

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

Date of decision: 02.04.2018

1. FAO No.3146 of 2012

The New India Assurance Company Ltd.

....Appellant

Versus

Amarjit Kaur and others

....Respondents

2. FAO No.3162 of 2012

Amarjit Kaur

....Appellant

Versus

Manish Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Suri, Advocate,
for the appellant-Insurance Company (in FAO-3146-2012).

Mr. Atul Jain, Advocate,
for respondent No.1 (in FAO-3146-2012) and
for appellant (in FAO-3162-2012).

Mr. Rishav Jain, Advocate,
for respondent No.2 (in FAO-3146-2012) and
for respondent No.1 (in FAO-3162-2012).

Mr. Pradeep Kumar, Advocate,
for respondent No.3-Insurance Company (in FAO-3162-2012).

RITU BAHRI J. (Oral)

This judgment will dispose of two appeals i.e. FAO No.3146 of

2012 and FAO No.3162 of 2012, together as both the appeals have arisen

out of one award.

Future Genrali India Insurance Company Ltd.-appellant has filed **FAO No.3146 of 2012** against the award dated 05.03.2012 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.3,41,000/- has been awarded in favour of the claimant-respondent No. 1 on account of death of Yadwinder Singh in a motor vehicular accident which took place on 30.04.2010. Respondent No. 1-Amarjit Kaur is mother of deceased Yadwinder Singh.

On the other hand, Amarjit Kaur (claimant) has filed **FAO No.3162 of 2012** seeking enhancement of compensation awarded by the Tribunal vide aforesaid Award dated 05.03.2012.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 30.04.2010, at about 08.00 P.M., after completing his duty at petrol pump, Yadwinder Singh (since deceased) was going towards his house on a motorcycle. He was following by Tarsem Chand and Satnam Singh on a separate motorcycle. When Yadwinder Singh reached near turn of Rampur Partan, a Santro Car bearing registration No.PB-44-B-7000 being driven by Manish Kumar (respondent No.1 in claim petition) in a rash and negligent manner, came from the opposite side and struck against the motorcycle of Yadwinder Singh, as a result of which, he (Yadwinder Singh) fell on the road and died at the spot. With regard to the accident, FIR No.82 dated 01.05.2010, under Sections 279/337/304-A IPC was registered against driver-Manish Kumar. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of offending vehicle by its driver Manish Kumar and thus, returned the finding on issue No.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Tarsem Chand (PW-2) and Satnam Singh (PW-3), who were eye witnesses of the accident. Further, the claimant has also proved on record FIR Ex.P1, death certificate Ex.P2 and copy of postmortem report Ex.P3.

In the absence of any documentary proof, income of the deceased was assessed as Rs.4000/- per month. Out of this, 50% amount was deducted towards personal expenses of the deceased and dependency of claimant came to Rs.2000/- per month i.e. Rs.24,000/- per annum. The deceased was 21 years of age at the time of accident/death. He was a bachelor. Tribunal has applied the multiplier of 14 keeping in view the age of Amarjit Kaur (mother), who was stated to be aged about 45 years. The dependency of claimants came to Rs.3,36,000/- (24,000/- x 14). Besides this, Rs.5000/- were awarded as funeral expenses. Hence, the claimant was found entitled to total compensation of Rs.3,41,000/- along with interest @ 6% per annum from the date of filing of the petition till realization.

Feeling dissatisfied with the impugned award, the Insurance Company as well as claimant-Amarjit Singh have preferred present appeals.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

Learned counsel for the Insurance Company is challenging the

impugned award on a short ground that both the eye witnesses of accident namely Tarsem Chand (PW-2) and Satnam Singh (PW-3) have turned hostile before the criminal Court. Due to this reason, driver-accused have since been acquitted by the trial Court. Learned counsel prayed that due to this reason, the claim petition should have been dismissed.

This argument of learned counsel for the insurance company is liable to be rejected. In FIR (Ex.P1), number of the offending vehicle has been clearly mentioned and as per postmortem report Ex.P3, deceased had died on account of accidental injuries. Acquittal of driver-accused in criminal trial cannot be made basis to reverse the finding given by Tribunal on issue No.1. Moreover, the accident had taken place on 30.04.2010 and the FIR (Ex.P1) was got registered on 01.05.2010 without any delay. In view of the said fact, this Court is of the view that finding on issue No.1 has been rightly given by the Tribunal by appreciating evidence in the right perspective. Therefore, the appeal filed by the Insurance Company-appellant has no merits.

On the other hand, learned counsel for claimant-Amarjit Kaur has argued that the deceased was 21 years of age at the time of death/accident, therefore, multiplier should have been applied keeping in view the age of deceased, whereas, the Tribunal has applied the multiplier of 14 keeping in view the age of his mother.

There is merit in the argument raised by learned counsel for claimant. In this case, the Tribunal has wrongly applied the multiplier of 14 keeping in view the age of mother of deceased. The deceased was 21 years of age at the time of accident. Therefore, while assessing the compensation, multiplier of 18 should have been applied keeping in view the age of

deceased-Yadwinder Singh.

Resultantly, FAO No.3146 of 2012 filed by the Insurance Company is **dismissed**, whereas FAO No.3162 of 2012 filed by claimant-Amarjit Kaur is **allowed**.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77 and **National Insurance Company Limited Vs. Pranay Sethi and others**, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.4000/- per month
(ii)	40% of (i) above to be added as future prospects	4000 + 1600 = Rs.5600/-
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	5600 – 2800 = Rs.2800/-
(iv)	Compensation after multiplier of 18 is applied	Rs.2800/- x 12 x 18 = Rs.6,04,800/-
(v)	Compensation under the conventional heads	Rs.30,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.6,34,800/-
(vii)	Enhanced amount of compensation	Rs.6,34,800 – 3,41,000 = Rs.2,93,800/-

The enhanced amount of compensation of **Rs.2,93,800/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme

Court in the case of **Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others**, Civil Appeal No.448 of 2018 (arising out of SLP (C) No.26853 of 2016) decided on 19.01.2018. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and present appeals i.e. FAO No.3146 of 2012 and 3162 of 2012 are disposed of in the above terms.

(RITU BAHRI)
JUDGE

02.04.2018
ajp

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