Case No.78 of 2009 is modified to the extent that the amount awarded by the Tribunal of Rs.6,22,000/-is enhanced by Rs.3,04,800/-.

The claimants would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

12.01.2018
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes