

XOBJC-167-CII of 2018 in/and FAO No. 2805 of 2015,
XOBJC-169-CII of 2018 in/and FAO No. 2806 of 2015,
XOBJC-166-CII of 2018 in FAO No. 2808 of 2015 and
XOBJC-165-CII of 2018 in FAO No. 2807 of 2015

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

**XOBJC-167-CII of 2018 in/and
F.A.O. No.2805 of 2015(O&M)
Date of Decision: 19.12.2018**

Reliance General Insurance Company Limited

.....Appellant.

Versus

Asha and others

..... Respondents.

AND

**XOBJC-169-CII of 2018 in/and
F.A.O. No.2806 of 2015(O&M)**

Reliance General Insurance Company Limited

.....Appellant.

Versus

Asha and others

..... Respondents.

AND

**XOBJC-165-CII of 2018 in/and
F.A.O. No.2807 of 2015(O&M)**

Reliance General Insurance Company Limited

.....Appellant.

Versus

Rohit and others

..... Respondents.

AND

**XOBJC-166-CII of 2018 in/and
F.A.O. No.2808 of 2015(O&M)**

Reliance General Insurance Company Limited

.....Appellant.

Versus

Mohit and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.K.Bashamboo, Advocate
for the appellant(s).

Mr. S.P.Chahar Advocate
for applicant-respondent no.1-cross-objector.

Mr. Ajay Redhu, Advocate
for respondents no.2 and 3 (in FAO No. 2805, 08, 07 of 2015
and for respondents no. 5 and 6 in FAO No. 2806 of 2015).

LISA GILL, J.

This judgement shall dispose of FAO No. 2805 of 2015, FAO no. 2806 of 2015, FAO No. 2807 of 2015 and FAO No. 2808 of 2015 as all these appeals arise from the same accident which took place on 03.06.2012, decided by a common award dated 28.11.2014, passed by the learned Motor Accident Claims Tribunal, Rohtak (for short 'tribunal').

Cross-objections have been filed in all the appeals by the claimant-respondents seeking enhancement of compensation awarded to them by the learned tribunal Rohtak, vide a common award dated 28.11.2014.

Four claim petitions were filed under Sections 166 of the Motor Vehicles Act, before the learned tribunal, Rohtak. MACT No. 03 of 2012, titled as 'Asha and others Vs. Ved Parkash and others', claiming compensation on account of death of Sadhu Ram (same is the subject matter of FAO No. 2806 of 2015).

MACT No. 02 of 2012, titled as 'Asha Vs. Ved Parkash and others', seeking compensation on account of the injuries received by her in the motor vehicle accident (same is the subject matter of FAO No. 2805 of 2015).

MACT No. 04 of 2012, titled as 'Rohit Vs. Ved Parkash and others', seeking compensation on account of the injuries received by him in the motor vehicle accident (same is the subject matter of FAO No. 2807 of 2015).

MACT No. 01 of 2012, titled as 'Mohit Vs. Ved Parkash and others', seeking compensation on account of the injuries received by her in the motor vehicle accident (same is the subject matter of FAO No. 2808 of 2015. For the sake of convenience, facts are being extracted from FAO No. 2805 of 2015).

Brief facts which are common to all the appeals are that Sadhu Ram (deceased) was employee of Haryana Police and posted at Bhiwani as ASI. There was a function at his native village Lahli on 03.06.2012. Sadhu Ram along with his wife-Asha and two minor sons namely Rohit and Mohit, were going to attend the function on his car bearing registration no. HR-99-KL-Tempo-1927. Krishan Kumar, brother of Sadhu Ram (deceased) was accompanying them in his own car. He was coming behind them. When they reached near Sangam Tyres Service shop near College Mor, Kalanaur, a truck bearing registration no. HR-46-B-9420 was standing on the mettalled (pucca)road without any indicator or any stones or other material around the truck to indicate that it was parked and stationary on the road. Deceased tried to save himself and his family members. In this process, the car hit

against the back side of the truck which was lying parked in a dangerous and negligent manner without any indication. As a result thereof, Sadhu Ram, died at the spot. His wife Asha and minor sons Rohit and Mohit received injuries. Asha and minor sons were taken to Government Hospital, Kalanaur. Medico legal examination of the injured persons was conducted. Thereafter, Asha and Rohit were referred to Maharaja Aggarsain Hospital, Delhi and injured Mohit was referred to Action Medical Institute Pachhim Vihar, delhi for treatment. FIR No. 159 dated 03.06.2012, under Sections 283, 337, 338, 304-A IPC, was registered, in this respect.

