

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

Date of decision: 12.7.2018

1. **FAO No.8230 of 2014(O&M)**

Amar Kaur and othersAppellants

VERSUS

Jaspreet Kaur and othersRespondents

Present: Mr. Rakesh Kumar, Advocate for the appellants.

Mr. Prateek Pandit, Advocate for respondent No.4.

2. **FAO No.5780 of 2014(O&M)**

Rajwant SinghAppellant

VERSUS

Jaspreet Kaur and othersRespondents

Present: Mr. Rakesh Kumar, Advocate for the appellant.

Mr. Prateek Pandit, Advocate for respondent No.4.

Mr. S.S. Sidhu, Advocate for respondent No.6.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.8230 and 5780 of 2014 as these have emerged out of the same award dated 05.12.2013 passed by the Motor Accidents Claims Tribunal, Kapurthala (in short 'the Tribunal') whereby compensation has been awarded on account of death of Satnam Singh and injuries sustained by Rajwant Singh, appellants before the Court as well as death of Gurmukh Singh son of Bachan Singh, in a motor vehicular accident that took place on 15.12.2010.

FAO No.8230 of 2014 has been filed by Amar Kaur and others for enhancement of compensation qua death of Satnam Singh whereas the other appeal has been preferred by Rajwant Singh, the injured/claimant.

FAO No.8230 of 2014

The Tribunal has assessed compensation of Rs.3,67,000/- detailed hereunder:-

Monthly income of the deceased	Rs.15000/-
Multiplier	12
Deduction for personal expenses	2/3 rd
Loss of dependency	Rs.7,20,000

However, claimants have been held entitled to 50% of loss of dependency i.e. Rs.3,60,000/- as 50% negligence has been attributed to the deceased. In addition, claimants have been awarded loss of consortium Rs.5000/- and funeral charges Rs.2000/- making total compensation to the tune of Rs.3,67,000/-.

Counsel for the appellants would urge that indisputably the occurrence in question took place when Satnam Singh along with Rajwant Singh was returning from Jalandhar and going towards village Paharipur on motorcycle bearing No.PB09-L-5233 and Rajwant Singh was a pillion rider on the said motorcycle, on the G.T. Road near village Dayalpur and Gurmukh Singh son of Bachan Singh on his motorcycle No.PB09-E-6827 came from link road towards G.T. Road and a collision took place between the two motorcycles driven by Satnam Singh and Gurmukh Singh and as a result, the drivers of motorcycle and pillion rider Rajwant Singh sustained injuries. Satnam Singh died on the spot. Gurmukh Singh died on the way

to hospital. FIR bearing No.128 dated 15.12.2010 under Sections 304-A/279/337/427 IPC was registered at Police Station Subhanpur, District Kapurthala on the statement of Paramjit Singh Sarpanch, elder brother of Gurmukh Singh.

To prove the occurrence being the result of rash and negligent driving of motorcycle by Satnam Singh, Paramjit Singh AW-2 was examined. He tendered into evidence his affidavit Ex.AW2/A and in para 3 thereof, he would state that Gurmukh Singh was driving his motorcycle with care and at a nominal speed as he was just to approach G.T. Road. At about 6 PM when Gurmukh Singh tried to approach the GT Road from link road of village Dayalpur, motorcycle driven by Satnam Singh came in a very high and rash speed from Jalandhar side in a zig zag manner, negligently and without caring about other traffic, hit the motorcycle of Gurmukh Singh. Further stated that impact of the accident was so much that Satnam Singh died on the spot, Rajwant Singh and Gurmukh Singh suffered multiple injuries. Gurmukh Singh was being taken to Jalandhar for better treatment but he died on the way.

To rebut testimony of Paramjit Singh, Rajwant Singh, injured-claimant appeared in the witness box and tendered into evidence his affidavit Ex.AW7/A. A relevant extract from his affidavit, in the context of accident being the result of rash and negligent driving of Gurmukh Singh, reads as follows:-

“...When our motorcycle reached on the GT Road near village Dyalpur, at about 6 p.m, then suddenly Gurmukh Singh son of Bachan Singh came on his motorcycle No.PB09-E-6927 from link road at a very high speed, which was being

driven by him negligently and rashly and tried to come on the main road without seeing the traffic on the main road. Due to his said negligence, Gurmukh Singh after coming on the main road, struck against the motorcycle of Satnam Singh. Due to this impact, both the riders and pillion rider suffered multiple injuries.”

The witness was cross examined at length but nothing tangible and material has been elicited to substantiate plea of Jaspreet Kaur and others, legal heirs of Gurmukh Singh that the occurrence is the result of contributory negligence of Satnam Singh or negligence to the extent of 50% can be attributed to Satnam Singh (since deceased). As a matter of fact, on due consideration of testimony of Rajwant Singh, it is difficult to sustain findings of the Tribunal that occurrence is the result of contributory negligence of Satnam Singh who was driving his motorcycle on the GT road and Gurmukh Singh was in the process of approaching G.T. Road from a link road when the accident took place. The Tribunal has also failed to appreciate that Paramjit Singh is none else but real brother of deceased Gurmukh Singh and he has every reason to deny liability of Gurmukh Singh.

