

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

(1)

**FAO No.673 of 2012 (O&M)
Date of Decision: October 31, 2018.**

National Insurance Company Limited

.....APPELLANT(s).

VERSUS

Rani @ Manjeet Kaur and others

.....RESPONDENT(s).

(2)

FAO No.5344 of 2012 (O&M)

Rani @ Manjeet Kaur and others

.....APPELLANT(s).

VERSUS

Jeet Ram and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Talwar, Advocate
for the appellant in FAO-673-2012 and
for respondent No.3 in FAO-5344-2012.

Mr. Ram Pal Verma, Advocate
for respondents No.1 to 6 in FAO-673-2012
and for appellants in FAO-5344-2012.

SURINDER GUPTA, J.

Both the above captioned appeals have been filed against the
award dated 04.11.2011 passed by Motor Accident Claims Tribunal,
Sonipat (later referred to as the tribunal).

National Insurance Company Limited in its appeal (FAO-673-

2012) has sought reduction of the quantum of compensation as awarded by

the tribunal on the ground that it was a case of contributory negligence of vehicle bearing registration No.HP-72A-0221 (later referred to as the offending vehicle) and vehicle of deceased. Claimants (appellants in FAO-5344-2012) have sought enhancement of compensation as awarded by the tribunal.

Firstly, I take the appeal filed by insurance company to find as to whether there is any substance in the plea of contributory negligence of vehicle of Virsa Singh deceased in causing the accident. Claimants have described the manner of accident which find mentioned in para 24 of the claim petition, as follows:-

“On the fateful day i.e. 4.12.2010, the deceased along with his employer Pan Singh were coming from Amritsar to Delhi after loading potatoes in their vehicle. The deceased was driving his truck No.HR-55L-2555 at a very moderate speed, by observing the traffic rules and intensity of traffic on his correct side. At about 4.30 A.M. early morning on 04.12.2010, when the deceased reached near Pooja Dhaba, G.T. Road, Rai, the offending vehicle No.HP-72A-0221 was wrongly parked, without observing the traffic rules and intensity of traffic by developing a snag on rear portion, without blowing any indicator and without placing stones/bushes to show the vehicle parked, and due to dark, the deceased could not see the standing truck and struck with the said standing vehicle of the respondent no.1. In fact the offending vehicle had got punctured and two persons were replacing the tyre, but they also sustained injuries in the said accident. In the said accident, the deceased sustained serious and grievous multiple injuries on his person. However, the deceased was being shifted to

General Hospital, Sonapat but he succumbed to the injuries in the way to Hospital.”

In support of their case, the claimants examined ASI Balbir Singh, the investigating Officer, who had investigated case bearing FIR No.333 dated 04.12.2010 registered at Police Station Rai, District Sonapat with regard to this accident. He has stated that the offending vehicle was standing on the road as the tyre of said vehicle had got burst. This vehicle was parked in the middle of the road.

Claimants have also examined Pan Singh, who was accompanying deceased Virsa Singh in vehicle (truck) bearing registration No.HR-55L-2555 at the time of accident. This vehicle was being driven by Virsa Singh. He has stated that at about 4.30 a.m. when they reached G.T. Road, Rai Sonipat near Pooja Dhaba, the deceased was driving the truck at a moderate speed. The offending vehicle had been parked on the road without any parking light, reflector, warning sign, bushes etc. Virsa Singh could not notice the canter parked in the middle of the road and hit against it. In accident, he suffered serious injuries and was taken to Civil Hospital, Sonipat, where he succumbed to his injuries. He has stated that due to heavy fog, they could not see the offending vehicle, which was parked in the middle of the road.

Learned counsel for the insurance company has argued that it was dark and foggy night. Offending vehicle was in stationary condition, though as per case of the claimants, it was parked in the middle of the road. In case, Virsa Singh had not been rash and negligent in driving the truck, he would not have hit the offending vehicle so severely, resulting in death of

negligence of the deceased himself.

