

205(I)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. FAO No.3652 of 2013 (O&M)
Date of Decision: 30.11.2018

Savita and another

Appellants

Versus

Dharminder and others

Respondents

2. FAO No.10160 of 2014

Sonia Rani

Appellant

Versus

Dharminder and others

Respondents

3. FAO No. 2117 of 2013 (O&M)

The New India Assurance Company Ltd.

Appellant

Versus

Sonia Rani and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Parminder Singh, Advocate
for the appellants [in FAO No.3652 of 2013]
for respondents No.2 and 3 [in FAO No.2117 of 2013]
for proforma respondents [in FAO No.10160 of 2014]

Mr. Surender Dhull, Advocate
for the appellant [in FAO No.10160 of 2014]
for respondent No.1 [in FAO No.2117 of 2013].

Mr. Deepak Suri, Advocate
for the appellant-Insurance Company
[in FAO 2117 of 2013].
for respondent No.3-Insurance Company.
[in FAO No. 3652 of 2013 and FAO No.10160 of 2014].

AVNEESH JHINGAN, J (Oral):

Three appeals have been filed against award dated 15.02.2013 passed by Motor Accident Claims Tribunal, Karnal [hereinafter referred to as 'the Tribunal']. These appeals have been filed by (i) parents of Gaurav Nagpal (deceased); (ii) widow of the deceased and (iii) insurer of truck bearing registration No. HR-39A-8365 [hereinafter referred to as 'offending vehicle']. All the three appeals arise from the same award, hence, these are being disposed of by a common order.

The facts emanating from the record are that on 25.01.2011, Gaurav Nagpal alongwith his uncle Subhash Nagpal was going from Indri to Karnal on his motorcycle bearing registration No. HR-75-3392. The motorcycle was being driven by Gaurav Nagpal. When they reached near J.K. College, their motorcycle was struck by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants of the motorcycle fell down and sustained injuries, Gaurav Nagpal succumbed to the injuries suffered in the accident. FIR No.32, dated 25.01.2011 was registered at Police Station Sadar, Karnal.

A claim petition under Section 166 of the Act was filed by the widow and parents of the deceased. The Tribunal after considering the facts and appreciating the evidence adduced held that accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending

vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded ₹21,97,800/- alongwith interest @ 7% per annum. The said amount included ₹5,000/- for loss of consortium to the widow and ₹10,000/- for last rites and funeral expenses.

The deceased was working as Lecturer in M.M. Group of Institutions, Rambha, District Karnal. His salary was ₹16,010/- per month. The Tribunal made 1/3rd deduction for self expenses and applied multiplier of '17'.

Heard learned counsel for the parties, perused the paper book and relevant documents produced.

Learned counsel for the insurer contends that the Tribunal erred in holding that accident occurred due to rash and negligent driving of the offending vehicle. He further contends that accident was result of contributory negligence as is apparent from the site plan produced before the Tribunal as Mark 'A'.

Learned counsel(s) for the claimants rebut the contentions and argue that it was duly proved before the Tribunal that the accident occurred due to rash and negligent driving of the offending vehicle.

The contentions raised by learned counsel for the insurer lacks merit. The Tribunal while deciding the issue of rash and negligent driving has considered the report under Section 173 of Code of Criminal Procedure, 1973 (Ex.P4). In the said report, all the

details as to how accident took place was given. Moreover, there was an eye-witness to the accident, i.e., Subhash Nagpal, who was pillion rider on the motorcycle. His statement duly proved that accident occurred due to rash and negligent driving of the offending vehicle. Witness was duly cross-examined and insurer was not able to produce any witness or evidence to the contrary. The Site Plan cannot be relied upon to hold that there was contributory negligence. The Site Plan only depicts the place where the offending vehicle is ultimately found after the impact. It does not gives description as to how and where the offending vehicle collided. Reliance in this regard is placed on the decision of the Supreme Court in **Mangla Ram Vs. Oriental Insurance Co. Ltd. and others 2018 AIR (SC) 1900.** The Supreme Court held as under:-

“23. Be that as it may, the next question is whether the Tribunal was justified in concluding that the appellant was also negligent and had contributed equally, which finding (1991) 4 SCC 584 (1987) 3 SCC 234 rests only on the site map (Exh. 2) indicating the spot where the motorcycle was lying after the accident? We find substance in the criticism of the appellant that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time.

XX XX XX

However, the finding is that as per the site map, the motorcycle was found lying at

that spot. That cannot be the basis to assume that the appellant was driving the motorcycle on the wrong side of the road at the relevant time. Further, the respondents did not produce any contra evidence to indicate that the motorcycle was being driven on the wrong side of the road at the time when the offending vehicle dashed it. In this view of the matter, the finding of the Tribunal that the appellant contributed to the occurrence of the accident by driving the motorcycle on the wrong side of the road, is manifestly wrong and cannot be sustained.”

Learned counsel(s) for the claimants contend that the amount awarded by the Tribunal is on the lower side as no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer defends the award quantum of compensation but could not raise any serious objection with regard to awarding of future prospects and conventional heads.

The contentions raised by learned counsel(s) for the claimants deserve acceptance in view of decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.**

There is no dispute between the parties as to monthly income of the deceased and age of the deceased, the deceased was having a permanent job. Having due regard to the decision of the Supreme Court in **Pranay Sethi's** case (supra), 50% future

prospects are awarded. The claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the widow for loss of consortium.

There is no dispute regarding multiplier, therefore, multiplier of '17' is to be applied.

In view of above discussion, compensation is re-calculated as follows:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	16,010/-
50% Future Prospects	8,005/-
Sub Total	24,015/-
1/3 rd deduction for self expenses	8,005/-
Monthly Dependency	16,010/-
Annual Dependency	192120/-
Applying multiplier of 18	32,66,040/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to widow	40,000/-
Grand Total	33,36,040/-

The award dated 15.02.2013 is modified to the extent that amount awarded of ₹21,97,800 by the Tribunal is enhanced to ₹33,36,040/-.

The amount awarded for loss of consortium to widow shall be disbursed to her only and the balance amount shall be disbursed to the claimants in the same proportion as was held by the Tribunal.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the

claim petition till the realization of the amount.

The appeals filed by the claimants are partly allowed and
appeal of insurer is dismissed.

November 30, 2018

pankaj baweja

[AVNEESH JHINGAN]
JUDGE

1. Whether speaking/ reasoned

:

Yes/ No
2. Whether reportable

:

Yes/ No