Learned tribunal concluded that the accident in question took place due to the rash and negligent act of respondent no.1-Ved Parkash i.e. the driver of the offending truck inasmuch as the truck was parked negligently on the metalled road without any indicator etc. The accident, it was concluded occurred due to the rash and negligent parking of the vehicle on the road. Compensation awarded to the claimants is detailed as under:-

A total sum of ₹75,000/- was awarded as compensation in MACT No.02 of 2012, on account of the injuries received by Asha in the motor vehicle accident.

A sum of ₹41,000/- was awarded as compensation in MACT No. 04 of 2012, on account of the injuries received by Rohit in the motor vehicle accident.

₹1,15,000/- was awarded as compensation in MACT No. 04 of 2012, on account of the injuries received by Mohit in the motor vehicle accident.

Learned tribunal awarded ₹33,67,000/- as compensation in

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MACT No. 03 of 2012, on account of the death of Sadhu Ram in the motor vehicle accident.

Aggrieved therefrom all these appeals have been preferred by the appellant-Insurance Company.

No serious challenge has been raised to the quantum of compensation awarded by the learned tribunal except in the case of compensation awarded to the claimants on account of death of Sadhu Ram.

Learned counsel for the appellant-Insurance Company vehemently argues that the learned tribunal has grossly erred in concluding that the accident in question was caused due to the rash and negligent act of the driver of the offending truck. It is argued that the accident in question took place at noon on 03.06.2012. It is the driver of the car i.e. the deceased who was rash and negligent in not taking due care and caution in not avoiding the accident. It is the car driven by the deceased that struck against the truck from behind leading to the accident. Therefore, it was the deceased, who was guilty of rash and negligent act. It is further contended that it can be safely inferred that the deceased must have been driving his car at a very high speed and could not control the vehicle which led to the accident in which Sadhu Ram lost his life. Much stress has been led on the statement of PW-4-Asha (claimant) to the effect that deceased tried to save himself and his family members and during the said attempt, the car hit the back of the truck. Learned counsel for the appellant submits that if not wholly responsible for the accident, the deceased in any case is guilty of contributory negligence. Therefore, the Insurance Company cannot be held liable to pay the entire amount of compensation. Reliance is placed by

learned counsel for the appellant(s) on **Raj Rani Vs. Oriental Insurance**

Company Limited 2009(5) R.C.R (Civil) 232. It is further submitted that deceased Sadhu Ram was an employee of the State of Haryana working as ASI with the Haryana Police. Therefore, he was entitled to the benefits under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. Salary in question would be available to the widow/claimants till the date on which the deceased would have superannuated. Therefore, the learned tribunal, it is contended has erred in not deducting the said amount from the total amount of compensation. It is thus prayed that all these appeals be allowed and the Insurance Company be absolved of its liability to pay the entire amount of compensation.

Learned counsel for the respondents have refuted the abovesaid averments and pray for upholding the finding of the learned tribunal on this aspect. Learned counsel for the claimants has prayed for dismissal of all the appeals preferred by the insurance company and enhancement of the compensation awarded to the claimants thereby allowing the cross-objections filed by the claimants.

I have heard learned counsel for the parties and have perused the record with their able assistance.

