

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

F.A.O. No. 567 of 2012(O&M)

Date of Decision: 02.07.2018

New India Assurance Co. Ltd.

.....Appellant.

Versus

Paramjit Kaur and others

..... Respondents.

AND

F.A.O. No. 3121 of 2016(O&M)

Paramjit Kaur and others

.....Appellants.

Versus

Harbans Singh and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Vijay Lath, Advocate
and Mr. Naveen Sharma, Advocate
for the appellants (in FAO No.3121 of 2016).

Mr. R.C.Gupta, Advocate
for the appellant in FAO No. 567 of 2012 and
for respondent no.4 in FAO No. 3121 of 2016.

Ms. Rajni Maurya, Advocate
for Mr. Naveen Batra, Advocate
for respondent no.2 in FAO No.3121 of 2016 and
for respondent no.5 in FAO No. 567 of 2012.

LISA GILL, J (Oral).

This order shall dispose of FAO No. 567 of 2012 and FAO No.

3121 of 2016 as both of them arises out of the common impugned award dated 12.10.2011. For the sake of convenience, facts are extracted from FAO No. 567 of 2012.

FAO No. 567 of 2012 has been filed by the New India Assurance Company Ltd., challenging award dated 12.10.2011 passed by learned Motor Accident Claims Tribunal, Ropar (for short 'MACT'), claiming that excess compensation has been awarded to the claimants.

Claimants have preferred FAO No.3121 of 2016 claiming enhancement of the compensation awarded to them on account of death of Hira Singh i.e. the husband and father of the claimants.

Brief facts necessary for the adjudication of the matter are that in a motor vehicle accident which took place on 03.11.2009, Hira Singh lost his life. It was averred that the deceased, who was employed as Sewadar-cum-Jathedar at Gurdawara Patalpuri Sahib, Kiratpur Sahib, was proceeding towards Gurdawara Sahib Baba Gurdit Ji on his motorcycle bearing No. PB-16-C-6034. He was proceeding at a normal speed while exercising proper care and caution. When, he was going to turn towards the Gurdawara Sahib, a truck bearing registration No. HP-24-A-1698 driven in a rash and negligent manner by respondent no.4-Harbans Singh came from behind and hit his motorcycle. Hira Singh received multiple injuries. He was taken to PHC Kiratpur Sahib and further referred to PGI, Chandigarh, where he ultimately succumbed to his injuries. FIR No. 146 dated 13.11.2009, under Sections 279, 304-A IPC, Police Station Anandpur Sahib (Ex.P2), was registered on the statement of PW-2-Harsimran Singh, the son of the deceased.

The claimants filed a petition under Section 166 of the Motor Vehicle Act seeking compensation on account of death of Hira Singh.

The learned tribunal while holding that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.4-Harbans Singh, awarded a sum of ₹4 lakhs to the claimants. Income of the deceased was assessed as ₹4000/- per month. Deduction of 1/4th was effected and a multiplier of 11 was applied. ₹2000/- each was awarded towards loss of consortium and funeral expenses.

Learned counsel for the Insurance Company contends that identity of the driver of the offending vehicle has not been proved. As per FIR (Ex.P2), one Baljit Singh @ Bali son of Kartar Singh, is mentioned as the accused and not respondent-Harbans Singh. Driving license of the said Baljit Singh @ Bali was not proved. It is further submitted that deduction of 1/ 3rd should be effected instead of 1/4th keeping in view the number of claimants i.e. three (03). It is further urged that interest awarded should be at the rate of 7.5 % per annum instead of 9 % per annum. Moreover, the claimants did not produce any permit to ply the vehicle. Therefore, the Insurance Company cannot be held liable in this case.

Learned counsel for the claimants on the other hand argues that inadequate compensation has been awarded to the claimants. First and foremost, it is argued that income of the deceased has been wrongly assessed as ₹4000/- per month, whereas, it is proved on record that the deceased was a permanent employe of Takhat Sri Kesgarh Sahib, Sri Anandpur Sahib (Ropar). Reference is made to the certificate (Ex.P4) issued by Takhat Sri Kesgarh Sahib, Sri Anandpur Sahib (Ropar), wherein it is mentioned that the

deceased was a regular/permanent employee receiving a basic pay of ₹6480/-, ₹2981 as dearness allowance, ₹250 as medical allowance, ₹518 as house rent and ₹778 was being deducted as provident fund. Thereby, total sum of ₹11007/- was being received by him. It is submitted that the learned Tribunal has wrongly ignored this certificate, which is duly proved by PW-3-Amarjit Singh son of Jagtar Singh, accounts clerk of Gurdwara Takhat Sri Kesgarh Sahib, Sri Anandpur Sahib (Ropar).

