

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O. No.1672 of 2012(O&M)

Date of Decision: 05.10.2018

Varsha and others

.....Appellants.

Versus

Rahisuddin and others

..... Respondents.

AND

F.A.O. No. 6007 of 2012 (O&M)

Niten and others

.....Appellants.

Versus

Rahisuddin and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Sandeep K. Sharma, Advocate
and Ms. Gurdeep Kaur, Advocate
for the appellants (in both appeals).

Respondent no.1 already *ex parte*
and respondent no.2-service dispensed with (in FAO No. 1672
of 2012)

Respondents no.1 and 2-service dispensed with (in FAO No.
6007)

Mr.M.B.Jain, Advocate
for respondent no.3-Insurance Company (in both appeals)

None for respondent no.4 (in FAO No. 1672 of 2012)

Mr. B.S.Bairagi, Advocate
for respondent no.4 (in FAO No. 6007 of 2012)

LISA GILL, J.

FAO no. 1672 of 2012 and FAO No. 6007 of 2012 are taken up
for hearing together as both the appeals, though decided vide separate
awards dated 03.02.2012 and 04.09.2012, emanate from the death of Kamal
Kumar and Sanjay Kumar in the motor vehicle accident which took place on

08.08.2011.

Legal representatives of deceased-Kamal Kumar i.e. Varsha and others filed MACT No. 108 of 2011, seeking compensation on account of death of Kamal Kumar, which was decided by the learned Motor Accident Claims Tribunal, Jhajjar, vide impugned award dated 03.02.2012, which is the subject matter of FAO No. 1672 of 2012.

Legal representatives of deceased-Sanjay Kumar i.e. Niten and others filed MACT No. 146 of 2011, seeking compensation on account of death of Sanjay Kumar, which was decided by the learned Motor Accident Claims Tribunal, Jhajjar, vide impugned award dated 04.09.2012, which is the subject matter of FAO No. 6007 of 2012.

Both the abovesaid appeals have been filed by the claimants seeking enhancement of compensation awarded to them by the learned Tribunal, Jhajjar.

Brief facts as per averments in the claim petitions under Section 166 of the Motor Vehicles Act (hereinafter referred to as the 'Act'), are that on 08.08.2011, Kamal Kumar and Naresh Kumar were proceeding on a Tata Magic bearing Registration No. HR-61-A-6380 from Gurgaon towards Kosli for supplying milk. The vehicle was being driven by Kamal Kumar. Sanjay Kumar met them on the way and joined them in the vehicle. When, they reached near Hanuman Mandir of Village Patoda, truck no. RJ-27-G-6606 (offending vehicle) which had earlier been going in front of them was parked in the middle of the road by its driver in a rash and negligent manner, without any indication. Due to the sudden stopping of the truck and parking thereof in the middle of the road, the vehicle in which the deceased was

traveling hit the truck from behind. Due to the impact, Kamal Kumar and Sanjay Kumar passed away on account of the injuries suffered by them in this accident. FIR No. 465 dated 08.08.2011 (Ex.P-4) was registered on the statement of Naresh Kumar. Final report under Section 173 (Ex.P-2) and the postmortem report of both the deceased are on record.

Learned Tribunal, on consideration of the facts and circumstances of the case held that both the deceased lost their lives due to the injuries suffered in the accident which occurred on 08.08.2011. The rash and negligent driving of the offending truck by respondent no.1 was proved on record. It was however held by the learned Tribunal in both the matters that the claimants are not entitled to the entire compensation awarded as Kamal Kumar (deceased) was himself responsible of contributory negligence. Therefore, it was directed that the compensation awarded be reduced to 50% in both the cases. Learned Tribunal awarded a sum of ₹7,20,000/- to the legal heirs/claimants of Kamal Kumar, details of which are as under:-

Sr. No.	Heads of Claim	Amount
1.	Income	₹5000/- per month
2.	Deduction	1/3rd
3.	Multiplier	16
4.	Loss of dependency	₹6,80,000/-
5.	Loss of consortium to widow-Varsha	₹20,000/-
6.	Funeral expenses	₹20,000/-
	Total	₹7,20,000/-

Learned Tribunal awarded a sum of ₹ 7,20,000/- to the legal heirs/claimants of Sanjay Kumar, details of which are as under:-

Sr. No.	Heads of Claim	Amount
1.	Income	₹5000/- per month

2.	Deduction	1/4th
3.	Multiplier	16
4.	Loss of dependency	₹7,20,000/-
5.	Loss of consortium to widow-Asha Devi	₹20,000/-
6.	Funeral expenses	₹20,000/-
	Total	₹7,60,000/-

Learned counsel for the appellants in FAO No. 6007 of 2012, who are the legal representatives of deceased-Sanjay Kumar submits that learned tribunal has erred in deducting 50% of the compensation payable to the claimants on the ground that Kamal Kumar was found guilty of contributory negligence. The offending truck had been suddenly stopped in the middle of the road in a rash and negligent manner without any indication or warning. Resultantly, the vehicle driven by Kamal Kumar struck into the offending truck. There is thus no question of any contributory negligence on the part of Kamal Kumar. Moreover, the legal representatives of Sanjay Kumar cannot be denied the entire compensation on this ground, even if it is accepted as correct, for the reason that contributory negligence, if any on the part of Kamal Kumar cannot be taken to be a relevant factor *qua* the legal representatives of Sanjay Kumar for reducing the compensation to them by 50%. Though not admitted, it is submitted that at best it may be a case of composite negligence and nothing more *qua* the legal representatives of Sanjay Kumar. Therefore, the claimants are entitled to receive the entire compensation from any of the tort feasons. In respect to the quantum of compensation, the income assessed is not disputed though it is submitted that increment in income on account of future prospects has not been afforded neither proper and reasonable compensation has been awarded under the conventional heads. It is thus prayed that compensation awarded

be enhanced and the entire compensation be released to the appellant-claimants in FAO No. 6007 of 2012.