Analysed from another angle, as the vehicle driven by Gurmukh Singh was approaching GT road, it was the obligation of Gurmukh Singh to ensure that there is no vehicle coming from either side of the road when he enters the GT road from a side lane, therefore, the entire blame for the occurrence is to be attributed to deceased Gurmukh Singh. In this context, reference can be made to judgments of this Court

State of Punjab Vs. Roshnai Ram, 1976 ACJ 506; K.S. Minhas Vs.

Smt. Sneh Lata and others, 1986 (2) PLR 82 and **District Transport Co-operative Society Ltd. Amritsar and another Vs. Smt. Janak Rani and others, AIR 1984 Punjab 317.** In this view of the matter, findings of the Tribunal attributing contributory negligence to deceased Satnam Singh are set aside. As a consequence, the issues with regard to rashness and negligence in causing the accident are answered against Gurmukh Singh and in favour of claimants qua death of Satnam Singh and injured Rajwant Singh.

The plea of the claimants is that the deceased was working as a driver of heavy transport vehicle in Dubai prior to the occurrence and earning Rs.50,000/- per month. The claimants have produced on record the documents namely attested copies of passport Ex.P9 and Visa P10, identity card issued by the Election Commisison of India Ex.P11, driving licence of United Arab Emirates, Ministry of Interior Dubai w.e.f. February 2006 to February 2016 Ex.P12 and P13, copy of permit issued by the Department of Traffic, Dubai Ex.P14 to substantiate their plea that the deceased was working as a driver in Dubai.

The widow of the deceased appeared in the witness box and in her cross examination, she had stated that her husband went to Dubai 9 months prior to occurrence. Her testimony to this effect gets corroborated from document Ex.P9 i.e. passport that contains endorsement/stamp regarding deceased having gone to UAE on 23.02.2010 and came to India on 11.11.2010. Meaning thereby that deceased was in Dubai for a period of about 9 months before the occurrence that took place in December 2010. The other document shows that the deceased was holder of driving licence of vehicles Light Duty/Mini Bus and Heavy Bus. There was a permit with

date of issuance 03.09.2005 and date of expiry 03.09.2006 but there was no permit in the years 2009 and 2010. There is no clear evidence available on record if the deceased was owner of any vehicle in Dubai or the person with whom he was working in Dubai either as a driver or otherwise but the very fact that the deceased stayed in Dubai for a period of about 9 months till 11.11.2010 goes a long way to indicate that the deceased had gone there to work and earn livelihood for his family. In absence of any clear evidence with regard to income of the deceased, taking a clue from the minimum wage available at the relevant time coupled with that the deceased was working in Dubai, interest of justice demands that income of the deceased is assessed at Rs.25,000/- per month. Taking into consideration the cost of living being high, 50% amount shall be deducted towards personal expenses of the deceased.

The Tribunal has applied multiplier of 12 for computing loss of dependency. The deceased was born on 05.02.1973, recorded in his identity card issued by the Election Commission of India. He was in the age bracket of 36 to 40 years at the relevant time. Claimants shall be entitled to addition in income for future prospects at the rate of 40%. The appropriate multiplier for computing loss of dependency would be 15. In this manner, loss of dependency comes to Rs.31,50,000/- [Rs.45,00,000/- (Rs.25000 x 12 x 15) + Rs.18,00,000/- (40% future prospects) – Rs.31,50,000/- (1/2 deduction towards personal expenses)].

The claimants shall be entitled to Rs.70,000/- under conventional heads in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**, detailed hereunder :-

Loss of consortium to the widow	Rs.40,000/-
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Funeral expenses	Rs.15,000/-
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Loss of estate	Rs.15,000/-
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In view of the above, total compensation comes to Rs.32,20,000/- and the additional amount is Rs.28,53,000/- (Rs.32,20,000/- - Rs.3,67,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization by respondents Jaspreet Kaur and others to the claimants in the ratio 40:40:20. However, the compensation shall be payable out of estate of deceased Gurmukh Singh.

FAO No.5780 of 2014

The Tribunal has assessed compensation of Rs.16,500/- detailed hereunder:-

Medical expenses	Rs.10,000/-
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Pain and suffering	Rs.3000/-
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Special diet	Rs.2000/-
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Loss of income	Rs.1500/-
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Rajwant Singh appeared in the witness box and stated on oath that he remained admitted in Brar Hospital and thereafter shifted to Doaba Hospital, Jalandhar and remained there for 15 days. The Tribunal in para 34 of the award has noticed that he has not produced any medical bill or other documents with regard to his medical treatment nor examined any doctor from Brar Hospital or Doaba Hospital, Jalandhar.

Counsel for the appellant has failed to point out any materials on record justifying enhancement of compensation in respect of injuries sustained by Rajwant Singh. However, as findings of the Tribunal attributing 50% negligence to Satnam Singh have been set aside and entire

liability for the occurrence has been held against Gurmukh Singh, Rajwant Singh shall be entitled to recover compensation from Jaspreet Kaur and others who would be liable to pay compensation only out of estate left behind by Gurmukh Singh and inherited by them.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms.

JULY 12, 2018 'D. Gulati'	(REKHA MITTAL) JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no