IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.706 of 2012(O&M)
Date of Decision: 05.10.2018

Kulwinder Kaur and others

......Appellants.

Versus

Satpal Singh and others ...... Respondents.

AND

XOBJC-66-CII of 2012 in/and

F.A.O.No.1598 of 2012 (O&M)

The New India Assurance Company Limited

......Appellants.

Versus

Kulwinder Kaur and others

...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Rakesh Gupta, Advocate
for the appellants (in FAO No. 706 of 2012) and
for respondents no.1 to 6 (in FAO No. 1598 of 2012).

Mr. ADS.Sukhija, Advocate
for respondents no.1 and 2 (in FAO No. 706 of 2012)

Mr. V. Ramswaroop, Advocate
for the appellant (in FAO No. 1598 of 2012) and
for respondent no.3 (in FAO No. 706 of 2012)

Mr. Gopal Mittal, Advocate
for the cross-objector no.9 and
for respondent no.4 in FAO no. 706 of 2012.

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LISA GILL, J.

FAO no. 706 of 2012, XOBJC-66-CII of 2012 and FAO No. 1598 of 2012 are taken up for hearing together and are being decided by a common decision as all of them arise out of the same impugned award dated 26.11.2011, passed by learned Motor Accident Claims, Tribunal, Patiala.

FAO No. 1598 of 2012 has been filed by the New India Assurance Company Limited, challenging its liability to pay the compensation. The quantum of compensation assessed by the learned tribunal is also under challenge.

XOBJC-66-CII of 2012 have been filed by the legal heirs of respondent no.9-Jagir Singh, who was the owner of the tractor bearing registration no. HRX-4582.

FAO No. 706 of 2012, has been filed by the claimants seeking enhancement of the compensation awarded to them vide impugned award dated 26.11.2011, passed by the learned tribunal, Patiala.

As per averments in the claim petition filed by the claimants under section 166 of the Motor Vehicles Act, deceased Tarlochan Singh was posted as Assistant Sub Inspector in Punjab Police and was posted at Police Station Mullepur. He was proceeding for his duty at Police Station Mullepur on 30.07.2009, at about 11.30.a.m., on his motorcycle. Gurmajor Singh, younger brother of the deceased was following him on his motorcycle bearing registration no. PB-11-Z-0679. When the deceased reached near Gurudwara Baba Deep Singh, near Sirhind bye-pass, Rajpura, a truck bearing registration no. HP-12-A-5820, came from the opposite side and hit against the motorcycle of Tarlochan Singh. As a result thereof, Tarlochan Singh fell down on the road and suffered multiple injuries. At the same time, another tractor-trolley bearing registration no. HRX-4582 loaded with sand ran over Tarlochan Singh, due to which he received multiple injuries. Tarlochan Singh was taken to A.P.Jain, Hospital, Rajpura, but due to seriousness of his condition, the doctors advised to shift Tarlochan Singh to Gian Sagar Hospital. Tarlochan Singh however succumbed to the injuries received by him. FIR No. 198 dated 30.07.2009, under Sections 279, 427, 304-A IPC was registered at Police Station City Rajpura, in this respect.

Learned tribunal awarded a total sum of ₹33,64,880/- to the claimants. Income of the deceased was assessed as ₹19,910/- per month. Deduction of 1/ 4th was effected and a multiplier of 14 was applied. An amount of ₹5000/- was awarded towards loss of estate. An amount of ₹10,000/- was awarded on account of loss of consortium and ₹5000/- was awarded on account of funeral expenses. It was held that the insurance company would be liable to pay 80% of the compensation and 20% thereof shall be paid by the driver and owner of the tractor-trolley.

Learned counsel for the insurance company vehemently argues that the learned tribunal has wrongly assessed the liability of the present appellant-insurance company to pay the amount of compensation to the extent of 80% and only 20% has been ordered to be the liability of the driver and the owner of the tractor in question. Learned counsel submits that the deceased was run over by the tractor trolley driven by respondent no.5-Gurjit Singh. Therefore, it is clear that death of Tarlochan Singh took place on account of rash and negligent driving of the offending tractor by respondent no.5-Gurjit Singh. It is contended that though it is the owner and driver of the tractor, who should be held liable to pay the entire compensation, however, liability of the insurance company should not be more than 50% in any case. It is further contended that the driver of the offending truck produced two driving licenses. As per verification report, the license issued from Licensing Authority, Mathura was not valid. Therefore, the insurance company would not be liable to indemnify the owner of the truck in question.

