IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) FAO No.716 of 2014 (O&M)
Decided on:-May 04, 2018.

New India Assurance Company Limited.

………Appellant.

Versus

Geeta Kumari and others

………Respondents.

(2) FAO No.717 of 2014 (O&M)

New India Assurance Company Limited.

………Appellant.

Versus

Nidhi Bansal and others

………Respondents.

(3) FAO No.718 of 2014 (O&M)

New India Assurance Company Limited.

………Appellant.

Versus

Suman Verma and others

………Respondents.

(4) FAO No.8626 of 2014 (O&M)

Nidhi Bansal and others

………Appellants.

Versus

Salaudeen and others

………Respondents.

(5) FAO No.8643 of 2014 (O&M)

Geeta Kumari and others

………Appellants.

Versus

Salaudeen and others

………Respondents.

CORAM: ***HON'BLE MR. JUSTICE HARI PAL VERMA.***

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Present:- Mr. Ashwani Talwar, Advocate and
Mr. Lalit Kumar and Ms. Priya Deep, Advocates
for the appellant-insurance company in
FAO Nos.716, 717 and 718 of 2014.

Mr. Ravindra Jain, Advocate
for the appellant-claimants in
FAO Nos.8626 and 8643 of 2014 and
for respondents-claimants in
FAO Nos.716 and 717 of 2014.

Mr. V.B. Aggarwal, Advocate
for respondents No.5 and 6 in
FAO Nos.716 and 717 of 2014;
for respondents No.6 and 7 in
FAO No.718 of 2014; and
for respondents No.1 and 2 in
FAO Nos.8626 and 888643 of 2014.

Mr. Inderjit Sharma, Advocate
for respondents-claimants No.1 to 5 in
FAO No.718 of 2014.

Mr. Subhash Goyal, Advocate
for respondent No.12 in
FAO No.718 of 2014.

HARI PAL VERMA, J.

This order shall dispose of the aforementioned five appeals as the same have arisen out of the same accident and against the common award dated 07.05.2013 passed by learned Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as the Tribunal), whereby in three claim petitions bearing ***MACT No.12 of 2008/2013*** titled as ***Geeta Kumari and others Versus Salaudeen and others; MACT No.13 of 2008/2013*** titled as ***Nidhi Bansal and others Versus Salaudeen and others*** and ***MACT No.14 of 2008/2013*** titled as ***Suman Verma and others Versus Salaudeen and others*** filed under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), the Tribunal awarded compensation of Rs.30,58,512/- to claimants Geeta Kumari and others on account of death of Sunil Kumar, compensation of Rs.34,62,304/- to claimants Nidhi Bansal and others on account of death of Kamal Bansal and compensation of Rs.63,01,520/- to claimants Suman Verma and others on account of death of Rakesh Verma in a motor vehicular accident, which took place on 24.07.2008.

Whereas appeals bearing FAO Nos.716, 717 and 718 of 2014 have been filed by the New India Assurance Company Limited seeking reduction of the amount of compensation, the remaining two appeals bearing FAO Nos.8626 and 8643 of 2014 have been filed by the claimants seeking enhancement of the amount of compensation awarded by the Tribunal vide impugned award dated 07.05.2013.

However, for convenience and clarity, the detailed order is being passed in ***FAO No.716 of 2014*** titled as ***New India Assurance Company Limited Versus Geeta Kumari and others***.

CM-2295-CII-2014

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 32 days in filing the present appeal.

For the reasons stated in the application the same is allowed and the delay of 32 days in filing the instant appeal is condoned.

FAO No.716 of 2014

Briefly stated, on 24.07.2008, deceased Sunil Kumar along with his friends Rakesh Verma and Kamal Bansal was travelling in an Indigo car bearing registration No.HR-02S-2586 (hereinafter mentioned as the car) from Chandigarh to Jagadhri. The car was being driven by Sunil Kumar on correct and left side of the road. However, on the way and near the Sher-e-Punjab Dhaba situated in the area of village Janetpur, Tehsil Dera Bassi, District Patiala, the offending truck bearing registration No.HR-37B-9567 (hereinafter mentioned as the truck) was lying parked on the road without switching on its rear lights or parking lights. No such indication was given as regard the manner in which it was parked. It being around 11.15 P.M., the driver of the car could not see the parked truck and could notice it only after reaching near it. The driver of the car tried his level best to avoid the accident, but the car still struck against the truck. The occupants of the car, namely, Sunil Kumar, Rakesh Verma and Kamal Bansal sustained grievous injuries and died at the spot.

Amit Bindal and Amrinder Singh, both residents of Dera Bassi had witnessed the accident, as they were travelling in a separate car bearing registration No.PB-70-0027, a little behind the ill-fated car. Noticing the accident, the matter was reported to the police and on the basis of statement of Amit Bindal, FIR No.96 dated 25.07.2008 under Sections 283 and 304-A IPC was registered against the driver of the truck.

