

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

(1) FAO No.5001 of 2012 (O&M)

Smt. Sunita and others

..... Appellants

Versus

Rajesh Kumar and others

..... Respondents

(2) FAO No.5578 of 2012 (O&M)

United India Insurance Co. Ltd.

..... Appellant

Versus

Smt. Sunita and others

..... Respondents

Date of Decision: 31.08.2018

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. S.N.Pillania, Advocate
 for the appellants/claimants (in FAO No.5001 of 2012) and
 for respondent Nos.1 to 6 (in FAO No.5578 of 2012).

 Mr. Suvir Dewan, Advocate
 for the appellant/Ins. Co. (in FAO No.5578 of 2012) and
 for respondent No.3/Ins. Co. (in FAO No.5001 of 2012).

 None for respondent Nos.1 and 2 (in FAO No.5001 of 2012) and
 for respondent Nos.7 and 8 (in FAO No.5578 of 2012).

MAHABIR SINGH SINDHU, J.

 With the consent of both the sides and for convenience, this order shall dispose off the aforementioned two appeals, filed under Section 173 of the Motor Vehicles Act, 1988 (*for short 'the Act'*), as the same have arisen out of the common impugned Award dated 04.06.2012, passed by learned Motor Accidents Claims Tribunal, Jind (*for short 'the Tribunal'*).

(2) FAO No.5001 of 2012 has been filed by the claimants/appellants for enhancement of compensation on account of death of Joginder (*for short 'deceased'*) in a motor-vehicular accident.

(3) FAO No.5578 of 2012 has been filed by the Insurance Company (*for short 'Insurer'*) for setting aside the impugned Award, vide which, compensation for an amount of ₹ 4,70,800/- along with interest @ 9% per annum has been granted from the date of filing the claim petition till its realization.

(4) Brief facts of the case are that claimants/appellants filed a petition under Section 166 of the Act before learned Tribunal and, *inter alia*, averred that on 23.10.2011, Joginder (deceased) was coming from Julana to his Village Devrad and when he reached in the area of Village Brahmanwas, near the Well, a Jeep registration No.HR-07-C-1347 (*hereinafter referred as 'offending vehicle'*), being driven by respondent No.1-Rajesh Kumar in a very rash and negligent manner came and hit him. Consequently, he fell down on the road and suffered multiple grievous injuries and immediately, he was taken to the Community Health Centre (CHC), Julana and thereafter referred to PGIMS, Rohtak, but succumbed to the injuries. Post-mortem examination on the dead body of the deceased was conducted. An FIR No.170 dated 24.10.2011, under Sections 279 and 304-A, IPC was also registered in the matter at Police Station Julana, District Jind. Specifically alleged that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1-Rajesh Kumar. Respondent No.2-Sunil Kumar is the registered owner; whereas respondent No.3 is the insurer of the offending vehicle and thus, all

the respondents liable jointly and severally for the compensation. Further averred that deceased was 31 years of age and earning ₹ 15,000/- per month as he was self employed as a Plumber by occupation. Also pleaded that an amount of ₹ 50,000/- was spent on treatment, transportation and last rites of deceased and thus, laid a claim for the compensation of ₹ 20 Lakh along with interest @ 24% per annum from the date of filing till its realization. Claimant/appellant No.1 is the widow; 2, 3 and 4 are the minor daughters; whereas 5 and 6 are the parents of deceased.

(5) Upon notice, respondent Nos.1 and 2 filed joint reply and denied the claim petition while raising the preliminary objections to the effect that no accident had taken place and the offending vehicle has been falsely involved just to grab the compensation. Further submitted that there is a delay in registration of the FIR. Also denied the age, occupation and income of the deceased. Lastly submitted that the offending vehicle was insured with respondent No.3-United India Insurance Company and in case the involvement of the vehicle is proved, then respondent No.3 is liable to pay the compensation and not the respondent Nos.1 and 2.

