IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 718 of 2015 (O&M)
Date of Decision : 20.03.2018

New India Assurance Company Ltd. ....Appellant

Versus

Renu Prashar and others .....Respondents

2. FAO No. 727 of 2015 (O&M)

New India Assurance Company Ltd. ....Appellant

Versus

Beena Rani and others .....Respondents

3. FAO No. 1230 of 2015 (O&M)

Beena Rani and others ....Appellants

Versus

Phool Chand and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Kapoor, Advocate
for the appellant in FAO NOs. 718 & 727 of 2015 and
for respondent no. 3 in FAO-1230-2015.

Mr. Rohit Kaushik, Advocate
for Mr. Keshav Pratap Sigh, Advocate
for appellants in FAO-1230-2015 and
for respondents no. 1 to 3 in FAO-727-2015.

Surinder Gupta, J.

Above captioned appeals have been taken up together as these arise from the same accident and award dated 29.10.2014 passed by Motor Accident Claims Tribunal, Kurukshetra (later referred to as 'the Tribunal'). Claimants, Renu Prashar and others (MACT No. 22 of 2014) and Beena Rani and others (MACT No. 23 of 2014) filed two separate claim petitions claiming compensation for death of Deepak Prashar and Pushpinder Kumar (later referred to as 'the deceased') in a motor vehicle accident on 05.11.2013 with truck bearing registration no. PB-11-AN-9476 (later referred to as 'the offending vehicle'). The Tribunal awarded compensation of ₹6,76,016/- for death of Pushpinder Kumar and ₹32,85,000/- for death of Deepak Prashar.

2. Legal heirs of Pushpinder Kumar have filed appeal (FAO No. 1230 of 2015) seeking enhancement of compensation while New India Assurance Company Ltd. has filed two separate appeals (FAO Nos. 718 and 727 of 2015), challenging awarded passed by the Tribunal.

3. Facts of the accident have been enumerated in para 2 of the award, which reads as follows:-

> *"……...that on dated 5.11.2013, Deepak Prashar (since deceased) along with his father-in-law Pushpinder Singh (since deceased) were coming from Mandi Gobindgarh to Pehowa while driving a Maruti Car bearing registration no. PB-10AS-7314 for performing Kirya Karam of one Ganesh Kumar, father of said Deepak Prashar and they were being followed by two persons, namely, Tajinder Joshi and Saurabh Prashar in car bearing registration no. PB-23M-1089. It is further alleged that said Deepak Prashar was driving his car at a normal speed and on his due left hand side of the road by observing all traffic rules and when at about 9.30 a.m., they reached in the area of village Jaurasi, then the offending truck bearing registration no. PB-11AN-9476 being driven by respondent no. 1 in a rash and negligent manner was seen coming from the opposite side, on which, said Deepak Prashar lowered down the speed of his car and came on the kacha portion of the road but still the offending truck struck against his car after coming on the wrong side of the road and as a result of which, said Deepak Prashar and his father-in-law Pushpinder Kumar received multiple, serious and*

grievous injuries and the said Deepak Prashar succumbed to his injuries at the spot, whereas injured Pushpinder Kumar was shifted to Saraswati Mission Hospital, Pehowa but due to his serious condition, he was shifted to Rajindra Hospital, Patiala, where he also succumbed to his injuries on the same day of the accident. It is further asserted that the said accident was witnessed by two persons namely, Saurabh Prashar and Tajinder Joshi and consequently FIR No. 413 dated 5.11.2013, under Sections 279-, 304-A, 337, 427 IPC was registered at Police Station, Pehowa, against the respondent no. 1."

4. Respondents no. 1 and 2, owner and driver of the offending vehicle in their written statement denied the accident and pleaded false involvement of the offending vehicle in this accident. Insurance Company in its separate written statement also denied the accident and took the plea that claim petition has been filed in collusion with and at the instance of respondents no. 1 and 2 i.e. owner and driver of the offending vehicle. It took an alternate plea that the accident, if any, had taken place due to sole negligence of the deceased himself, who was driving the car in a rash and negligent manner without caring for the traffic on main road and driver of the offending vehicle was not liable for the accident.