The driver and owner of the truck while filing their written statement had refuted the claimants' version of accident and, rather, pleaded that the car which came from behind, was being driven in a rash and negligent manner and at the speed of 110-120 KMs per hour. After overtaking an Innova car bearing registration No.HR-37B-6820 from the wrong side, it struck against the rear portion of the truck which at that time was moving at a slow speed on correct left side near the berm of the road as there was moving a tractor-trolley ahead of the truck at the time of accident. It was pleaded that the owner and driver of the truck are not liable to pay the amount of compensation. Alternatively, it was pleaded that the truck was insured and, therefore, in the event of any liability to be fastened upon the driver and owner of the truck, the insurance company should be held liable to pay the awarded compensation.

The insurance company (appellant herein) in its written statement, though had admitted the factum of insurance of the truck, but pleaded that no accident had taken place with the truck and the accident was a result of gross negligence of the driver of the car.

On the crucial issue No.1 as to whether the accident was caused by respondent-driver of the truck, the Trubunal has held that the accident had occurred on account of rash and negligent parking of the truck by its driver leading to death of Sunil Kumar, Rakesh Verma and Kamal Bansal in the accident.

Mr. Ashwani Talwar, Advocate along with Mr. Lalit Kumar, Advocate for the appellant-insurance company has argued that as per the statement of Amit Bindal (PW1), the accident occurred at 11.15 A.M. Thus even if the truck was parked in the middle of the road, it was visible. This witness is an eye-witness of the accident. The Tribunal has decided the case against the appellant-insurance company being an insurer of the stationary truck only on the basis of statement of Amit Bindal (PW1), who is the author of the FIR while ignoring all other documentary evidence i.e. photographs Ex.R2 to Ex.R37. The Tribunal has not discussed the way and the manner in which the accident had occurred and has committed an error while coming to the conclusion that Amit Bindal (PW1) is an independent witness though Suman Verma (PW2), who is one of the claimants, has admitted in her cross-examination that Amit Bindal is their family friend and she knows her for the last about five years, but his friendship with her husband was prior to this accident.

It has further been argued that the truck was not on the middle of the road, rather on the corner of the road. Therefore, it is the case of the appellant that in this very situation, the legal maxim i.e. "man may lie, but the documents would not" is completely attracted regarding factum of rash and negligent driving of the car. From the photographs so attached with the record, it is evident that the truck was lying parked on the correct side of road and it is the car which hit the stationary truck. Therefore, negligence is on the part of the car driver. The impact of collision was so high that the entire portion of the car was badly damaged, resultantly, all the passengers travelling in the car died at the spot. Thus, it led to a conclusion that the driver of the car was more negligent than the driver of the stationary truck. It is not the case of the claimants that the car hit against the stationary truck due to reflection of the headlights of the vehicles coming from the opposite side. Therefore, the driver of the car himself was responsible for causing the accident and that too when the car was being driven at such a high speed. The driver of the car could not control his vehicle, which led to causing the accident.

He has further contended that the present is a fit case, where it can be held that the driver of the car in which the deceased were travelling was guilty of contributory negligence. The manner in which the car was badly damaged leads to an inference that the car was being driven at a very high speed i.e. 110-120 KMs per hour.

On the other hand, learned counsel for the respondent-claimants have argued that the Tribunal has rightly held that the accident had occurred due to wrong and negligent parking of the truck by its driver. For committing such negligence, a case bearing FIR No.96 dated 25.07.2008 under Sections 283 and 304-A IPC was also registered against the driver of the truck. Therefore, the question of contributory negligence on the part of car driver does not arise at all.

I have heard learned counsel for the parties.

The argument raised by learned counsel for the appellant-insurance company that the accident was caused in the morning hours i.e. 11.15 or 11.30 A.M. deserves outright rejection. From the perusal of the claim petitions filed by the claimants as well as in the evidence i.e. in the examination-in-chief of Amit Bindal (PW1), it is evident that the accident had occurred at about 11.15 P.M. (in the night). The insurance company has not controverted the averments made in the claim petitions, wherein it has been specifically pleaded that the accident had occurred at about 11.25 P.M. Even in the FIR, which was registered at the behest of Amit Bindal (PW1), it is clear that the accident was caused during the night time.

