

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

Date of decision: 30.1.2018

1.

FAO No.10228 of 2014(O&M)

Charanjit Singh

....Appellant

VERSUS

Harish Kumar Sachdeva and others

.....Respondents

Present: Mr. Sanjeev Goyal, Advocate for the appellant.

Mr. S.S. Salar, Advocate for respondents No.1 and 2.

Mr. Puneet Sharma, Advocate for respondent No.4.

Mr. Rajbir Singh, Advocate for respondent No.5.

Mr. G.S. Nahel, Advocate for respondent No.6.

Mr. Subhash Goyal, Advocate for respondent No.7.

2.

FAO No.10281 of 2014(O&M)

Charanjit Singh

....Appellant

VERSUS

Swaran Kaur and others

.....Respondents

Present: Mr. Sanjeev Goyal, Advocate for the appellant.

Mr. S.S. Salar, Advocate for respondents No.1 and 2.

Mr. Puneet Sharma, Advocate for respondent No.5.

Mr. Rajbir Singh, Advocate for respondent No.6.

Mr. G.S. Nahel, Advocate for respondent No.7.

Mr. Subhash Goyal, Advocate for respondent No.8.

3. **FAO No.10380 of 2014(O&M)**

Charanjit SinghAppellant

VERSUS

Pritpal Singh and othersRespondents

Present: Mr. Sanjeev Goyal, Advocate for the appellant.

Mr. G.S. Nahel, Advocate for respondent No.1.

Mr. Puneet Sharma, Advocate for respondent No.3.

Mr. Subhash Goyal, Advocate for respondent No.4.

Mr. Rajbir Singh, Advocate for respondent No.5.

4. **FAO No.2851 of 2014(O&M)**

Reliance General Insurance Co. Ltd.Appellant

VERSUS

Pritpal Singh and othersRespondents

Present: Mr. Subhash Goyal, Advocate for the appellant.

Mr. G. S. Nahel, Advocate for respondent No.1.

Mr. Sanjeev Goyal, Advocate for respondent No.3.

Mr. Suvir Dewan, Advocate for respondent No.4.

Mr. Rajbir Singh, Advocate for respondent No.5.

5. **Cross Objection No. 44-CII of 2015 in/and**
FAO No.2852 of 2014(O&M)

Reliance General Insurance Co. Ltd.Appellant

VERSUS

Swaran Kaur and others

.....Respondents

Present: Mr. Subhash Goyal, Advocate for the appellant.

Mr. S.S. Salar, Advocate for respondent No.1/cross objector
and 2.

Mr. Suvir Dewan, Advocate for respondent No.6.

Mr. Rajbir Singh, Advocate for respondent No.7.

Mr. G.S. Nahel, Advocate for respondent No.8.

5. **Cross Objection No. 42-CII of 2015 in/and**
FAO No.2853 of 2014(O&M)

Reliance General Insurance Co. Ltd.

....Appellant

VERSUS

Harish Kumar Sachdeva and others

.....Respondents

Present: Mr. Subhash Goyal, Advocate for the appellant.

Mr. S.S. Salar, Advocate for respondent Nos.1 and 2-Cross
objectors.

Mr. Sanjeev Goyal, Advocate for respondent No.4.

Mr. Suvir Dewan, Advocate for respondent No.5.

Mr. Rajbir Singh, Advocate for respondent No.6.

Mr. G.S. Nahel, Advocate for respondent No.7.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.2851 to 2853, 10228,
10281, 10380 of 2014 and cross objections No.42-CII of 2015 in FAO
No.2853 of 2014 and cross objections No.44-CII of 2015 in FAO No.2852

of 2014.

FAO Nos.2851 to 2853 of 2014 have been filed by Reliance General Insurance Co. Ltd., insurer of Tavera Car No.PB-13-Q-8297 involved in the accident dated 14.02.2010 whereas FAO Nos.10228, 10281 and 10380 of 2014 have been filed by Charanjit Singh, owner of Truck Trola No.HR-58-9819, another vehicle involved in the accident. Cross objections No.42-CII of 2015 in FAO No.2853 of 2014 and cross objections No.44-CII of 2015 in FAO No.2852 of 2014 have been filed by the claimants seeking enhancement of compensation on account of death of Dimplejit Kaur and Mohinder Singh respectively.

For the sake of convenience, Reliance General Insurance Co. Ltd. shall be referred to as 'Insurance Company', New India Assurance Company Ltd. as 'the insurer', Charanjit Singh as 'the appellant' and cross objectors as 'claimants'.