5. On appraisal of evidence, the Tribunal concluded that the accident in question took place due to sole rash and negligent driving of the offending vehicle by its driver. While reaching above conclusion, the Tribunal relied on testimonies of PW-3 Saurabh Prashar, PW-4 Tajinder Joshi, registration of FIR No. 413 dated 05.11.2013 against driver of the offending vehicle and presentation of challan in that case against him wherein he has been charge-sheeted for offencens punishable under Sections 279 and 304-A IPC.

6. On the question of conclusion drawn by the Tribunal that the

accident was caused due to rash and negligent driving of the offending vehicle by its driver, learned counsel for the Insurance Company has argued that it was a case of contributory negligence. As per claimants, it was a head on collusion. Deepak Prashar, who was driving the car, could see that the truck was coming from opposite side and could take precautions to avoid the accident. In the case of head on collusion, driver of both the vehicles are equally liable for causing the accident. Admittedly, it is a case of head on collusion but there cannot be a blanket rule that in every head on collusion driver of both the vehicles are liable for causing the accident. The negligence of driver of the vehicle can be assessed from the evidence on record about the manner in which the accident had taken place. There may be a case where a person is driving his vehicle on left hand side of the road and the vehicle from opposite side comes on wrong side and hit his vehicle or a vehicle is hit by the other vehicle while trying to overtake another vehicle. Insurance Company in this case did not produce any evidence regarding mode and manner of the accident and in these circumstances, the Tribunal was left with the testimonies of eye-witnesses PW-3 Saurabh Prashar and PW-4 Tajinder Joshi. In his affidavit tendered in examination-in-chief, PW-3 Saurabh Prashar has stated that deceased Deepak Prashar was driving his car on left hand side of the road. The offending vehicle came from opposite side at very fast speed, which was being driven in a very rash and negligent manner. On seeing the offending truck, Deepak Prashar lowered down the speed of his car and came on *kacha* portion of the road on extreme left hand side but the offending vehicle hit the car of deceased after coming wrong side of the road, resulting in death of Deepak Prashar and his father-in-law. While owner and driver of the offending vehicle have put only one question to this witness to suggest that no accident had taken place, counsel for insurer of the offending vehicle suggested this witness that the accident had taken place due to sole negligence of the deceased. Tajinder Joshi, who appeared as PW-4 has also described the manner of accident as per testimony of PW-3 Saurabh Prashar. He has stated that the accident had taken place on *kacha* portion of the road and the entire car was on *kacha* portion, when it was hit by the offending vehicle. It was driver side of the truck, which had hit the car. From statements of these witnesses, which are unrebutted, as driver of the offending vehicle has not stepped into the witness-box to give his own version of the accident, it is duly proved that it is a case where any negligence in causing the accident cannot be attributed to driver of the car (Deepak Prashar). As per testimony of witnesses that on seeing the truck coming at a very fast speed and being driven in a rash and negligent manner, deceased-Deepak Prashar had taken his vehicle on extreme left side of the road on *kacha* portion, where it was hit by the truck. In view of facts and circumstances that have come on record, I find no fault with finding of the Tribunal that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver. The argument of learned counsel for appellant (insurance company) that it was a case of contributory negligence of driver of the car and driver of the truck, as such, has no basis and is rejected.

QUANTUM OF COMPENSATION (FAO No. 718 of 2015)

7. The Tribunal has computed the compensation of ₹32,85,000/- for death of Deepak Prashar as follows:-

(i)	Annual income of the deceased	₹180000
(ii)	50% of (i) above added towards future prospects	(₹180000+₹90000)= ₹270000
(iii)	1/3rd of (iii) above deducted towards personal expenses	₹270000- ₹90000) = ₹180000
(iv)	Compensation calculated after applying the multiplier of 17.	(₹180000X17) = ₹3060000
(v)	Compensation for loss of consortium	₹100000
(vi)	Compensation for loss of love and affection	₹100000
(vii)	Compensation for funeral expenses	₹25000
	Total	**₹3285000**

8. Learned counsel for appellant-Insurance Company has argued that the Tribunal in this case has not taken income of deceased as per income tax return placed on file as Ex. P-3, rather it has taken into account the income as mentioned in salary certificate. Income tax return is more authentic document than the salary certificate. While referring to observations of Hon'ble Apex Court in case of ***Pranay Sethi (supra),*** he has argued that addition in income of the deceased towards future prospects could be allowed as 40% instead of 50% as allowed by the Tribunal and under the conventional heads compensation of ₹70,000/- could be allowed while the Tribunal has awarded compensation on this score as ₹2,25,000/-.