Similarly, there is no force in the argument of learned counsel for the appellant-insurance company that the truck was not on the middle of the road, rather on the corner of the road, as the photographs so attached with the claim petition nowhere reflects that the truck was parked on the corner of the road. Amit Bindal (PW1), who is an eye-witness of the accident, had specifically stated that the truck was wrongly parked and there was no indication through the rear lights or any indicator. The driver of the car still tried to control the same, but the car struck against the static truck. As regards the speed of the car in which the deceased were travelling, learned counsel for the insurance company has tried to justify that the speed of the car in which the deceased were travelling was around 110-120 KMs per hour solely on the premises that there was enough damage to the car in which the deceased were travelling and after striking with the truck, it turned back. Thus the appellant insurance company has failed to adduce any evidence on record that the car was at such a high speed.

So far as the plea of learned counsel for the appellant-insurance company regarding contributory negligence on the part of driver of the car is concerned, record reveals that regarding the accident in question, FIR No.96 dated 25.07.2008 under Sections 283 and 304-A IPC was also registered against the driver of the truck. There is no evidence available on record that the driver of the truck had made any representation to the authorities alleging false implication or contributory negligence in the case. Thus, in the absence of any evidence that there was any contributory negligence on the part of the driver of the car, the plea of the appellant-insurance company cannot be accepted.

Therefore, this Court does not find any reason to differ with the findings recorded by the Tribunal that the accident had occurred due to sole rash and negligent parking of the truck by respondent-driver leading to the death of Sunil Kumar, Kamal Bansal and Rakesh Verma.

So far as quantum of compensation awarded by the Tribunal to the claimants Nidhi Bansal and others in ***FAO No.8626 of 2014*** and the claimants Geeta Kumari and others in ***FAO No.8643 of 2014*** is concerned, learned counsel for the appellant-claimants has argued that as held by Hon'ble Apex Court in ***National Insurance Company Limited Versus Pranay Sethi and others 2017(4) RCR (Civil) 1009***, the claimants are also entitled to 40% increase towards future prospects. Similarly, as against the admissible claim of Rs.70,000/- towards conventional heads, the Tribunal has awarded compensation of Rs.20,000/- only, which also needs to be increased.

On the other hand, learned counsel for the insurance company has argued that the Tribunal has already awarded adequate compensation to the claimants and there is no scope of further enhancement.

This Court finds that the income of deceased Kamal Bansal is based on his income tax return. The claimants have pleaded that deceased was employed as Manager in the factory known as Mohit Plywood. He was also receiving salary as well as commission, based on the income of the factory. Ravi Kumar (PW9) who was maintaining the accounts of the deceased has deposed that he was maintaining the accounts of deceased Kamal Bansal and filed his income tax return through a chartered accountant. As per the said return for the financial year 2007-08 (from 01.04.2007 to 31.03.2008), the gross income of the deceased was Rs.3,43,973/- per annum. PW10 Mohd. Saleem, who is an official of the Income Tax Department has also proved the income tax return Ex.P14 filed with the department. Ravi Kumar (PW9), was thoroughly cross-examined, but the respondents could not point out anything from the cross-examination of this witness to impeach the genuineness of the income of deceased, as reflected in Ex.P14. Thus, it has been proved on record that the income of deceased Kamal Bansal was Rs.3,43,973/- per annum.

Therefore, having recourse to the law laid down by Hon'ble Supreme Court in ***Pranay Sethi and others' case (supra)***, this Court finds that an addition of 40% is required to be granted to the claimants towards future prospects. Similarly, as against the conventional heads, the Tribunal has awarded Rs.20,000/- i.e. Rs.10,000/- for loss of consortium, Rs.5,000/- for loss of estate and Rs.5,000/- towards funeral expenses. But in the light of the judgment passed by the Apex Court in ***Pranay Sethi and others' case (supra)***, a total sum of Rs.70,000/- is admissible to the claimants under conventional heads. However, there is no dispute regarding applicability of multiplier of '16' and 1/4th deduction towards personal expenses of the deceased.

Therefore, this Court finds that the impugned award passed by the Tribunal needs modification and the amount of compensation awarded by the Tribunal to the claimants Nidhi Bansal and others is re-assessed in the following tabulated form:

Gross annual income of deceased Kamal Bansal.		Rs.3,43,973/-
Future Prospects	(40% of 343973)	Rs.1,37,589/-
Total income	(343973+137589)	Rs.4,81,562/-
Income Tax.		Rs.45,358/-
Total income after tax deduction	(481562 – 45358)	Rs.4,36,204/-
Deduction towards personal expenses of deceased.	(1/4 of annual income)	Rs.1,09,051/-
Annual dependency of the claimants.	(436204 – 109051)	Rs.3,27,153/-

Multiplier.	(as per age of the deceased)	'16'
Total loss of dependency.	(327153 x 16)	Rs.52,34,448/-
Conventional heads.	Loss of estate	Rs.15,000/-
	Funeral expenses	Rs.15,000/-
	Loss of consortium	Rs.40,000/-
Total amount of compensation.	(5234448+15000+15000 + 40000)	Rs.53,04,448/-
Amount already awarded by the Tribunal.		Rs.34,62,304/-
Enhancement.	(5304448 – 3462304)	Rs.18,42,144/-

Therefore, the appellant-claimants Nidhi Bansal and others in ***FAO No.8626 of 2014*** are entitled to total compensation of Rs.53,04,448/- (Rupees fifty three lakhs, four thousand, four hundred and forty eight) along with interest @ 7.5% from the date of filing of the petition till its realisation except for the period by which the appeal is delayed on account of filing/re-filing of the same. Thus instead of compensation of Rs.34,62,304/-, the claimants are held entitled to Rs.53,04, 448/-.

