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

(1)

FAO No.9937 of 2014 (O&M)
Date of Decision: December 18, 2018.

Shri Ram General Insurance Company

..........APPELLANT(s).

VERSUS

Rohit Kumar and others

........RESPONDENT(s).

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(2)

FAO No.9938 of 2014 (O&M)

Shri Ram General Insurance Company

..........APPELLANT(s).

VERSUS

Bimla Devi and others

........RESPONDENT(s).

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(3)

FAO No.627 of 2015 (O&M)

Rohit Kumar

..........APPELLANT(s).

VERSUS

Vijay Kumar and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate for
for the appellant in FAO Nos.9937 and 9938 of 2014 and
for respondent No.3 in FAO No.627 of 2015.

Mr. Ram Kumar Saini, Advocate
for appellant(s) in FAO No.627 of 2015
for respondents No.1 and 2 in FAO No.9938 of 2014 and
for respondent No.1 in FAO No.9937 of 2014.

Mr. Om Pal Sharma, Advocate
for respondent-National Insurance Company
in all the three appeals.

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SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Kurukshetra (later referred to as 'the tribunal') while deciding two claim petitions, one filed by Bimla Devi and Satnam Singh bearing MACP No.182 of 2013 and another by Rohit Kumar bearing MACP No.183 of 2013, allowed compensation of ₹13,02,754/- in MACP No.182 of 2013 for death of Rinku and ₹28,71,490/- in MACP No.183 of 2013 for the injuries suffered by claimant Rohit Kumar. Against the award of the tribunal, Shri Ram General Insurance Company has filed two appeals i.e. FAO No.9937 of 2014 and FAO No.9938 of 2014, challenging the award of compensation to the claimants in both the claim petitions, while Rohit Kumar has filed appeal bearing FAO No.627 of 2015 seeking enhancement of compensation allowed by the tribunal.

2. As the tribunal has conducted joint trial of both the claim petitions, for the sake of convenience, facts are being taken from claim petition bearing MACP No.182 of 2013 titled as *Bimla Devi and Anr. Vs. Vijay Kumar and Others.*

3. The manner in which the accident took place, has been described in para 25 of the claim petition, which is reproduced as follows:-

> "That on the fateful day i.e. 13.11.2009, Rinku Verma (since deceased) along with others were travelling in Car No.PB-26E/5858 being driven by Rohit son of Suman Kumar at a moderate speed and on due left side of the road. At about 2.30 A.M., when they reached near Nau Gaja Peer Shahabad Markanda on G.T. Road, the respondent No.1 Vijay Kumar had negligently & carelessly parked the offending Truck No.HR-55A/7994 in the middle of the road without any indicator, reflector

> or signal/sign endangering the human lives and due to this negligent parking of the offending Truck in the middle of the road in the foggy night, the Car being driven by Rohit rammed into the offending Truck and the occupants of the Car received injuries. Rinku Verma received fatal injuries and he died at the spot.
>
> The accident took place due to careless and negligent act on the part of the respondent No.1 who negligently and carelessly parked the offending Truck in the middle of the road in foggy night, without any indicator or reflector. A criminal case was registered against the respondent No.1 for causing this accident and he is facing trial before the learned Illaqa Magistrate. The respondent no.2 is the registered owner and respondent no.3 is the insurer of the offending Truck, hence the respondents no.1 to 3 are jointly and severally liable to pay compensation to the claimants."

4. Learned counsel for insurance company has argued that the tribunal while passing the award, has ignored the fact that Car bearing No.PB-26E-5858 in which Rohit Kumar claimant and Rinku (since deceased) were travelling, had hit stationary truck bearing registration No.HR-55A-7994 (later referred to as 'the offending vehicle') from behind. It was a case of contributory negligence, as such, owner and insurer of the offending vehicle are not solely liable and the tribunal should have equally apportioned the liability for accident on the driver of the car and the offending vehicle.

