

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

(1)

**FAO No.1730 of 2014 (O&M)
Date of Decision: January 24, 2018.**

Nirmla Devi and others

.....APPELLANT(s).

VERSUS

Mahinder Singh and others

.....RESPONDENT(s).

(2)

FAO No.1731 of 2014 (O&M)

Virender Kumar @ Virender

.....APPELLANT(s).

VERSUS

Mahinder Singh and others

.....RESPONDENT(s).

(3)

FAO No.506 of 2014 (O&M)

National Insurance Company Limited

.....APPELLANT(s).

VERSUS

Nirmla Devi and others

.....RESPONDENT(s).

(4)

FAO No.639 of 2014 (O&M)

National Insurance Company Limited

.....APPELLANT(s).

VERSUS

Virender and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants in FAO-1730-2014, FAO-1731-2014;
for respondents No.1 to 3 in FAO-506-2014 and
for respondent No.1 in FAO-639-2014.

Mr. Ashish Bansal, Advocate for
respondents No.1 & 2 in FAO-1730-2014, FAO-1731-2014;
for respondents No.4 & 5 in FAO-506-2014 and
for respondents No.2 and 3 in FAO-639-2014.

Mr. D.R. Bansal, Advocate
for respondent No.3 in FAO-1730-2014, FAO-1731-2014 and
for appellant in FAO-506-2014 & FAO-639-2014.

SURINDER GUPTA, J.

The above four appeals have been taken up together as the same arise out of common award dated 14.11.2013 passed by Motor Accident Claims Tribunal, Kurukshetra (later referred to as 'the tribunal').

The case of the claimants, in brief, is that on 08.09.2011, Vikas Kumar along with Virender Kumar and Rajbir Singh were going from Kurukshetra to Shahbad in a Maruti Car bearing registration No.HR-51D-4141. Vikas Kumar was driver of the car. At about 2.00 p.m., when they reached near Moga Dhaba in the area of village Sanwla, District Kurukshetra, a canter bearing registration No.PB-06J-2165 (later referred to as 'the offending vehicle') came from wrong side of the road and the driver of the canter stopped and parked it on the road in a dangerous manner without any indicator or parking light. Vikas was driving Maruti car at a normal speed and on correct left hand side of the road. His car struck against the stationary canter parked on the road, as a result of which, Vikas

were shifted to L.N.J.P. Hospital, Kurukshetra from where they were referred to PGI, Chandigarh. Virender Kumar was shifted to Anand Hospital, Kurukshetra, whereas Vikas Kumar was taken to PGI, Chandigarh but he succumbed to his injuries on the way. Police was informed and FIR No.287 dated 08.09.2011 for the offences punishable under Sections 279, 337 and 304-A of Indian Penal code was registered at Police Station Sadar Thanesar.

The tribunal awarded compensation of ₹8,15,000/- for the death of Vikas Kumar, which was computed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹5000/- p.m.
(ii)	50% addition towards future prospects	₹5000 + ₹2500=₹7500
(iii)	Deduction towards personal expenses 50%	₹7500-3750=3750 p.m. 3750X12=₹45000 p.a.
(iv)	Multiplier applied 18	₹45000X18 = ₹810000/-
(v)	Transportation and Funeral expenses	₹5000/-
<i>Total</i>		₹8,15,000/-

Claimant Virender Kumar was awarded compensation of ₹1,07,000/-, which was computed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Hospital expenses	₹34000
(ii)	Medicines	₹32684
(iii)	Pain and suffering	₹15000
(iv)	Special diet, Transportation and attendant charges	₹10000
(v)	Compensation for disability	₹40000
<i>Total</i>		₹1,31,684/- (wrongly calculated as ₹106684 rounded off ₹1,07,000/-).

Claimants Nirmala Devi and others (FAO-1730-2017) have sought enhancement of the compensation with the plea that the income of

deceased Vikas as assessed by the tribunal is on lower side. Deceased was student of 6th semester of Polytechnic College, Mansa and would have got handsome salary after completion of his studies and rendered great financial help to the family. Instead of making deduction of 1/4th from the income of the deceased, the tribunal has wrongly deducted 50% on account of his personal expenses. Funeral expenses allowed as ₹5000/- are also highly inadequate.

Claimant Virender Kumar (FAO-1731-2014) has sought increase in compensation with the plea that compensation allowed by the tribunal on conventional heads and medical expenses etc. are highly inadequate.