In reply on behalf of owner and driver of the offending vehicle, a plea was taken that the offending vehicle had been rightly parked without any snag with blowing indicator and accident was caused due to rash and negligent driving of the deceased himself. However, the driver of the offending vehicle has not appeared in the witness box to support this averment.

Investigating Officer ASI Balbir Singh is the independent witness, who reached the spot immediately after the accident and found that tyre of the offending vehicle got burst and it was in the middle of the road. No suggestion was given to him that the parking light of the offending vehicle were on at the time of accident or even thereafter. One of the person, who was changing the tyre of the offending vehicle, also died and this refutes the plea taken by the respondents in the written statement that offending vehicle had been rightly parked without any snag.

The accident took place on 04.12.2010 which is winter season and during these days, it is pitch dark at about 4.30 a.m. and the visibility is further affected when it is a foggy night. If the tyres of the offending vehicle had got burst and were being replaced in the middle of the road, the onus was on its driver to place indicator on both sides of the vehicle to alert the drivers of the vehicles coming from both sides. The liability for inaction of driver of offending vehicle cannot be foisted on the deceased, who could not see the vehicle parked in the middle of the road due to darkness and heavy fog. When it was pitch dark and dens foggy night, it is not possible for the driver of the offending vehicle to drive at high speed but at the same

time, it is not expected that some vehicle is parked in the middle of the road without adequate caution. The tribunal on appraisal of the facts has committed no error while holding that the accident was result of rashness and negligence on the part of driver of the offending vehicle, who did not care to follow the traffic rules while parking his vehicle on the road for the purpose of replacing the tyre, I find no reason to interfere with the finding of learned tribunal on issue No.1 and the same is affirmed.

On the quantum of compensation, learned counsel for the claimants (appellants in FAO-5344-2012) has argued that as per the law laid down in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***, the claimants are entitled to 40% addition in the income of the deceased towards future prospects and also compensation under the conventional heads.

Learned counsel for insurance company has not contested the contention of learned counsel for the claimants but has argued that the tribunal has taken monthly income of the deceased as ₹6000/- per month while as per the notification dated 24.02.2010 issued by Labour Commissioner, Haryana, minimum wages of skilled labourer was fixed as ₹4,604/- per month, as such, the tribunal has already taken the income of the deceased as higher than the minimum wages prescribed and the claimants are not entitled to any enhancement even by adding 40% in the income of the deceased toward future prospects.

The tribunal has taken monthly salary of the deceased as ₹4500/- per month + diet allowance as ₹100/- per day. Pan Singh, employer of the deceased (owner of the vehicle), who appeared as PW5 has stated that

deceased was earning ₹4500/- per month + diet money of ₹100/- per day. The driver had to remain out of town in most of the days and the salary of the deceased as assessed by the tribunal after inclusion of diet money as ₹6000/- per month instead of ₹7500/- per month, call for no interference.

As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***, the claimants are entitled to 40% addition in the income of the deceased towards future prospects as he was 33 years of age at the time of accident. The claimants are also entitled to compensation under conventional heads as per the law settled in above referred citation.

The compensation to which the claimants are entitled, is reassessed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹6000 per month
(ii)	40% of above (i) to be added as future prospects	(₹6000+₹2400)= ₹8400 per month
(iii)	Deduction of 1/4 th towards personal expenses of the deceased	(₹8400-₹2100)= ₹6300 per month
(iv)	Compensation after multiplier of 16 is applied	(₹6300X12X16)= ₹1209600.
(v)	Loss of consortium	₹40000
(vi)	Loss of estate	₹15000
(vii)	Funeral expenses	₹15000
Total		₹12,79,600/-

As a sequel of my above discussion, appeal filed by insurance company (FAO-673-2012) has no merits and is dismissed.

The appeal filed by the claimants (FAO-5344-2012) has merits and is accepted. The award of the tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from

amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

- | | | |
|-------|--------------------------------|----------------------------------|
| (i) | Appellant-claimant No.1-widow | : 40% |
| (ii) | Appellants-claimants No.2 to 4 | : 15% each |
| (iii) | Appellants-claimants No.5 & 6 | : 15% (To be shared
equally) |

Insurance company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal.

In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

October 31, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***