Respondent No.3/Insurance Company filed separate reply, raised preliminary objections similar to respondent Nos.1 and 2 and denied the averments made in the claim petition on the merits also including the accident in question. The factum of age, occupation, qualification, income of the deceased and medical expenses born by the claimants/appellants were also denied. Further submitted that the FIR was lodged by one Hansraj, who is the real brother of deceased, whereas it is alleged in the claim petition that one Mahender has witnessed the occurrence. Further averred that

respondent No.1 was not driving the offending vehicle and some other person, namely, Gandhi was driving the same without any valid driving license. Further submitted that it might be a case of hit and run and the claimants have filed the petition just to grab the compensation in collusion with respondent Nos.1 and 2. Further averred that the vehicle was being driven in violation of the terms and conditions of the Insurance Policy without requisite Permit, Fitness Certificate and payment of upto-date Road Tax.

(6) On the basis of pleadings of the parties, learned Tribunal framed the following issues:-

1. *Whether the accident in question was caused by respondent No.1 while driving Jeep No.HR-07C-1347 in a rash and negligent manner causing death of Joginder son of Raghbir Singh, as alleged? OPP*
2. *If issue No.1 is proved, whether claimants Sunita etc. are entitled to any compensation and if so, to what extent and from whom? OPP*
3. *Whether respondents No.1 and 2 had violated any term and condition of insurance policy? OPR-3*
4. *Relief.*

(7) The claimants/appellants, in order to prove their case, examined E/ASI Om Parkash (PW-1); Rajesh Kumar, Addl. Ahlmad to the Court of ACJM, Jind (PW-2); Sunita (appellant No.1) as PW-3; Dr. Anil Kumar Malik (PW-4); Mahender (PW-5); S.I./I.O. Hira Lal (PW-6) and produced copies of documents i.e. FIR (Ex.P-1); Post Mortem Report of Jogender (Ex.P-2); Death Certificate of Joginder (Ex.P-3); Birth Certificate of deceased (Mark A); Voter Identity Card of deceased (Mark B); Voter Identity Card of claimant-Sunita (Mark C); Voter Identity Card of claimant-

Raghibir (Mark D); Voter Identity Card of claimant-Bhateri (Mark E); Birth Certificate of claimant/minor daughter-Kajal (Mark F); Birth Certificate of claimant/minor daughter-Anjali (Mark G) and Card of newly born child (Mark H).

(8) On the other hand, respondents have produced copy of Driving License of respondent No.1-Rajesh Kumar (Ex.R-1); Registration Certificate of the offending vehicle (Ex.R-2); Insurance Cover Note (Ex.R-3). Respondent No.3 tendered Insurance Policy (Ex.R-4).

(9) Learned Tribunal, while deciding Issue No.1, came to the conclusion that the accident, resulting into the death of Joginder, has occurred due to rash and negligent driving of the offending vehicle by respondent No.1-Rajesh Kumar.

Learned Tribunal also decided Issue No.3 against respondent No.3/Insurance Company and held that there is no evidence to prove that there was any violation of terms and conditions of the Insurance Policy.

While deciding Issue No.2, learned Tribunal concluded that the deceased was around 31 years of age at the time of accident and after studying up to 8th standard, obtained Diploma of Plumber. However, learned Tribunal observed that since there is no evidence to prove the income and occupation of the deceased, therefore, after taking into consideration the monthly income of the deceased as ₹ 3600/- as a Casual Worker and after making a deduction of 1/3rd towards his personal expenses, assessed the loss of annual dependency as ₹ 28,800/- (₹ 2400 x 12 = ₹ 28,800/-) and after applying the multiplier of 16, worked out the total compensation as ₹ 4,60,800/- (₹ 28,800 x 16).

