

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

Date of decision: 03.12.2018

FAO No.2071 of 2014 (O&M)

Surjeet Kaur and others

... Appellants

Versus

Ganga Shaya Meena and another

... Respondents

FAO No.3101 of 2014 (O&M)

National Insurance Company Ltd.

... Appellant

Versus

Surjeet Kaur and others

... Respondents

FAO No.3102 of 2014 (O&M)

National Insurance Company Ltd.

... Appellant

Versus

Surjeet Kaur and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Satbir Gill, Advocate
for the claimants.

Mr. Amrinder S. Sidhu, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2071, 3101 and 3102 of 2014 as these have emerged out of the same award dated 15.10.2013 passed by the Motor Accidents Claims Tribunal, Sirsa whereby compensation has

been assessed on account of death of Jarnail Singh son of Dharam Singh and injuries sustained by Surjeet Kaur, widow of Jarnail Singh in a motor vehicular accident that took place on 21.09.2011.

FAO No.2071 of 2014 has been filed by Surjeet Kaur and others for enhancement of compensation qua death of Jarnail Singh. FAO Nos.3101 and 3102 of 2014 have been filed by the National Insurance Company Ltd. (hereinafter to be referred as 'the insurance company') to assail the award.

Counsel for the insurance company would inform the Court that appeals have been preferred to assail findings of the Tribunal on issue No.1 pertaining to occurrence being the result of rash and negligent driving of offending vehicle by its driver namely Ganga Shaya Meena.

FAO Nos.3101 and 3102 of 2014

To assail findings of the Tribunal on issue No.1, it is argued that Manjinder Singh at whose behest criminal proceedings have been initiated for the occurrence in question, did not appear in the witness box to support case of the claimants. On the contrary, Manjinder Singh was examined in the criminal trial against driver of alleged offending vehicle but he failed to support cause of the prosecution, sufficient to show that a false case was registered against driver of offending vehicle.

Another submission made by counsel is that as accident took place in middle of the road, the present is a case of contributory negligence of both the vehicles involved in the occurrence and as such, claimants shall

not be entitle to entire compensation with regard to death of Jarnail Singh.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 with the submission that Surjeet Kaur, the injured claimant has proved the case that accident is the result of rash and negligent driving of maruti van used as an ambulance by its driver. It is further argued that on due investigation of FIR registered at the behest of Manjinder Singh, Ganga Shaya Meena was put to trial for causing the occurrence due to his rash and negligent driving. In addition, it is argued that there is no rebuttal to testimony of Surjeet Kaur as driver of offending vehicle did not appear in the witness box without any tangible explanation and an adverse inference is liable to be drawn against the respondents for his failure to examine himself.

I have heard counsel for the parties, perused the paper book and records.

The claimants, in para 24 of the application for compensation, have given details of occurrence dated 21.09.2011 attributing rash and negligent driving to offending vehicle driven by Ganga Shaya Meena. Surjeet Kaur, widow of Jarnail Singh and one of the injured in the occurrence appeared in the witness box and tendered into evidence her duly sworn affidavit Ex.PW1/A. She was cross examined by counsel for both the respondents separately before the Tribunal. She has empathetically denied that accident in question took place in middle of the road. Counsel for the insurance company has failed to point out any materials extracted from

cross examination of Surjeet Kaur in order to prove that Jarnail Singh can be attributed any role in the occurrence in order to accept his contention that the present is a case of contributory negligence of both the vehicles involved in the accident.

As has been rightly argued by counsel for the claimants, driver of offending vehicle withheld himself from the witness box without any explanation, therefore, an adverse inference is liable to be drawn against the respondents for non examination of driver of offending vehicle. Indisputably, on due investigation of the FIR lodged at the behest of Manjinder Singh, driver of the offending vehicle was put to trial. As Manjinder Singh is not one of the claimants and claimants have no mechanism or obligation in law to ensure that Manjinder Singh must support case of the prosecution in criminal proceedings, the insurance company cannot derive any advantage to its contention from the fact that Manjinder Singh did not support cause of the prosecution in criminal trial. In this view of the matter, I do not find an error much less perversity in findings of the Tribunal on issue No.1 and accordingly, the same are affirmed.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

FAO No.2071 of 2014

The Tribunal has awarded compensation of Rs.7,62,000/-,

detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Multiplier	13
3. Deduction for personal expenses	1/3 rd
4. Loss of consortium	Rs.1,00,000/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of estate	Rs.3000/-
7. Loss of love and affection	Rs.10,000/-

The Tribunal has assessed income of the deceased at Rs.6000/- per month. The claimants have placed on record copy of jamabandi to prove that the deceased was owner of agriculture land measuring 5 killa 1 kanal 1 marla. Taking a clue from minimum wage available at the relevant time coupled with land holding of the deceased along with the fact that land would be available to his family, there is no justification for enhancement of income of the deceased. Claimants shall be entitle to addition in income for future prospects @ 25%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,80,000/- [(6000 x 12 x 13) + (25% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.1,50,000/-, detailed hereunder:-

1. Loss of consortium to claimants No.1 to 3	Rs.1,20,000/- (Rs.40,000/- each)
2. Expenses on last rites	Rs.15,000/-
3. Loss to estate	Rs.15,000/-

Total compensation is Rs.9,30,000/- and the additional amount is Rs.1,68,000/- (9,30,000 - 7,62,000), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased, to be invested in fixed deposit for a period of three years.

The appeal is partly allowed in the aforesaid terms.

03.12.2018
ashok

(REKHA MITTAL)
JUDGE

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