FAO Nos.2851 to 2853 of 2014

The sole submission made by counsel for the Insurance Company is that though the Tribunal has attributed rashness and negligence exclusively to the driver of Truck No.HR-58-9819 in causing the accident due to which Mohinder Singh and Dimplejit Kaur, occupants of car No.PB13-Q-8297 sustained injuries that proved fatal and damage to the aforesaid car but still the Tribunal has held the Insurance Companies of both the vehicles involved in the accident liable to pay compensation to the extent of 50% each. It is argued with vehemence that as no negligence in causing the accident has been attributed to driver of the car insured with Reliance General Insurance Co. Ltd., no liability to pay compensation can

be fastened upon the said Insurance Company.

Counsel representing the insurer of Truck in question while refuting contentions of counsel for the Insurance Company would argue that as the Tribunal in para 30 of the award passed in MACT case No.19 of 19.02.2011 has held that there being head-on collision, both the Insurance Companies are liable to make payment in equal share, therefore, findings recorded by the Tribunal fastening liability against both the Insurance Companies are liable to be affirmed.

The Tribunal in the case Pritpal Singh Vs. Surjit Singh and others filed for grant of compensation on account of damage to Tavera Car framed issue No.1 to the following effect:-

“1. Whether the Tavera Car bearing registration No.PB-13Q-8297 was damaged on 14.02.2010, due to rash and negligent driving of respondent No.1 Surjit Singh while driving the truck trolly No.HR-58-9819? OPP”

Issue No.1 was answered along with issue No.2 taken up jointly. In paras 21 and 22 of the award, it has been held, reads thus:-

“21. All these above referred facts go to show that Tavera vehicle bearing registration No.PB-13Q-8297 was damaged as a result of rash and negligent driving of truck bearing registration No.HR-58-9819 driven by respondent No.1.

22. This Court is of the opinion that as per settled law whenever it is brought on record that the criminal proceedings have been initiated regarding the accident in question, that is sufficient for the Court to arrive at a conclusion that the accident had taken place. In this regard, this court is fortified by Lakhu Singh and another Vs. Uday Singh and others, 2008 ACJ 1608. Accordingly, it stands proved on record that on 14.02.2010 at about 1.00 p.m. in the area of village Harike, District Tarn Taran Car make Tavera registration No.PB-13Q-8297 was badly damaged in the said accident due to rash and negligent driving of truck bearing No.HR-58-9819. The vehicle in question belonged to the claimant has also been proved on the record.”

The Tribunal has recorded categoric findings that accident has resulted due to rash and negligent driving of truck bearing No.HR-58-9819. However, while deciding liability to pay compensation, the Tribunal committed a serious error by holding that respondents No.3 and 6 therein (wrongly recorded as 6 in place of respondent No.4) can be fastened with liability to the extent of 50% each. Again in para 30 of the judgment, the Tribunal has held that there being head-on collision, both the Insurance Companies are liable to make payment in equal share. The Tribunal has made contradictory observations in the aforesaid paras. However, counsel representing the insurer has failed to point out any materials on record on the basis whereof negligence in causing the accident can be attributed to driver of Tavera car bearing No.PB-13Q-8297. Under the circumstances, findings of the Tribunal fastening 50% liability upon insurance company cannot be allowed to sustain and liable to be set aside. As a natural corollary, the insurer of truck bearing No.HR-58-9819 shall be absolutely liable to pay compensation to the claimants subject, however, to the outcome of the appeals filed by Charanjit Singh.

For the foregoing reasons, the appeals preferred by the Insurance Company are allowed in the aforesaid terms.

FAO Nos. 10228, 10281 and 10380 of 2014

Counsel for the appellant has fairly informed that the appeals have been preferred to assail findings of the Tribunal whereby insurer of Truck No.HR-58-9819 has been allowed recovery right against the appellant/insured of truck bearing No.HR-58-9819. It is argued that non possession of fitness certificate is neither a ground for exonerating the

insurer nor does it constitute a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'), therefore, the Tribunal has committed a gross error by bestowing recovery right in favour of the insurer.

Counsel representing the insurer of the truck is not in a position to support findings of the Tribunal that non-production of fitness certificate either amounts to breach of terms and conditions of policy much less constituting a defence under Section 149(2) of the Act.

Section 149 of the Act deals with duty of the insurers to satisfy the judgments and awards against persons insured in respect of third party risks. Section 149(2) of the Act provides for the grounds on which an insurer to whom notice of bringing of proceedings before the Claims Tribunal is given can defend the action on any of the following grounds:-

- “(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—
 - (i) a condition excluding the use of the vehicle—
 - (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
 - (b) for organised racing and speed testing, or
 - (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
 - (d) without side-car being attached where the vehicle is a motor cycle; or
 - (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
 - (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
- (b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact

which was false in some material particular.”