Learned counsel for the claimant refutes that identity of the driver of the offending vehicle has not been proved in this case. Reference is made to Ex.P-5 i.e., challan/final report under Section 173 Cr.P.C., which was admittedly presented against respondent-Harbans Singh after the matter was duly investigated by the police authorities. Charge under Section 279, 304-A IPC was also framed against respondent-Harbans Singh. Charge sheet dated 09.06.2010 in the abovesaid FIR is available on record as Annexure P-6.

It is further submitted that driving license of the said respondent-Harbans Singh was duly verified by the insurance company as reflected in the verification report dated 07.09.2010 (Ex.6). The national permit for goods carriage valid from 27.07.2007 to 26.07.2012 was issued in respect of the offending vehicle. The same was proved on record as Ex.RX. It is submitted that in terms 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**, future prospects at the rate of 15% need to be awarded keeping in view the age (55 years) of the deceased-Hira Singh and the fact that he was a permanent employee of Takhat Sri Kesgarh Sahib, Sri

Anandpur Sahib (Ropar). It is however conceded that deduction of 1/ 3rd has to be effected instead of 1/ 4. Multiplier of 11, it is submitted has been correctly applied. Learned counsel for the claimant thus prays for enhancement of the compensation awarded.

Heard learned counsel for the parties.

It is not in dispute that FIR (Ex.P2) was registered on the statement of Harsimran Singh (PW-2). A perusal of the FIR reflects that the driver of the offending truck himself revealed his name to be Baljit Singh. It is on this basis that PW-2-Harsimran Singh recorded his statement. It cannot be disputed that on investigation, it was found that it is respondent-Harbans Singh, who was driving the offending vehicle. Challan/final report in the said case was presented against Harbans Singh after investigation and charge under Section 279, 304-A IPC was also framed against Harbans Singh. Driving license of Harbans Singh was duly verified as reflected in the report Annexure P-6. The national permit for the goods carriage (Ex.RX) is also on record. Therefore, it cannot be said that identity of the driver of the offending vehicle was not established or that the driving license and permit to ply the vehicle has not been produced.

As per Ex.P-4, a certificate issued by Takhat Sri Kesgarh Sahib, Sri Anandpur Sahib (Ropar), the deceased is stated to be a regular employee. The said certificate has been duly proved by PW-3-Amarjit Singh, accounts clerk of Takhat Sri Kesgarh Sahib, Sri Anandpur Sahib (Ropar). There is nothing on record to discredit or disbelieve the employment of the deceased as reflected above. Even if the component of the basic pay, dearness allowance and the provident fund is taken into consideration, the salary of

the deceased was little more than ₹10,000/-. Therefore, income of the deceased has been wrongly assessed as ₹4000/- per month without reference to the aforesaid evidence on record. It is thus considered appropriate to assess the income of the deceased as ₹10,000/- per month. In terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi's** case (Supra), 15% is to be awarded in respect to the future prospects thereby taking the income of the deceased to ₹11,500/- per month. Indeed, deduction of 1/ 3rd is to be effected instead of 1/4th as calculated by the learned tribunal, making the amount ₹7667/- (₹11,500/- – ₹3833/-). Applying a multiplier of 11 in view of the deceased being 55 years old at the time of accident, dependency of the claimants is assessed as ₹10,12,044/- (7667 x 12 x 11). The claimants are entitled to ₹15,000/- for funeral expenses and ₹15000/- for loss of estate. Claimant wife is entitled to ₹40,000/- on account of loss of consortium. Thus claimants are held entitled to compensation of ₹10,82,044/- instead of ₹4 lakhs. However, interest at the rate of 9% awarded by the learned tribunal is excessive and should be 7.5.%.

It is fairly brought to my notice by learned counsel for the claimant-appellant that when the application for condonation of delay of 1592 days in filing of the appeal by the claimants was allowed, the claimants gave up their claim for interest on the delayed period. It is thus held that the claimants are entitled to compensation of ₹10,82,044/- with interest at the rate of 7.5% per annum instead of 9% per annum from the date of institution of the claim petition till realisation with interest on the delayed period being deducted. Needless to say the amount already deposited/disbursed shall stand deducted thereof.

Both the appeals are accordingly disposed of.

02.07.2018

[LISA GILL]
Judge

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.