National Insurance Company Limited, insurer of the offending vehicle in separate appeals (FAO-506-2014 and FAO-639-2014) has challenged the conclusion drawn by the tribunal that the accident was caused due to rash and negligent driving of the driver of offending vehicle. Maruti car driven by deceased Vikas Kumar had hit a standing and stationary vehicle during mid day. The tribunal, while drawing conclusion about rash and negligent conduct of driver of offending vehicle has taken note of the fact that driver and owner of the offending vehicle had not appeared in the witness box. On this fact, no adverse inference could be drawn against the insurer as driver and owner of the offending vehicle were colluding with the claimants. From facts of case and evidence on record, it is proved that accident was caused due to contributory negligence of driver of Maruti Car, who could save it if he had driven his car at moderate speed in a careful manner. The tribunal has rightly made deduction of 50% from

the income of deceased Vikas, who was bachelor but has wrongly applied the multiplier of 18 instead of multiplier as per age of the claimants.

I have heard learned counsel for the parties and perused the paper book and record of the tribunal with their assistance.

Learned counsel for the insurance company has ferociously opposed the award on the ground that the mode and manner of the accident suggest that deceased Vikas was negligent while driving Maruti car. The accident took place during broad daylight and he could very well see the standing canter. He did not notice the 'offending vehicle' on the road as he was rash and negligent and smashed his car in the canter.

Learned counsel for the claimants has argued that the canter had come from wrong side and was parked on the metalled portion of the road without any light or indicator. If a vehicle is parked on the metalled road, it causes obstruction to the traffic moving on the highway and the accident if caused is due to the negligent act of the driver of vehicle, who had parked it on the road without taking the precaution to park it on a side and *kacha* portion of the road. He further submits that testimony of the claimants' witnesses is unrebutted. The driver and owner of the offending vehicle have not stepped into the witness box to rebut the testimony of Virender, injured and eyewitness or to give their own version regarding the accident. The driver and owner of the offending vehicle have denied the accident and did not pleaded that it was caused due to rash and negligent driving of the driver of Maruti car.

Insurance company in its reply has taken the plea that the accident was caused due to rash and negligent driving of deceased Vikas

himself, who struck the car into parked 'offending vehicle' in broad daylight. The above plea of the insurer stands corroborated from the testimony of Virender injured, who appeared in this case as PW2. In his examination-in-chief, he has stated that when he along with Vikas and his father Rajbir was going from Kurukshetra to Shahbad and reached near Moga Dhaba in the area of village Sanwla, District Kurukshetra at about 2.30 PM, the offending canter came from the wrong side and stopped on the road without giving any indicator or parking light. The Maruti car No.HR-51D-4141 struck against the offending stationary canter. In cross-examination, he has admitted that the canter was lying parked on wrong side of the road, facing towards Pipli side. The driver was sitting on the steering of the canter. He had not seen the canter coming from any side and witnessed it parked on the road. He has further admitted that it was broad daylight and there was complete Sun shine. Site plan of the place of occurrence Ex.P12 shows that canter was parked on the metalled portion of the road and car of deceased Vikas Kumar coming from the opposite side, hit the canter from the front side.

In the facts and circumstances proved on file, the question which call for consideration is as to whether there is element of negligence on the part of driver of Maruti car (deceased) or there was sole negligence on the part of driver of the offending vehicle (canter). So far as the negligence of driver of the offending vehicle is concerned, the same is visible. On a busy road, whenever a vehicle is to be parked or stopped, precautions are to be taken that on going traffic is not obstructed. The driver of the vehicle, who tries to halt at the busy road should take it on the

extreme left side of the road or on *kacha* portion as the situation demands. However, this fact is to be kept in mind that driver of offending vehicle had not halted all of a sudden but his vehicle was already on the road when accident took place. It was broad daylight and driver of the Maruti car could certainly see the offending vehicle from a distance and manage to take precaution by slowing down speed of his vehicle and to avoid the accident. The fact that he hit the standing vehicle shows that the driver of the Maruti car was also negligent. During broad daylight, this fact is insignificant whether the driver of the offending vehicle had put on parking lights etc. The tribunal has discarded the contention of insurance company on the ground that respondent No.1-driver of the offending vehicle has not stepped into the witness box and no specific plea regarding contributory negligence of the driver of Maruti car was raised in the reply by the owner of the offending vehicle. Though the owner of the offending vehicle had denied the accident, the insurance company in its reply, has taken specific plea as follows:-

“The accident, if any, though the same is denied, took place due to rash and negligent driving of the deceased himself who struck the car against the parked canter during the broad daylight.”

Even if the driver of the offending vehicle has not turned up, the factum of contributory negligence can be determined even from the evidence on record. In this case, the evidence is explicit and clear that driver of Maruti car could see the vehicle wrongly parked on the road from a distance and it was expected from him to slow down speed of his car and avoid the accident.

Taking all these facts into consideration, I feel no hesitation to hold that it was a case of contributory negligence which can be attributed to driver of the offending vehicle and driver of Maruti car in the ratio of 75:25 respectively. The finding of learned tribunal on the issue of rashness and negligence on the part of driver of offending vehicle is modified accordingly.