Counsel for the insurer has failed to convince this Court as to how non-possession of a fitness certificate is covered within the purview and ambit of grounds envisaged in clause (a) or/and (b) of Section 149(2) of the Act. In absence of legislature providing non-possession of a fitness certificate to be a ground to defend action by the insurer, it is difficult to sustain findings of the Tribunal that the insurer is entitled to recovery right against the insured for his failure to produce the fitness certificate. That being so, findings recorded by the Tribunal giving recovery right in favour of the insurer are liable to be set aside and ordered accordingly. Resultantly, the insurer shall be liable to pay compensation to the claimants by way of indemnification of the insured in discharge of its obligation under the contract of insurance without any recovery right against the insured.

For the foregoing reasons, the appeals are allowed in the aforesaid terms.

Cross objection No. 44-CII of 2015 in FAO No. 2852 of 2014

Swaran Kaur has filed cross objections claiming enhancement of compensation on account of death of Mohinder Singh in the accident. The Tribunal has awarded compensation of Rs. 1.25 lakhs i.e. Rs. 1,00,000/- for loss of consortium and Rs. 25,000/- for funeral expenses.

Counsel for the claimants would argue that the deceased was a pensioner and drawing Rs. 15,414/- per month, proved by Baldev Singh, Junior Assistant, District Treasury, Sangrur CW1. It is argued with vehemence that compensation is liable to be assessed on the basis of

pension of the deceased by applying an appropriate multiplier. According to counsel, family pension paid to widow of the deceased is not amenable to deduction for computing loss of dependency. In support of his contention, he has relied upon judgment of the Madras High Court (Madurai Bench) **The Branch Manager, National Insurance Company Limited vs. Shanmugathai and others 2008(2) TN MAC 314.** Reference is also made to judgment of Hon'ble the Supreme Court **Halen C Rabello vs. Maharashtra State Road Transport Corporation 1998(4) RCR (Civil) 177.**

Counsel representing the insurance company would urge that as widow of the deceased is getting family pension, claim for loss of dependency has rightly been rejected by the Tribunal. Further contended that compensation under conventional heads needs to be restricted to Rs. 70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.**

Perusal of testimony of Baldev Singh CW1 makes it evident that deceased was born on 14.4.1943, thus, approximately 67 years old at the time of occurrence. He was a pensioner and as per pension order brought by the witness, he was paid pension @ Rs. 15,414/-p.m. After death of Mohinder Singh, his widow is paid family pension @ Rs. 11,162/- per month.

The question for consideration is whether the entire pension paid to the deceased is to be taken into account for computing loss of

dependency or the family pension paid to the widow is liable to be deducted and difference of pension and family pension is to be considered for computing loss of dependency.

Counsel for the claimants has referred to judgment of the Madras High Court rendered on 14.7.2008. The Court has relied upon judgment of Hon'ble the Supreme Court in **Halen C Rabello's case (supra)** and judgments of various High Courts to say that family pension paid to claimants/widow of the deceased is not amenable to deduction.

I have gone through various judgments referred to in the judgment of Madras High Court but find that in those judgments, the issue before the Court was not of a pensioner. Recently, in **Reliance General Insurance Company Limited vs. Shashi Sharma and others 2016(4) RCR (Civil) 569**, the issue before Hon'ble the Supreme Court was, whether compassionate assistance available to dependents of deceased government employees under the Haryana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006 (in short Rules of 2006) is amenable to deduction out of compensation assessed by the Tribunal under the Motor Vehicles Act or otherwise. The Court on a detailed consideration of the earlier judgments passed by the Court including the judgment in **Halen C Rabello's case (supra)** has held that the harmonious approach for determining a just compensation payable under the Act of 1988 is to exclude the amount received or receivable by the dependents of the deceased government employee under the Rules of 2006 towards the head financial assistance equivalent to “pay and other

allowances” that was drawn by the deceased government employee in the normal course. However, benefits extended to the dependents of the deceased Government employee including family pension, life insurance, provident fund etc. that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee.

In the case at hand, had Mohinder Singh remained alive, family would have been entitled to benefit of Rs. 15,414/- per month drawn as pension by the deceased. In case, family pension is not deducted out of pension drawn by the deceased, it would amount to giving double the benefit namely benefit of pension drawn by the deceased as well as family pension available to family. As such, in my considered opinion, claimants shall be entitled to benefit of difference of pension and family pension for computing loss of dependency and the same comes to Rs. 15414- 11,162= Rs.4252/- per month.