Learned Tribunal also awarded ₹ 10,000/- towards funeral, transportation and consortium and thus, the total compensation of ₹ 4,70,800/- (₹ 4,60,800 + ₹ 10,000/-) was granted and all the respondents were held jointly and severally to make the compensation. Learned Tribunal further awarded interest @ 9% per annum, payable from the date of filing of the claim petition till realization of the awarded amount. Learned Tribunal divided the total compensation between the claimants, *inter se*, in the following manner:-

₹ 1,50,800	Widow (claimant No.1)
₹ 80,000/- each	Minor daughters (claimant Nos.2 to 4)
₹ 40,000/- each	Parents (claimant Nos.5 & 6)

(10) It is argued by learned Counsel for the appellants that learned Tribunal has wrongly assessed the income of the deceased as ₹ 3600/- per month and made a deduction of 1/3rd towards his personal expenses contrary to the law laid down by Honb'le Supreme Court in '**Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121**' despite the fact that there were six dependents upon him. Also argued that the claimants/appellants are entitled for future prospects as well as compensation under the other heads in view of the law laid down by Honb'le Supreme Court in '**National Insurance Company Limited Versus Pranay Sethi and others', (2017) 16 SCC 680**'.

(11) On the other hand, learned Counsel for the Insurance Company has submitted that the compensation, awarded by learned Tribunal, is just and appropriate and does not require any interference by this Court and he prayed for dismissal of the appeal.

(12) Heard both sides and perused the paper-book.

(13) FAO No.5578 of 2012 has been filed by the Insurance Company against the impugned award, but learned Counsel on their behalf is not seriously disputing the findings recorded by learned Tribunal on Issue Nos.1 and 3 yet this Court deems it appropriate to record its satisfaction in support of the conclusion arrived at by learned Tribunal on these Issues as well.

(14) PW 5-Mahender duly proved the contents of the claim petition and deposed that on 23.10.2011, when he was standing near the Well in the Village Brahmanwas for drinking the water, the offending vehicle, being driven by respondent No.1, in a very rash and negligent manner, came and hit the deceased and after causing the accident, the driver fled away from the spot along with the offending vehicle. Later on, he came to know that name of the driver was Rajesh Kumar and he informed the family members of the deceased regarding the accident in question and had also noted the registration number of the offending vehicle. It is duly proved on record that an FIR No.170 dated 24.10.2011 was registered and after investigation, report under Section 173 Cr.P.C. was submitted by the police against Rajesh Kumar. The testimony of PW 5-Mahender is further corroborated by PW 6-S.I. Hira Lal, who investigated the case and deposed that initially the FIR was registered against one Gandhi, r/o Village Farmana, but later on, during investigation, it was actually Rajesh Kumar, respondent No.1, who was driving the offending vehicle at the time of accident and consequently, after investigation, a report under Section 173 Cr.P.C. was filed against him before the Court of competent jurisdiction. This witness denied the

suggestion that respondent No.1-Rajesh Kumar has been falsely implicated or that he never visited Village Farmana.

(15) PW 4-Dr. Anil Kumar Malik, who conducted the post mortem examination on the dead body of deceased-Jogender Singh on 24.10.2011, produced the Post Mortem Report as Ex.P-2 and opined that the cause of death was the injuries mentioned in the Report. The injuries were stated to be ante-mortem in nature, caused by blunt force impact and consistent with the history of road-side accident. Concededly, at the time of deciding the claim petition, respondent No.1-Rajesh Kumar was facing the criminal trial in FIR No.170 dated 24.10.2011.

(16) In order to contradict the evidence brought on record by the claimants/appellants, the respondents have not produced any material on the case file except the stand taken in reply of the Insurance Company that the offending vehicle was being driven by one Gandhi and not by respondent No.1-Rajesh Kumar, which was not found to be correct during investigation by the police.

(17) Still further, learned Tribunal has rightly observed that object of the FIR is to set the criminal law in motion and the relevant material is to be collected by the police during investigation. Since PW5-Mahender has clearly explained the involvement of respondent No.1-Rajesh Kumar and after submission of report under Section 173 Cr.P.C., he was charge-sheeted and facing the trial in FIR No.170 dated 24.10.2011, therefore, this Court has no hesitation to affirm the finding on Issue Nos.1 and 3 in favour of the claimants/appellants and against the respondents.

(18) So far as quantum of compensation is concerned, learned Tribunal

has taken into consideration the monthly income of the deceased as a Casual Worker in the absence of any substantive evidence. PW3-Sunita deposed that deceased was earning ₹ 15,000/- per month by way of Plumber work and they have spent ₹ 50,000/- on treatment and last rites of the deceased. During cross-examination, she stated that deceased was a Diploma Holder of Plumber trade and he was 8th standard pass. Although she denied the suggestion that deceased was not doing the work of Plumber, but there was no documentary proof of his income and again she denied the suggestion that ₹ 50,000/- were not spent on transportation and last rites of the deceased.