In respect to the quantum of compensation, it is submitted that a substantial amount had been received by the claimants on account of G.P.F., ex-gratia, leave encashment, family pension and gratuity etc. The same should have been deducted from the amount of compensation awarded to the claimants. It is thus prayed that the appeal filed by the Insurance Company be allowed.

Learned counsel for the cross-objectors submits that it is borne out from the record that the offending truck hit the motorcycle driven by the deceased, due to which he fell on the ground. In this situation, the tractor driver cannot be held responsible for any kind of negligence whatsoever. Therefore, the learned tribunal has erred in holding that the owner and driver of the tractor in question are liable to pay 20% of the compensation awarded. Therefore, the present cross-objections be allowed and the owner and driver of the tractor be absolved of any liability in this matter.

Learned counsel for the claimants to the contrary submits that meagre compensation has been awarded by the learned tribunal, which is required to be enhanced. It is contended that the income of the deceased has been wrongly assessed as ₹23,425/-, whereas the salary slip of the deceased produced on record reveals that the appellant was receiving a salary of ₹27,235/- (Ex.CW1/B). Deduction effected on account of income tax is erroneous. 20% of the income has been straightway deducted without following the proper procedure and manner of deduction. While it is conceded that in terms of the judgment of Hon'ble Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R. (Civil) 1009,** an increase of 25% instead of 30% should have been awarded, it is contended that meagre compensation has been afforded under the conventional heads which is required to be enhanced. It is denied that the insurance company is not liable to pay the compensation in question. It is thus prayed that the appeal filed by the claimants be allowed.

I have heard learned counsel for the parties and have carefully gone through the record with their able assistance.

It is not disputed that Tarlochan Singh died due to the injuries suffered by him in the motor vehicle accident which took place on 30.07.2009. It is borne out from the record that when Tarlochan Singh was proceeding on his motorcycle, a truck bearing registration no. HP-12-A-5820 came from the opposite side, driven in a rash and negligent manner by respondent no.1-Satpal Singh. It came towards the wrong side and hit against the motorcycle driven by Tarlochan Singh. It is the right tyre of the offending truck which hit against the motorcycle, due to which Tarlochan Singh fell on the ground and suffered injuries. At the same time, tractor trolley bearing registration no. HRX-4582 loaded with sand came from the same side and ran over the deceased. It could not apply its brakes effectively in time as it was apparently at a high speed and being loaded did not take the required steps to avert the mishap. FIR No. 198 dated 30.07.2009 was registered against the drivers of the truck as well as the tractor (Ex.P-3). As per postmortem report (Ex.C-4), Tarlochan Singh died on account of the injuries suffered by him in the accident. Certified copies of FIR, final report under Section 173 Cr.P.C., charge sheet etc., are all available on record.

FIR in question was registered on the statement of Gurmajor Singh, who deposed as CW-3. He was following the deceased who was his elder brother. CW-3, specifically stated that the truck in question was being driven in a rash and negligent manner. It came toward the wrong side and hit the motorcycle driven by Tarlochan Singh. The offending tractor, which was coming behind the deceased ran over his brother as he lay on the road. No attempt whatsoever was made by the tractor driver to apply any brakes. Therefore, it is rightly held by the learned tribunal that the accident in question was caused due to the rash and negligent driving of the truck and the tractor driver was also negligent, having run over Tarlochan Singh while not applying any brakes.

In the factual matrix of the case, it cannot be said that apportionment of liability has been wrongly effected by the learned tribunal. There is no infirmity in the said finding of the learned tribunal and the same is accordingly upheld.

Contention of learned counsel for the cross-objectors that no specific issue had been framed in respect to the composite negligence, if any, by the learned tribunal, therefore the said finding could not have been returned, is devoid of any merit. This is so for the reason that the parties were well aware of the stand taken by each party. It is specifically mentioned in the claim petition that Tarlochan Singh died due to the rash and negligent driving of the offending truck as well as the tractor, whose driver could not control the vehicle and apply brakes as required. The claimants has arrayed both the insurance company as well as the owner and driver of the tractor. It is settled position that in case of composite negligence, it is open to the claimants to satisfy their claim *qua* any of the tort feasers, guilty of composite negligence. The Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Co. Ltd. & Ors., 2015 (2) R.C.R (Civil) 1019** has held that:-

> "(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.
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> (ii) In the case of composite negligence, apportionment of compensation between two tort feasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.
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> (iii) In case all the joint tort feasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feasor can recover the amount from the other in the execution proceedings.
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> (iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the

other joint tort feasor in independent proceedings after passing of the decree or award.”

