

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

FAO No. 379 of 2015 (O&M)

Date of decision : November 20, 2018

Santosh Rani and others

.....Appellants

Versus

Baljit Singh and others

....Respondents

FAO No. 43 of 2017

Baljit Singh

.....Appellant

Versus

Santosh Rani and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Saravpreet S. Gurna, Advocate for
Mr. G.S. Gurna, Advocate
for the appellants.(in FAO-379-2015)

Mr. Ashok Giri, Advocate
for respondent No. 1(in FAO-379-2015)
for the appellant (in FAO-43-2017)

Mr. R.N. Singal, Advocate
for respondent No. 2 (in FAO-379-2015)
for respondent No. 4 (in FAO-43-2017)

LISA GILL, J.

This order shall dispose of FAO No. 379 of 2015 (Santosh Rani and others versus Baljit Singh and others) and FAO No. 43 of 2017 (Baljit Singh versus Santosh Rani and others)

FAO-43-2017 has been filed by the driver/owner of the offending vehicle challenging recovery rights afforded to the insurance company.

FAO-379-2015 has been preferred by the claimants for enhancement of the compensation awarded to the claimants by the learned

Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the 'Tribunal') on account of death of Surinder Pal vide award dated 07.09.2012.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, son and mother of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Surinder Pal on 23.11.2009 in a motor vehicle accident caused due to driving of the offending vehicle Maruti car bearing registration No. PB-23C-0636 by respondent No.1 in a rash and negligent manner. It was averred that Jagdev Raj was coming back on his motorcycle from Ropar on 23.11.2009. At about 6/6.30 p.m. after crossing PSEB Grid on village Chaurwala, he saw that Surinder Pal was standing on the backside of the trolley towards its right tyre and after getting the air pressure of the tyres of tractor/trolley checked, he was standing on the left (correct) side of the road. In the meantime, the offending Maruti car came from Patiala side and struck against Surinder Pal. As a result thereof, he fell on the road and received multiple grievous injuries on head and succumbed to his injuries at the spot. The deceased, aged 37 years at the time of the accident was stated to be earning a sum of ₹10,000/- per month while working as a driver with Tirath Singh, Timber Merchant, Safabadi Gate, Patiala.

It is noticed at this stage that respondent No. 1 – driver of the offending vehicle was proceeded against exparte. It was concluded by the learned Tribunal that as the driving licence was not brought on record, the insurance company was liable to pay the compensation amount to the claimants and seek recovery of the same from respondent No. 1 – driver-cum-owner of the offending vehicle.

Application under Order 41 Rule 27 CPC in FAO-43-2017 was filed by the driver-cum-owner of the offending vehicle for producing and proving the driving licence. Learned counsel for insurance company submits that licence so put forth by the appellant was sent for verification. As per report dated 01.08.2018 submitted by the Er. Ankit Bharat, Surveyor and Loss Assessor, the driving licence furnished by the appellant attached as Ex.A1 with the application, is found to be correct and genuine after verification from the Licensing Authority, Fatehgarh Sahib.

Learned counsel for the insurance company in this view of the matter fairly states that the appeal in question doubtlessly has to be allowed. Photocopy of the driving licence sent for verification, request from the Surveyor addressed to the Licensing Authority, Fatehgarh Sahib as well as report of even date by Er. Ankit Bharat, Surveyor and Loss Assessor, furnished in Court today are taken on record subject to just exceptions.

It is further brought to my notice by learned counsel for Baljit Singh – driver of the offending vehicle, that a sum of ₹4,50,000/- stands deposited before the Executing Court on 23.01.2018. The said amount has been released to the insurance company.

Keeping in view the specific stand of the insurance company wherein the driving licence Ex.A1 has been admitted to be genuine, this appeal is allowed. Needless to say sum of ₹4,50,000/- deposited with the Executing Court shall be refunded to the appellant – Baljit Singh within four weeks of the receipt of certified copy of the decision. In case of delay beyond four weeks, the appellant shall be entitled to interest @ 7.5% per annum for the period of delay till realisation.

FAO No. 379 of 2015 (O&M)

Learned Tribunal on consideration of the facts and evidence on

record held that the accident in question took place on 23.11.2009 due to rash and negligent driving of the offending Maruti car bearing registration No. PB-23C-0636 by respondent No. 1. Learned Tribunal awarded a sum of ₹4,86,000/- with interest at the rate of 7% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹4000/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 15 was applied as the deceased was 38 years old at that time. Additionally, a sum of ₹10,000/- on account of loss of consortium was awarded.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that learned Tribunal has wrongly assessed the income of the deceased as ₹4,000/- per month as the deceased was working as a driver and earning ₹10,000/- per month. It is further submitted that in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increment on account of future prospects at the rate of 40% should be afforded. It is submitted that though multiplier of 15 has been correctly applied, compensation under the conventional heads is meagre. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed, thus, impugned award dated

07.09.2012 be upheld.

Heard learned counsel for the parties.

There is no dispute that Surinder Pal lost his life in a motor vehicle accident, which took place on 23.11.2009 caused due to the rash and negligent driving of Maruti car bearing registration No. PB-23C-0636 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality. It is also not disputed that the deceased was 38 years old at the time of the accident.

Learned counsel for the appellants is unable to point out any evidence on record to indicate the deceased to be earning more than ₹4,000/- per month as assessed by the learned Tribunal. Therefore, income of the deceased as ₹4,000/- per month as assessed by the learned Tribunal is upheld. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 40% (₹1600/-) has to be afforded as the deceased was 38 years old at the time of accident, which takes the income of the deceased to ₹5600/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77, deduction of 1/3rd is to be applied as it is admitted by appellant No. 1 herself that parents of the deceased were not dependent upon him and were being looked after by their other sons, thereby rendering income of the deceased to be ₹3733/-(5600-1867). Applying a multiplier of 15, dependancy of the claimants is, therefore, assessed as ₹6,71,940/- (₹3733x12x15). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium.

In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018), appellant No. 2 i.e. son of the deceased are entitled to ₹40,000/- on account of loss of parental consortium and appellant No. 3 i.e. mother of the deceased to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹8,21,940/- detailed as under:-

Loss of dependency (₹3733x12x15)	₹6,71,940/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹8,21,940/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants 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.

With the abovesaid modification in the amount of compensation, FAO-379-2015 is disposed of. FAO-43-2017 filed by the driver/owner is allowed.

November 20, 2018

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No