Learned counsel for the appellants in FAO No. 1672 of 2012 submits that Kamal Kumar cannot be held guilty of any contributory negligence keeping in view the factual position as is apparent from the evidence on record. Therefore, deduction of 50% has been incorrectly effected. Income of the deceased as assessed by the learned Tribunal is not disputed, though, it is argued that increment on account of future prospects besides proper and reasonable compensation on account of conventional heads be afforded. It is thus prayed that compensation awarded be enhanced and the entire amount of compensation be released to the appellants.

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

The factum of the motor vehicle accident which occurred on 08.08.2011, is not in dispute. Deceased-Kamal Kumar was driving the Tata Magic bearing Registration No. HR-61-A-6380. Sanjay Kumar was sitting in the vehicle in front with him and Naresh Kumar was sitting behind. Naresh Kumar, the propounder of the FIR, who was admittedly travelling in the said vehicle clearly stated that the offending truck which was going in front of them suddenly stopped in the middle of the road without any rhyme or reason in a totally rash and negligent manner without any indication or warning. It is in this situation that their vehicle struck into the truck, due to which Kamal Kumar and Sanjay Kumar lost their lives. PW-2-Narsh Kumar, specifically stated that the offending truck was parked in the middle of the road without any indication, due to which the vehicle in which the deceased

was travelling hit the same. FIR in this respect was registered against the driver of the offending truck. In the cross-examination, PW-2-Naresh Kumar, specifically denied the suggestion that offending truck was parked on the unmettaled (*kacha*) part of the road and not in the middle of the road. This suggestion by itself is clearly indicative of the fact that the offending truck was wrongly stationed in the middle of the road. There is nothing on record to show that there was enough space on either of the sides of the truck from where the deceased could have manoeuvred his vehicle. There is no evidence on record to rebut this stand of the claimants. PW-2-Naresh Kumar has consistently given the same version right from the initial stage till his deposition before the learned tribunal. It has been held by the Hon'ble Supreme Court in **Archit Saini and another Vs. The Oritenal Insurance Company Limited and others, 2018(3) SCC 365**, that in a case where the offending vehicle was parked in the middle of the road, there was no question of any contributory negligence on the part of the vehicle which hit the same from behind. Therefore, finding of the learned tribunal that there was any contributory negligence on the part of Kamal Kumar, is erroneous, hence, set aside.

Compensation in respect to the legal heirs of Kamal Kumar:-

Income of the deceased as assessed by the learned tribunal i.e. ₹5000/- per month, is not in dispute. No serious arguments have been addressed nor is there any evidence on record to indicate that the deceased was earning income higher than ₹5000/- per month. However, increment of 40% in income, is required to be afforded on account of future prospects in view of the judgment of the Hon'ble Supreme Court in **National Insurance**

Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil)

1009, as the deceased was 28 years of age. Deduction of 1/3rd has been correctly effected. Multiplier of 17 has also been correctly applied.

Compensation in respect to deceased-Kamal Kumar is re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of dependency	₹9,52,000/-
2.	Loss of consortium to the spouse	₹40,000/-
3.	Funeral expenses	₹15,000/-
4.	Loss of estate	₹15,000/-
5.	Parental consortium @40,000/- each to both the children	₹80,000/-
	Grand total	₹11,02,000/-

Compensation in respect to the legal heirs of Sanjay Kumar:-

Income of the deceased as assessed by the learned tribunal i.e. ₹5000/- per month, is not in dispute. No serious arguments have been addressed or any evidence pointed out to indicate that the deceased was earning income higher than ₹5000/- per month. However, increment of 40% in income, is required to be afforded on account of future prospects in view of the judgment of the Hon'ble Supreme Court in **Pranay Sethi's case (Supra)**, as the deceased was 35 years of age. Deduction of 1/4th has been correctly effected. Multiplier of 16 has also been correctly applied. Compensation in respect to deceased-Sanjay Kumar is re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of dependency	₹10,08,000/-
2.	Loss of consortium	₹40,000/-
3.	Funeral expenses	₹15,000/-
4.	Loss of estate	₹15,000/-
5.	Parental consortium @40,000/- each to three children	₹1,20,000/-
6.	Loss of Filial consortium to	₹40,000/-

	mother	
	Grand total	₹12,38,000/-

Parental consortium to the children of both the deceased and loss of filial consortium to the mother of deceased-Sanjay Kumar in FAO No. 6007 of 2012, has been awarded in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, Civil Appeal no. 9581 of 2018, arising out of SLP (Civil) No. 3192 of 2018, decided on 18.09.2018.**

In view of the fact that the finding of the learned tribunal regarding contributory negligence on the part of Kamal Kumar has been set aside, no deduction is to be applied on the compensation awarded to the claimants.

Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimants shall be deducted in both the appeals.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

With the abovesaid modification in the amount of compensation, both the appeals are disposed of.

05.10.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.