There is no perversity in the finding of the learned tribunal regarding the negligence of the offending truck as well as the tractor-trolley and apportionment of negligence qua each. The claimants are, needless to say, entitled to recover the whole amount of compensation from the insurance company which would have the right to recover 20% thereof from the other tort feasor.

Contention on behalf of learned counsel for the insurance company that the company is liable to be absolved of its liability on account of the driver of the offending vehicle not holding a valid license, is also negated by the evidence on record. Verification report by a local commissioner (Ex.R-8) cannot be made the basis to hold that a driving license is invalid. Moreover, there is specific evidence led by the owner of the truck, who appeared as RW-3 to prove that he had taken necessary precautions before hiring the services of the driver-respondent no.1-Satpal Singh. RW-3 specifically deposed that he had checked the license issued by the DTO, Phek, Nagaland and he also made inquiries about the driver from other truck owners. He conducted the driving test of the respondent-driver through Dalip Singh, who is an expert driver. RW-3 clearly deposed that it is only after being satisfied of the driving skills of respondent no.1-Satpal that he was hired. It has been held by the Hon'ble Supreme Court in **National Insurance Company Limited versus Swaran Singh and others 2004 (3) SCC 297** that mere absence or fake or invalid licence at the relevant time are not defences available to the insurer against the insured or third parties. To avoid its liability towards the insured also, the insurer company has to prove the insured to be guilty of negligence and failure to exercise reasonable care in compliance of the conditions of the policy. The respondent-owner has succinctly proved that he took due care and caution, as is expected of a reasonable person before engaging the services of the respondent-driver. Therefore, the insurance company cannot be absolved of its liability on this ground.

In-regard to the compensation which has been awarded to the claimants, it is to be noted that the deceased-Tarlochan Singh at the time of his death was posted as ASI with the Police Police at Police Station Mullepur. As per his salary certificate (Ex.CW1/B), the deceased was receiving salary of ₹27,235/-. The amount being received on account of HRA, dearness allowance etc., is not to be deducted. There is no dispute that for calculating the income tax for the assessment year 2009-10, income upto ₹1,60,000/- was exempted. Tax on income from ₹1,60,001/- to ₹3,00,000/- at the rate of 10% is to be deducted and deduction at the rate of 20% has to be effected to calculate tax on income from ₹3,00,001/- to ₹5,00,000/-. Income tax liability thus comes to ₹19,944/- per annum. Deduction of 1/ 4th keeping in view the number of claimants has been correctly effected by the learned tribunal. 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,** 30% increase has to be afforded on account of future prospects. As the deceased was 44 years of age, multiplier of 14 has been correctly applied. Loss of consortium to widow, parental consortium to the children of the deceased, loss of filial consortium to the father of deceased-Tarlochan Singh, loss of estate and loss of funeral expenses, have to be awarded/enhanced in view of the judgment of 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**. Compensation in respect to deceased-Tarlochan Singh is re-worked as under:-

Sr. No.	**Heads of Claim**	**Amount**
1.	Salary	₹27,235/-
2.	1/ 4th deduction	₹27,235*4=₹6808/- (₹27,235-₹6808=₹20,427/-)
3.	Future prospects @ 30%	₹6128.10/- (₹20427/- +₹6128.10=₹26,555.10/-)
4.	Annual dependency	₹26,555.10 x 12=₹3,18,661.20/-
5.	Income tax	₹19,944/- (₹3,18,661.20 – ₹19,944=₹2,98,717.20/-
6.	Multiplier of 14	₹2,98,717.20 x 14=₹41,82,040.80/-
7.	Loss of consortium to widow	₹40,000/-
8.	Loss of parental consortium @ ₹40,000/- to the four children	₹1,20,000/-
9.	Loss of filial consortium to the father	₹40,000/-
10.	Loss of estate	₹15,000/-
11.	Loss of funeral expenses	₹15,000/-
	Grand total	**₹44,12,040.80/-**

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.

It is reiterated that the claimants are entitled to recover the whole amount of compensation from the insurance company which in turn can recover 20% thereof from the owner and driver of the tractor-trolley.

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, appeal as well as cross-objections preferred by the appellants-claimants and respondent no.9-cross-objector, are disposed of and appeal preferred by the Insurance Company is dismissed.

[LISA GILL]
Judge

05.10.2018
s.khan

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