As per evidence on record, an accident took place on 03.06.2012 involving the offending truck and the car driven by Sadhu Ram. FIR No. 159 dated 03.06.2012 (Ex.P-2), was registered on the statement of Krishan Kumar (brother of the deceased-Sadhu Ram). Krishan Kumar stated that on 03.06.2012, he was going to attend a family function at this native village Lahli along with his brother and brother's family comprising of his

brother's wife and two minor sons. Sadhu Ram was stated to be proceeding on his own car along with his wife and children. Krishan Kumar was following them in his own car. When they reached near Sangam Tyres Service Shop near College Mor, Kalanaur, truck bearing registration no. HR-46-B-9420 was standing on the metalled road without any indicator etc. Nothing had been placed around or behind the truck to indicate that it was stationary. The deceased despite best efforts could not prevent the collision. His car hit the truck from behind. The truck, it was stated was parked in an extremely dangerous manner, without any kind of indication. Sadhu Ram died on the spot. The claimants i.e. Asha and her minor sons received multiple injuries. They were immediately taken to Government Hospital, Kalanaur. Claimant-Rohit was referred to Maharaja Aggarsain Hospital, Delhi and Mohit was referred to Action Medical Institute Pachhim Vihar, Delhi. FIR No. 259 dated 03.06.2012, under Sections 283, 337, 338, 304-A IPC was immediately registered. Charge was framed against the driver on 17.11.2012 and he was facing criminal prosecution. It cannot be denied by learned counsel for the Insurance Company that the truck in question was indeed parked on the metalled road, without any kind of indicators. I do not find any merit in the argument raised on behalf of the Insurance Company to the effect that it was deceased who was rash and negligent in hitting the truck from behind and therefore, guilty of at-least contributory negligence, if not, entirely responsible for the accident. In the facts and circumstances of the case, learned tribunal has rightly held that the accident in question took place due to the rash and negligent act of the driver of the offending truck.

This so for the reason that there is clear and cogent evidence on

record to show that the truck in question was parked in a negligent manner on the metalled road without any kind of indication. The insurance company in-fact in its written statement before the learned tribunal has denied the accident in question. It has not taken the plea of the driver of the car (deceased) being guilty of any rash or negligent act. It has been held by the learned Supreme Court in **Archit Saini and another Vs. Oriental Insurance Company Limited and others 2018(5) R.C.R (Civil) 80**, that merely because a vehicle hits another vehicle from behind does not *per se* lead to an inference of contributory negligence on the part of the vehicle coming from behind. In the present case, though the accident took place in noon time, it is not possible to hold the deceased to be guilty of any negligence leading to the accident in question. It would indeed be a travesty of justice to accept such a plea for the reason that on one hand it is not in dispute that the offending truck was parked negligently on the metalled road without any kind of indication, but at the same time the insurance company is allowed to take the plea that it is the vehicle which was proceeding on the road in normal course which had to exercise due care and caution in avoiding such vehicles which may be parked negligently on the road. It is not the case of the respondents in the claim petition that the truck was stricken by a mechanical failure or due to some unavoidable circumstance it had to be left parked on the metalled road and due care and caution had been exercised by the driver of the truck to warn the commuters on the road of the presence of the stationary truck by placing proper indicators around the truck, at an appropriate distance to enable the travellers to take appropriate measures to avoid the accident. No such evidence is admittedly available on

Claimant-Asha Rani (PW-4) has specifically denied the suggestions put to her that the truck in question was standing parked on the unmetalled portion of the road or that the indicators was switched on with some bushes placed behind the truck. The appellant has failed to lead any evidence to indicate that the deceased was guilty of rash and negligent act leading to the accident in question. Therefore, learned tribunal has rightly concluded that the accident in question has been caused due to rash and negligent act of the driver of the offending truck.

There is however merit in the argument raised by learned counsel for the appellants in respect to the amount of compensation received by the claimants under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (hereinafter referred to as the Haryana Compassionate Assistance Rules), to be deducted from the total amount of compensation awarded to them. It has been held by the Hon'ble Supreme Court in **Reliance General Insurance Company Limited Vs. Shashi Sharma and Ors., 2016(4) R.C.R (Civil) 569** that the amount received or receivable by the dependants of the deceased-government employee under the Haryana Compassionate Assistance Rules has to be deducted.

Moreover, compensation awarded to the claimants has to be reworked in terms of the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009** and **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. Learned tribunal has awarded a total sum of ₹33,67,000/- as compensation to the claimants on account of death of Sadhu Ram. Salary of the deceased as per the salary certificate (Ex.P-1) is ₹22,800/-. After deducting income tax, the same is ₹22,500/-. Future prospects at the rate of 30% have been correctly afforded by the learned tribunal. Multiplier of 14 and deduction of 1/ 3rd has been correctly applied by the learned tribunal. A sum of ₹15,000/- each instead of ₹25,000/- is awarded on account of funeral expenses and loss of estate to the claimants. A sum of ₹50,000/- on account of loss of consortium and ₹1 lakh for love and affection of the minor children, is maintained. In terms of the judgement of Hon'ble Supreme Court in Magma General Insurance Company's case (Supra), all the claimants are further entitled to a total sum of ₹1,60,000/- for loss of consortium (spousal, parental and filial).