Learned counsel for the appellants (in FAO No.1730 of 2014 titled *Nirmala Devi and others Vs. Mahinder Singh and others*) has argued that the tribunal while assessing income of the deceased, has not taken into consideration chances of bright future of the deceased, who was student of 6th semester of Polytechnic College and would have got handsome salary after completion of his studies and rendered great financial help to the family. Deduction of 50% from his income has also been wrongly made by the tribunal as from this meagre income, the deceased would not have spent 50% of his income on himself, rather would help his family with his income. The tribunal could take deduction of 1/4th from his income towards personal expenses. The compensation awarded towards funeral expenses as ₹5000/- is also inadequate and no compensation was awarded towards loss of estate.

Learned counsel for the appellant (in FAO No.1731 of 2014 titled *Virender Kumar @ Virender Vs. Mahinder Singh and others*) has argued that claimant Virender has suffered serious injuries in the accident and remained admitted in the hospital from 08.09.2011 to 23.09.2011. He remained under acute pain and suffering and the compensation awarded by the tribunal for pain and suffering, special diet, transportation and attendant

charges is on lower side. No compensation was allowed towards loss of income. Due to fractures, appellant Virender remained on bed for six months and during this period, he was not in a position to move and lead his life like a common man. He had suffered 27% disability. The compensation of ₹40,000/- allowed on this score is also on lower side. No compensation was allowed by the tribunal for loss of future prospects of the injured, his marriage prospects and loss of amenities of life.

Learned counsel for the insurance company has argued that the deceased Vikas was 22 years of age at the time of accident and as per the observations in case of *National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009*, claimants are entitled to 40% addition in the income of the deceased towards future prospects, whereas on this score the tribunal has allowed addition of 50% in his income. He has further argued that the tribunal has awarded appropriate compensation to claimant Virender Kumar keeping in view the nature of his injuries, disability etc. which call for no further enhancement on any score.

The tribunal while assessing the income of deceased Vikas, has observed that the deceased was a student and after completion of his studies, he would have got a job or would have earned not less than ₹5000/- per month which a casual labourer may earn when the accident took place. Applying the above norms, the income of the deceased was taken as ₹5,000/- per month. The deceased was student of 6th semester in Polytechnic College and his income cannot be equated with the income of a casual labourer. Though the claimants have claimed that he was earning ₹7,000/- per month by tuition work, the tribunal had to see as to what an

expert person could earn after completing his studies. In the year 2011, a person having diploma from polytechnic could easily earn ₹7000/- per month after completing his studies by doing job or starting his own work. The income of the deceased which has been equated with a casual labourer is highly inadequate and as such, is reassessed as ₹7000/- per month. As per observations of Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others(supra)***, addition of 40% is to be made in the income of the deceased towards future prospects and the claimants are also entitled to compensation of ₹10,000/- each towards loss of estate and funeral expenses. As per observations of Hon'ble Apex Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121***, the tribunal has rightly made deduction of 50% of income of deceased towards his personal expenses.

In view of the above, compensation to which the claimants No.1 and 2 are entitled, is computed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹7000 per month
(ii)	Deduction of 1/2 towards personal expenses of the deceased	(₹7000-₹3500)= ₹3500 per month
(iii)	40% of above (ii) to be added as future prospects	(₹3500+₹1400)= ₹4900 per month
(iv)	Compensation after multiplier of 18 is applied	(₹4900X12X18)= ₹1058400
(v)	Loss of estate	₹10000
(vi)	Funeral expenses	₹10000
(vii)	Less 25% on account of contributory negligence on the part of deceased	₹1078400-₹269600 =₹808800/-
<i>Total</i>		₹8,08,800/-

In FAO Nos.1731 of 2014 and 639 of 2014, Injured-claimant

Virender while appearing as PW2 has stated that after the accident, he

received multiple injuries on various parts of body including fracture on his right femur, left arm, left elbow, ankles and feet. He was taken to LNJP Hospital, Kurukshetra from where he was referred to PGI, Chandigarh. However, he was shifted to Anand Hospital, Kurukshetra, where he remained admitted as indoor patient from 08.09.2011 to 23.09.2011. During this period he was operated and treated by the doctors and a rod was inserted in his leg. He spent a sum of ₹1,50,000/- on his treatment, transportation, special diet etc. Injuries suffered in accident have rendered him permanently disabled and unable to do routine work. He remained in bed for a long period and disability due to injuries in accident have badly affected his future and marriage prospects.