So far as the appeal filed by claimants Geeta Kumari and others i.e. ***FAO No.8643 of 2014*** is concerned, perusal of the record shows that claimant Geeta Kumari (PW4) has deposed that her husband i.e. deceased Sunil Kumar was about 24-25 years of age and was a businessman owning two firms, namely, New Tech Traders and New Tech Services. Besides this, he used to supply cutting instruments to the plywood factories. He was earning Rs.2,97,000/- per annum. The claimants have further examined

Virender Partap (PW5), a chartered accountant, who stated that he was maintaining the accounts of the aforesaid two firms of deceased Sunil Kumar since the last about 3-4 years and had filed income tax return reflecting income of the deceased as Rs.2,97,049/- for the assessment year 2008-09. Similarly, Amit Kumar Jain (PW11), who was an official of the Income Tax Department, has stated that the income of deceased Sunil Kumar in the return for the assessment year 2008-09 (financial year 2007-08) was mentioned as Rs.2,97,049/-. He also proved the income tax return for the aforesaid period as Ex.P43. Thus, it has been proved on record that the income of deceased Sunil Kumar was Rs.2,97,049/- per annum for the financial year 2007-08 (assessment year 2008-09).

Therefore, in view of the law laid down by Hon'ble Supreme Court in ***Pranay Sethi and others' case (supra)***, this Court finds that an addition of 40% is required to be granted to the claimants towards future prospects. Similarly, as against the conventional heads, the Tribunal has awarded Rs.20,000/- i.e. Rs.10,000/- for loss of consortium, Rs.5,000/- for loss of estate and Rs.5,000/- towards funeral expenses. But in the light of the judgment passed by the Apex Court in ***Pranay Sethi and others' case (supra)***, a total sum of Rs.70,000/- is admissible to the claimants under conventional heads. However, there is no dispute regarding applicability of multiplier of '16' and 1/4th deduction towards personal expenses of the deceased.

Therefore, this Court finds that the impugned award passed by the Tribunal needs modification and the amount of compensation awarded by the Tribunal to the claimants Geeta Kumari and others is re-assessed in the following tabulated form:

Gross annual income of deceased Sunil Kumar.		Rs.2,97,049/-
Future Prospects	(40% of 297049)	Rs.1,18,820/-
Total income	(297049+118820)	Rs.4,15,869/-
Income Tax.		Rs.39,318/-
Total income after tax deduction	(415869 – 39318)	Rs.3,76,551/-
Deduction towards personal expenses of deceased.	(1/4 of annual income)	Rs.94,138/-
Annual dependency of the claimants.	(376551 – 94138)	Rs.2,82,413/-
Multiplier.	(as per age of the deceased)	'16'
Total loss of dependency.	(282413 x 16)	Rs.45,18,608/-
Conventional heads.	Loss of estate	Rs.15,000/-
	Funeral expenses	Rs.15,000/-
	Loss of consortium	Rs.40,000/-
Total amount of compensation.	(4518608+15000+15000 + 40000)	Rs.45,88,608/-
Amount already awarded by the Tribunal.		Rs.30,58,512/-
Enhancement.	(4588608 – 3058512)	Rs.15,30,096/-

Therefore, the appellant-claimants Geeta Kumari and others in ***FAO No.8643 of 2014*** are entitled to total compensation of Rs.45,88,608/- (Rupees forty five lakhs, eighty eight thousand, six hundred and eight) along with interest @ 7.5% from the date of filing of the petition till its realisation except for the period by which the appeal is delayed on account of filing/re-filing of the same. Thus instead of compensation of Rs.30,58,512/-, the claimants are held entitled for Rs.45,88,608/-.

Accordingly, the appeals i.e. ***FAO Nos.716, 717 and 718 of 2014*** filed by New India Assurance Company Limited are dismissed, whereas the appeals i.e. ***FAO Nos.8626 and 8643 of 2014*** filed by the claimants Nidhi Bansal and others as well as Geeta Kumari and others respectively are allowed to the aforesaid extent.

Photocopy of this order be placed on the files of other connected cases.

(HARI PAL VERMA)
JUDGE

May 04, 2018
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No