Compensation towards the claimants on account of death of Sadhu Ram in FAO No. 2806 of 2015, is thus re-worked as under:-

1.	Total income of deceased	₹22,800/- p.m.
2.	Actual salary after deducting tax	₹22,500/- p.m.
2.	Deduction of 1/ 3 rd on account of personal expenses	₹22,500/- (₹22,500*1/3=₹7500/-) = ₹15,000/-
3.	Total income after addition of future prospects at the rate of 30%	₹15,000/- (₹15000+ ₹4500/-) i.e. ₹19,500/-
4.	Annual dependency after applying multiplier of 14	₹19,500/- x 12 x 14= ₹32,76,000/-
5.	Spousal consortium	₹40,000/-
6.	Funeral expenses	₹15,000/-
7.	Loss of estate	₹15,000/-

8.	Filial consortium to claimant no.4 i.e. mother of the deceased	₹40,000/-
9.	Parental consortium to claimants no.2 and 3 i.e. children of the deceased @ ₹40,000/-each	₹80,000/-
	Total Compensation =	₹34,66,000/-

Learned counsel for the claimants-respondents/cross-objectors submit that a sum of ₹32,40,000/- has been received under the Haryana Compassionate Assistance Rules. Date of birth of Sadhu Ram (deceased) was 08.02.1968. He would have retired in the year 2026. Therefore, a sum of ₹32,40,000/- received by the claimants under the said Rules has to be deducted. Thus, the claimants are entitled to a total sum of ₹2,26,000/- on account of death of Sadhu Ram.

Claimants in FAO No. 2806 of 2015 shall be entitled to interest on the abovesaid 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 stand deducted.

Apportionment of amount of compensation amongst claimants in FAO No. 2806 of 2015 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.

FAO No. 2805 of 2015.

Claimant-Asha suffered a head injury with border line intelluctual functioning in the accident in question, leading to 25%

permanent disability. As per disability certificate (Ex.P-3), claimant-Asha is proved to be suffering from a permanent disability of 25%. PW-3-Dr. Sukhbir Singh, Deputy Medical Superintendent, PGIMS, Rohtak, has proved the said disability certificate. It is a matter of record that Asha remained hospitalised from 03.06.2012 to 02.07.2012. Discharge summary of Asha though not exhibited, is available on record as Mark-E. It is mentioned that the patient was brought to Maharaja Aggarsain Hospital, Delhi, with a history of a road accident on 03.06.2012 in an unconscious condition.

Claimant-Asha aged 35 years was admittedly a housewife. The accident in question took place on 03.06.2012. Services rendered by a house-wife cannot be equated with that of a daily wager. This Court in FAO No.3395 of 2015 has assessed the notional income of a housewife to be ₹7,000/- per month in respect to an accident which took place in the year 2011. In the present facts and circumstances, it is considered appropriate to assess the notional income of the deceased to be ₹7,000/- per month.

Compensation to the appellant-Asha is thus required to be assessed in view of the judgement of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. It is held that the functional disability of the appellant cannot be less than 10% and is so assessed. Therefore, loss of income is $7000 \times 10/100$ i.e., ₹700/- per month.

While affording an increase of 40% in the income of the appellant on account of loss of future income, the amount comes to [(700 +

(700 x 40%)] = ₹980/- per month i.e., ₹11,760/- per annum. Age of the injured/appellant was 35 years as on the date of the accident, therefore, multiplier of 16 is to be applied in terms of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77**. Loss of earning is, thus, assessed as ₹1,88,160/- [11,760 x 16].

Claimant-Asha is further entitled to a sum of ₹50,000/- for pain and suffering, besides a sum of ₹10,000/- each on account of special diet and attendant charges instead of a consolidated sum under both the heads. Claimant is also entitled to a sum of ₹25,000/- for loss of amenities.