(19) Therefore, keeping in view of the totality of the circumstances of the case and more particularly that the deceased was maintaining a large family of six dependents, this Court considers it appropriate to assess the monthly income of the deceased at least ₹ 4500/- and in addition, grant ₹ 25,000/- towards the medical expenses, born by the claimants/appellants in PGIMS, Rohtak.

(20) There is no dispute that deceased was 31 years of age and it is duly proved on record that there were six dependents upon him. Even the age of the deceased is not disputed by learned Counsel for the Insurance Company. Therefore, in view of the law laid down by the Hon'ble Supreme Court in '**Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121**', deduction of 1/3rd has been wrongly made by learned Tribunal and relevant part of para 30 of the said judgment reads as under:-

“ Having considered several subsequent decisions of this Court,

we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is 4 to 6, and one-fifth ($1/5^{\text{th}}$) where the number of dependent family members exceeds six.”

As already discussed, the number of dependent family members in the present case is six, therefore, learned Tribunal has wrongly made a deduction of $1/3^{\text{rd}}$ instead of $1/4^{\text{th}}$ towards personal expenses of the deceased and it is modified accordingly. Still further, in terms of '*National Insurance Company Limited Versus Pranay Sethi and others*', (2017) 16 SCC 680, the appellants/claimants are entitled 40% addition towards future prospects plus ₹ 70,000/- under conventional heads i.e. loss of consortium, loss of estate and funeral expenses.

(21) Keeping in view the facts and circumstances, discussed hereinabove, this Court finds that following compensation would be the “just compensation” to which claimants/appellants are entitled in the present case:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Monthly income of the deceased	₹ 4500
(ii)	Annual Income of the deceased	₹ 4500 x 12 = ₹ 54,000
(iii)	$1/4^{\text{th}}$ of (ii) deducted for personal expenses	₹ 54,000 - ₹ 13,500 = ₹ 40,500
(iv)	40% addition for future prospects	₹ 40,500 + ₹ 16,200 = ₹ 56,700
(v)	Net annual income of the deceased	₹ 56,700
(vi)	Multiplier	16
(vii)	Total Loss of dependency	₹ 56,700 x 16 = ₹ 9,07,200
(viii)	Compensation for loss of consortium	₹ 40,000

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
<i>(ix)</i>	<i>Compensation for loss of estate</i>	<i>₹ 15,000</i>
<i>(x)</i>	<i>Compensation for Funeral Expenses</i>	<i>₹ 15,000</i>
<i>(xi)</i>	<i>Compensation towards the medical expenses</i>	<i>₹ 25,000/-</i>
	<i>Total Compensation</i>	<i>₹ 10,02,200</i>

(22) In view of above, FAO No.5001 of 2012, filed by the claimants, is accepted and the impugned award dated 04.06.2012 of the Tribunal is modified. The amount of compensation is enhanced from ₹ 4,70,800/- to ₹ 10,02,200/- for the death of Joginder. Needless to say that amount of compensation, already paid to the claimants/appellants, shall be adjusted and the remaining balance amount shall be paid to the claimants in the same proportion as awarded by learned Tribunal within a period of six weeks from the date of receipt of certified copy of this order. Rate of interest i.e. 9% per annum, as awarded by learned Tribunal, will remain the same.

(23) Keeping in view the fact that this Court has come to the conclusion that the amount of compensation, awarded by the Tribunal, is on the lower side and the same has been enhanced in the connected appeal bearing FAO No.5001 of 2012, therefore, there is no occasion to reduce the same while entertaining the appeal of the Insurer. Since the findings on Issue Nos.1 and 3 have already been discussed in Para Nos. 13 to 16 and affirmed in Para No.17 of this order, therefore, FAO No.5578 of 2012, filed by the Insurance Company, is hereby dismissed.

August 31, 2018

Gagan

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>