The application for compensation was filed by the widow and children of the deceased. The deceased was 67 years old at the time of occurrence. A multiplier of 5 and deduction for personal expenses to the extent of 1/3rd is to be allowed. Loss of dependency in this regard comes to Rs. 4252 x 12 x 5=2,55,120 – 85,040 (1/3rd)=**Rs. 1,70,080/-**.

The deceased was 67 years old. There is nothing on record suggestive of the fact that he has altogether lost his utility for the family. His very presence would be a support for the family. Had he not been a pensioner, ordinarily the courts grant compensation by assessing notional

income. That being so, in view of age of the deceased and minimum wage available at the relevant time, income of the deceased is assessed at Rs. 2000/- per month. On the basis of discussion made hereinbefore, claimants shall be entitled to Rs. 1,20,000/-(2000 x 12 x5)-40,000(1/3rd)=**Rs.80,000/-**.

Compensation awarded by the Tribunal under conventional heads is restricted to Rs. 70,000/- in view of judgment in **Pranay Sethi and others' case (supra)**.

The total compensation is Rs. 3,20,000/- and the additional amount is **Rs. 1,95,000/-** (3,20,000 -1,25,000), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased.

The cross objections are partly allowed in the aforesaid terms.

Cross objection No. 42-CII of 2015 in FAO No. 2853 of 2014

With regard to death of Dimplejeet Kaur Sachdeva, Tribunal has assessed compensation of Rs. 8,93,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 6000/-
Deduction for personal expenses	1/3 rd
Multiplier	16
Loss of dependency	4000 x12 x16 =Rs.7,68,000/-
Loss of consortium	Rs. 1,00,000/-
Funderal expenses	Rs. 25000/-

Counsel for the claimants would argue that the Tribunal has not allowed benefit of increase in income for future prospects @ 40% and multiplier adopted by the Tribunal needs modification as the deceased was in the age bracket of 26-30 years. It is further argued that the deceased was

working as a teacher in Little Flower Convent School, Mangwal, District Sangrur at salary of Rs. 6000/- per month. After the school was closed, she had been rendering services to her family, therefore, value of her services as a house maker is also liable to be assessed and accordingly, loss of dependency may be computed.

Counsel representing the insurance company has supported assessment made by the Tribunal with the submission that adequate compensation has been awarded.

The Tribunal has assessed loss of dependency on the basis of salary of the deceased at Rs. 6000/- per month. As the deceased was less than 30 years of age, claimants shall be entitled to increase in income for future prospects @ 40%. The multiplier, in the given circumstances, would be 17 as the deceased was 30 years of age. Deduction for personal expenses allowed by the Tribunal is affirmed. In this manner, loss of dependency on the basis of income of the deceased as a teacher comes to Rs. $6000 \times 12 \times 17 = 12,24,000 + 4,89,600 = 17,13,600 - 5,71,200 = \text{Rs. } 11,42,400/-$.

The deceased was working as a teacher in a private school. She has left behind family consisting of her husband and minor son aged 8 years. This court cannot overlook that such like employees render services to the family both before going to the work place as well as after closing hours. However, value of services of a working lady cannot be equated with a house maker who is available round the clock. Under the circumstances, it is expedient in the interest of justice that value of services of the deceased is assessed at Rs. 2000/- per month. No deduction for personal expenses is

to be made, in the light of Division Bench judgment of this Court ***Paramjit Singh and another vs. Dilbag Singh alias Bagga and others 2014(3) R.C.R.(Civil)1027***. Loss of dependency in this regard comes to Rs. 2000 x12x 17=4,08,000/-. In view of the above, loss of dependency comes to **Rs. 15,50,400/-** (4,08,000 + 11,42,400).

Compensation awarded by the Tribunal under conventional heads is restricted to Rs. 70,000/- in the light of judgment in **Pranay Sethi and others' case (supra)**, detailed hereunder:-

Loss of consortium to husband	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

The total compensation is **Rs. 16,20,400/-** and additional amount is **Rs. 7,27,400/-** (16,20,400- 8,93,000), payable with interest @ 7.5% per annum from the date of petition till realization to Abhey Sachdeva, minor son of the deceased, to be invested in fixed deposit payable on his attaining age of majority or for a period of three years, whichever is later. Interest accruing on the fixed deposit shall be paid to guardian of the minor for meeting expenses on his education and living.

Cross objections are partly allowed in the aforesaid terms.

JANUARY 30, 2018
'D. Gulati/paramjit'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes

Whether reportable : yes/no