Compensation towards the claimant-Asha on account of the injuries received by her is thus re-worked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of earnings	₹1,88,160/-
2.	Pain and sufferings	₹50,000
3.	Loss of amenities	₹25,000
4.	Special diet	₹10,000
5.	Attendant charges	₹10,000
Grand Total		₹2,83,160/-

Amount already awarded by the Tribunal to the appellant/claimant, needless to say shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

As per disability certificate (Ex.P-4), claimant-Rohit, suffered 8% disability of the limb. It is mentioned that claimant-Rohit was suffering from surgical scar mark with mal-union in functional position of left distal radius with scar over right eyebrow. As per the discharge summary of Rohit (Mark-D), he was admitted in hospital with 'blunt trauma, abdomen with liver contusion with mild hemoperitoneum fracture distal end radius and ulna'.

The amount of ₹16,000/- awarded by the learned tribunal on account of disability is maintained. Claimant is however entitled to a sum of ₹25,000/- for pain and suffering (instead of ₹15,000/-) as well as a sum of ₹25,000/- on account of loss of marriage prospects, as it is clear that he has suffered a scar on his face. ₹10,000/- for special diet and attendant charges, it maintained. Thus, claimant-Rohit, is entitled to a total sum of ₹76,000/- on account of the injuries received by him in the motor vehicle accident.

Claimant 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 claimant shall stand deducted.

FAO No. 2808 of 2018.

As per disability certificate (Ex.P-5), claimant-Mohit suffered permanent disability to the extent of 45%. It is stated in disability certificate Ex.P-5 that Mohit suffered from 'clawing of left hand decrease sensory/motor functions with poor hand functional with surgical scar mark

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left elbow with terminal restriction of JT with head injury with I.Q. 92 with (deformity left hand) scar face, chest'. Claimant-Mohit remained admitted in hospital from 03.06.2012 to 15.06.2012. He was 15 years old at the time of the accident. A perusal of the record reveals that the claimant-Mohit is indeed visited by functional disability which he would have to bear for the rest of his life. Thus, notional income of the claimant-Mohit is assessed as ₹50,000/- per annum.

Compensation to the appellant-Mohit is thus required to be assessed in view of the judgement of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Keeping in view the evidence on record, functional disability of the claimant-Mohit is assessed as 20%. Therefore, loss of income is ₹50,000 x 20/100 i.e., ₹10,000/- per annum.

While affording an increase of 40% in the income of the appellant on account of loss of future income, the amount comes to $[(10,000/- + (10,000 \times 40\%)] = ₹14,000/-$ per annum. Age of the injured/claimant-Mohit was 15 years as on the date of the accident, therefore, multiplier of 18 is to be applied in terms of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77**. Loss of earnings is, thus, assessed as ₹2,52,000/- $[14,000 \times 18]$.

Claimant-Mohit is further entitled to a sum of ₹50,000/- for pain and suffering, besides a sum of ₹25,000/- for loss of amenities and ₹50,000/- for loss of marriage prospects. ₹5000/- is awarded on account of

transportation charges. ₹10,000/- i.e. ₹5000/- each awarded by the learned tribunal on account of special diet and attendant charges is maintained. Claimant is also entitled to a sum of ₹25,000/- for loss of amenities.

Compensation towards the claimant-Mohit on account of the injuries received by him is thus re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of earnings	₹2,52,000/-
2.	Pain and suffering	₹50,000/-
3.	Loss of marriage prospects	₹50,000/-
4.	Loss of amenities	₹25,000/-
5.	Transportation charges	₹5000/-
6.	Special diet and attendant charges	₹10,000/-
	Grand Total	₹3,92,000/-

Amount already awarded by the Tribunal to claimant-Mohit shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

Consequently, FAO Nos. 2805, 2807 and 2808 of 2015, are dismissed with no orders as to cost and FAO No. 2806 of 2015, is partly allowed.

Cross-objections filed by the respondent-cross-objectors, in FAO No. 2806 of 2015, FAO Nos. 2805, 2807 and 2808 of 2015, are disposed of.

19.12.2018
s.khan

[LISA GILL]
Judge

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