Dr. Himanshu Anand (PW3) of Anand Orthopaedic Centre, Kurukshetra described the injuries, treatment and expenses borne by Virender in his affidavit Ex.PW3/A as follows:-

- “1. That the patient Virender 29/M S/o Rajbir Singh R/o Debun (Kaithal) was admitted in my Hospital as a case of alleged road side accident on 08/09/2011.
2. That I informed local police by ruqqa on the same day.
3. Patient was earlier treated in LNJP, Kurukshetra and Medico legally examined at LNJP Kurukshetra and MLR was prepared at Kurukshetra.
4. That the patient was examined radiological and was found to have:
 - (A). Femur ®
 - (B). B/L Calcaneum
 - (C). #Medial Epicondyle (L) Elbow.
5. That the patient was operated on 08/09/2011 & 13/09/2011 with CR+I/L nailing and B/L POP & A/E slab.
6. That I charge a sum of rupees 34,000/- on account of treatment excluding that of medicines, anesthesia and implant.
7. That the patient was discharged on 23/09/011.”

PW3 has stated that claimant Virender suffered fracture of both

Calcaneum which means fracture of both heels. There was also fracture of left elbow and fracture of femur. He was operated twice and femur was fixed on 13.09.2011. Claimant Virender had suffered disability and was examined by Board of Doctors including PW4 Dr. Bimla Gouri, Senior Medical Officer, LNJP Hospital, Kurukshetra. The Board of Doctors issued disability certificate (Ex.P7) declaring the disability suffered by claimant Virender as 27%, which was not permanent. The disability assessed by the Board of Doctors was as follows:-

Sr. No.	Type of disability	Percentage
1.	Moderate restriction of movement of right knee joint with mild restriction of movement at right hip joint and muscle wasting right thigh.	15%
2.	Moderate restriction of movement of elbow joint .	7%
3.	Mild restriction of movement of elbow joint	5%

PW4 Dr. Bimla Gouri stated that this disability may reduce with the passage of time, physiotherapy or after removal of implant and disability **was not qua whole body**.

The tribunal has awarded compensation of ₹40,000/- for 27% disability and I am of the opinion that the same is adequate, keeping in view the nature of injury and disability suffered by the claimant. However, the tribunal has not allowed any compensation towards future medical expenses/physiotherapy and the expenses for removal of implant etc. Dr. Bimla Gouri has specifically stated that disability could be removed by physiotherapy, removal of implant etc. Even otherwise, a judicial note of the fact can be taken that a person, who suffered so many fractures requires continuous medical attention, physiotherapy, consultation of the doctor and he has also to be admitted while removing the rod fixed in the leg. On all

these counts, the claimant Virender is allowed another sum of ₹35,000/- as compensation.

On the issue of loss of income, the tribunal has observed that there is no evidence that claimant Virender has suffered any loss, as such, he is not entitled to any compensation on this account. Claimant has stated that he was doing tuition work and earning ₹7000/- per month. Even if, the plea of claimant that he was doing tuition work, is not believed, still his wages can be equated with a daily wager. A person, who has suffered so many fractures, has to remain in bed and could not be physically active at least for a period of 4 to 6 months.

Keeping in view the above facts, the income of claimant Virender is assessed as ₹4000/- per month and he is allowed loss of income for six months amounting to ₹24,000/-.

Learned counsel for claimant Virender has sought compensation for loss of future prospects. The disability suffered by claimant in this case is not permanent and there is no evidence that he has suffered loss on this score or the injuries have impacted his marriage prospects. However, on account of loss of amenities of life, he is allowed compensation of ₹25,000/-.

As a result of my above discussion, total amount of compensation to which claimant Virender is entitled, is computed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Hospital expenses	₹34000
(ii)	Medicines	₹32684
(iii)	Pain and suffering	₹15000

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(iv)	Special diet, Transportation and attendant charges	₹10000
(v)	Compensation for disability	₹40000
(vi)	Future medical expenses	₹35,000
(vii)	Loss of income	₹24000
(viii)	Loss of amenities of life	₹25000
<i>Total (after deducting 25% for contributory negligence of driver of Maruti Car.</i>		<i>₹2,15,684-53921=</i> <i>₹1,61,763/-</i>

As a sequel of my above discussion, appeal (FAO No.1730 of 2017) is dismissed while appeal of insurance company FAO No.506 of 2014 is allowed and award of the tribunal is modified to the extent the claimants No.1 and 2 Nirmala Devi and Shakti Singh are entitled to total compensation of ₹8,08,800/- for death of their son Vikas. This amount of compensation will carry interest as awarded by the tribunal. The amount of compensation shall be apportioned between claimants No.1 and 2 in equal shares.

FAO No.1731 of 2014 is allowed and amount of compensation awarded to claimant Virender Kumar @ Virender is enhanced from ₹1,07,000/- to ₹1,61,763/-. The claimant shall also be entitled to the interest on the compensation amount as allowed by the tribunal. Appeal filed by insurance company FAO No.639 of 2014 is dismissed.

Insurance Company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts.

January 24, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No