9. Firstly, I examine the contention of learned counsel for the appellant-Insurance Company regarding income of the deceased-Deepak Prashar. Claimants have placed on record income tax return of the deceased for the year 2010-2011 as Ex. P-3, which depicts gross income of the deceased as ₹1,29,900/- and after deduction of income tax as ₹1,26,420/-. The accident in this case had taken place on 05.11.2013. Income of the deceased as mentioned in aforesaid income tax return for the year 2010-2011 was income of the deceased at the time of his death. Claimants have placed on file salary certificate of the deceased from February, 2012 to October, 2013 as Ex. P-2, which show that in February, 2012, the deceased was having gross salary of ₹13,000/- per month and in October, 2013 he was having gross salary of ₹15,000/- per month. The Tribunal has rightly taken his income at the time of his death as ₹15,000/- per month. As per observations of Hon'ble Apex Court in case of ***Pranay Sethi (supra)*** 40% addition in income of the deceased could be allowed towards future prospects and a sum of ₹70,000/- towards conventional heads, like loss of estate, loss of consortium and funeral expenses. With above modification, the compensation to which claimants are entitled works out as follows:-

(i)	Annual income of the deceased as assessed by the Tribunal	₹180000
(ii)	40% of (i) above added towards future prospects	(₹180000+₹72000)= ₹252000
(iii)	1/3rd of (iii) above deducted towards personal expenses	₹252000- ₹84000) = ₹168000
(iv)	Compensation calculated after applying the multiplier of 17.	(₹168000X17) = ₹2856000
(v)	Compensation for loss of consortium	₹40000
(vi)	Compensation for loss of estate	₹15000
(vii)	Compensation for funeral expenses	₹15000
Total		**₹2926000**

FAO Nos. 718 and 1230 of 2015

10. Deceased Pushpinder Kumar was 58 years of age and was *Halwai* by profession. Claimants have claimed his income as ₹25,000/- per month but the Tribunal has taken the same as ₹6655/- per month as per wages chart issued by Deputy Commissioner. *Halwai* is a highly qualified person, who prepares sweets and other eatables as per taste of customers. In the year 2013, a *Halwai* could easily earn more than 300/- per day, as such, there was no reason to take minimum wages as prescribed by State authorities. The Tribunal has committed error while taking income of the deceased as per wages prescribed by Deputy Commissioner instead of taking a practical view about income of the deceased. Keeping in view inflationary trend and high prices of commodities of daily need, income of the deceased, who was 58 years of age and was in the profession of sweet maker, can be easily assessed as ₹10,000/- per month. Keeping in view his age, 10% addition in his income is to be made towards future prospects. Keeping in view the year of accident, claimants are entitled to compensation of ₹70,000/- under the conventional heads.

11. In view of my above discussion, compensation to which claimants-appellants are entitled, is computed as follows:-

(i)	Monthly income of the deceased	₹10000

(ii)	10% of (i) above added towards future prospects	(₹10000+ ₹1000)= ₹11000 per month
(iii)	1/3rd of (ii) above deducted towards personal expenses	(₹11000- ₹3666) = ₹7334 per month
(iv)	Compensation calculated after applying the multiplier of 9	(₹7334X12X9) = ₹792072
(v)	Compensation towards loss of consortium, loss of estate and funeral expenses	₹70000
Total		**₹862072 (rounded off to ₹862000)**

12. As a sequel of my discussion above, ***FAO-718-2015 (New India Assurance Co. Ltd. vs. Renu Prashar and others)*** is partly allowed and amount of compensation awarded by the Tribunal is reduced from **₹32,85,000/-** to **₹29,26,000/-**. ***FAO No. 727 of 2016 (New India Assurance Co. Ltd. vs. Beena Rani and others)*** is dismissed while ***FAO No. 1230 of 2015 (Beena Rani and others vs. Phool Chand and others)*** has merit and the same is **accepted**. Award of the Tribunal is modified and the compensation allowed to claimants for death of Pushpinder Kumar is enhanced from **₹6,76,016/-** to **₹8,62,000/-.** Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of instant appeal till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants will share the enhanced amount of compensation as per award

13. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimants.

March 20, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*