

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

Date of decision: 21.08.2018

FAO No.5743 of 2016 (O&M)

Bhagwant Ram

... Appellant

Versus

Charanjeev Jalged and others

... Respondents

FAO No.5361 of 2017 (O&M)

Sanjiv Kathuria

... Appellant

Versus

United India Insurance Co. Ltd. and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.S. Bains, Advocate for
Mr. Vijay Sharma, Advocate
for the appellant in FAO No.5743 of 2016 and
for respondents No.3 in FAO No.5361 of 2017.

Mr. Akshay Kumar Goel, Advocate
for the appellant in FAO No.5361 of 2017 and
for respondent No.2 in FAO No.5743 of 2016.

Mr. Sandeep Suri, Advocate
for the insurance company.

Mr. Subhash Goyal, Advocate
for the respondent-driver.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5743 of 2016 and 5361 of
2017 as these have emerged out of the same award dated 24.08.2015 passed

by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been awarded on account of death of Gopal Ram out of use of car No.CH-01-AG-8485.

FAO No.5743 of 2016 has been filed by one of the claimants seeking enhancement of compensation whereas the other appeal has been filed by registered owner of the aforesaid car.

Counsel for the claimant would argue that compensation assessed by the Tribunal is on lower side and needs enhancement.

Counsel representing respondent No.2 in FAO No.5743 of 2016 and appellant-Sanjeev Kathuria in FAO No.5361 of 2017 has assailed quantum of compensation assessed by the Tribunal. It is argued that application for compensation has been filed by elder brothers of the deceased, aged 45 years and 36 years and both of them were not dependent on income of the deceased. It is further argued that one of the claimants Bhagwant Ram appeared in the witness box and in his cross examination, he has categorically admitted that the deceased was residing separately in rented accommodation meaning thereby that the claimants were not even residing jointly with the deceased. It is further argued that as the claimants were not dependent upon earning of the deceased, they are not entitled to get compensation.

Counsel representing driver of the car in question has submitted that insurance company has been given right of recovery against the driver as well as insured of the vehicle but the insurance company

cannot be given right of recovery against the driver for want of privity of contract between the driver and insurer.

I have heard counsel for the parties, perused the paper books particularly the award.

The application for compensation was filed under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act') and compensation has been assessed to the tune of Rs.4,79,700/- by applying the structured formula envisaged in Second Schedule appended to Section 163-A of the Act, detailed hereunder:-

1. Monthly income of the deceased	Rs.3300/-
2. Multiplier	18
3. Deduction for personal expenses	1/3 rd
4. Loss of dependency	Rs.4,75,200/-
5. Expenses on funeral	Rs.2000/-
6. Loss of estate	Rs.2500/-

Counsel for the claimants/appellants is not in a position to dispute the facts elicited in cross examination of appellant Bhagwant Ram. A plain reading of the facts broughtforth by cross examination of Bhagwant Ram leaves no manner of doubt that deceased was unmarried brother of the claimants and he was residing independently. In the given scenario, it can safely be held that the claimants were not actually dependent upon income of the deceased. However, even if the claimants were not dependent upon income of the deceased, they being legal representatives of the deceased cannot be denied substantial amount qua loss to estate. In this context, reference can be made to judgment of this Court **Cholamandalam MS**

General Insurance Company Ltd. VS. Birbhan and others, FAO No.6972 of 2011 and other connected case, decided on 04.11.2014.

Taking into consideration income of the deceased coupled with that claimants shall be entitled to compensation only qua loss to estate, interest of justice would be served, if monthly income of the deceased to the tune of Rs.1500/- is taken into account for computing loss to estate. The Tribunal has rightly applied multiplier of 18 as the deceased was 29 years old. In this manner, claimants shall be entitled to compensation of Rs.3,24,000/- (Rs.1500 x 12 x 18) towards loss of estate. They would further be entitled to a sum of Rs.2000/- for expenses on funeral. The compensation payable to the claimants comes to Rs.3,26,000/- and compensation awarded by the Tribunal is reduced to the extent of Rs.1,53,700/- (4,79,700 – 3,26,000). The excess amount, if already paid by the insurance company may be recovered from the claimants by filing an application before the Tribunal.

The Tribunal has given right of recovery to the insurance company both against the driver and insured of the vehicle on the premise that the driver did not possess a valid licence who was otherwise minor at the time of occurrence. Indisputably, there is no privity of contract between the insurer and the driver, therefore, the insurance company cannot be heard to say that the driver is guilty of violating terms and conditions of the policy entitling the insurance company to press for right of recovery against the driver. In this view of the matter, findings recorded by the Tribunal

giving right of recovery against driver of the vehicle in question cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeals are disposed in the aforesaid terms, leaving the parties to bear their own costs. As the appeals have been decided on merits, applications for condonation of delay are of academic relevance only.

Statutory amount deposited by the insurance company be remitted to the Tribunal.

21.08.2018
ashok

(REKHA MITTAL)
JUDGE

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