5. The accident had taken place at about 2.30 a.m. on a foggy night. Claimant Rohit Kumar, driver of the car while appearing as PW2, has stated that the offending vehicle had been parked in the middle of the

road without any indicator, reflector, signal or sign. As it was a foggy night, he could notice the parked truck from a distance of about 10 feet and could not control his car, which hit the truck from behind resulting in injuries to him and his co-passenger Rinku. They both suffered serious injuries. The testimony of this witness that it was a foggy night and truck had been parked in the middle of the road, has gone unrebutted. He was suggested in the cross-examination by counsel for the insurance company that truck had been parked with parking light on and some stones, bushes and two tyres have also been placed around the truck. Rohit Kumar has stated that speed of his car was about 20 to 25 kilometer per hour.

6. The driver of the truck has not stepped into the witness box to state that he had put any indicator around the truck to warn the traffic coming on the road about parking of truck in the middle of the road. In the written statement filed by driver and owner of the offending vehicle, initially the plea was taken that accident took place due to rash and negligent driving of the car by its driver but while replying para 25 of the claim petition, it was denied that any accident had taken place with the offending vehicle.

7. From the testimony of Rohit Kumar and his cross-examination, it is apparent that the insurance company has virtually admitted that the offending vehicle was parked in the middle of the road. There is no evidence on record to refute the testimony of Rohit that there was no indicator near the truck to indicate about its wrong parking. Admittedly, the car of claimant Rohit hit the offending vehicle from behind. The question, which arises for consideration is, as to whether in the circumstances as

discussed above, any contributory negligence can be attributed to the driver of the car. The accident had taken place during midnight when the visibility was further affected due to foggy weather. The driver, owner and insurer of the offending vehicle have not produced any evidence to prove that indicators were placed around the offending vehicle to alert the coming vehicles on the road. When it is pitch dark and foggy night, it is not possible for the driver of a vehicle to drive at a high speed. A person, who had parked his vehicle in the middle of the road, is duty bound to switch on the indicators/parking light of his vehicle, put signals to alert the traffic on the road about location of the stationary vehicle to avoid the accident. The liability for inaction of driver of offending vehicle in this case cannot be fastened on the car in which Rohit and Rinku were travelling as Rohit could not see the offending vehicle parked in the middle of the road due to darkness and fog, resulting in the accident.

8. The argument of contributory negligence of driver of car was also raised before the tribunal and after examining the facts of the case, the same was rejected with the observations as follows:-

> "It is settled law that in cases of accident, each case has to be decided on its own peculiar circumstances. The facts of two cases may not be co-related. No hard and fast rule can be laid down that if a vehicle struck on the back of stationary vehicle whether it is a case of contributory negligence or not? It depends upon the facts and circumstances of each case and the evidence produced in that case. In the present case, the claimants have set up a plea that Rohit Kumar (petitioner in MACP No.183 of 2013) was driving car at moderate speed and that too on the appropriate left side of the road. The offending

vehicle was parked in the middle of the road and that too without any indicator, reflector or signal/sign. Accident in question had taken place during night hours at about 2.30 am and that too in foggy night. In the FIR, the same version has been mentioned. PW2 Rohit Kumar, who was driving car, while appearing in the witness box has supported the version of the claimants in all material particulars. In rebuttal, respondent No.1, driver of offending vehicle has not dared to come into the witness box. In case **"New India Insurance Company Versus Mayawati and others" (1992-2) Vol. 102 PLR 64 (Delhi),** it has been held that if the vehicle is parked without any light and three-wheeler dashed against the stationary vehicle, in that case, the driver was negligent in leaving the vehicle without any indicator and it was further held that it is not a case of contributory negligence of the deceased. To this effect reliance can also be placed on ruling **"The Oriental Insurance Company Limited Versus Smt. Surinder Kaur and others" (2012-3) The Punjab Law Reporter 741 (P&H).** In case **"National Insurance Company Limited Versus Kamaljeet Kaur and others" (2012-3) The Punjab Law Reporter 713 (P&H),** it has been held that where the truck was parked on the road unattended without any indication or parking lights at 8.15 p.m. and motor cyclist had struck against the rear side of stationary truck, it amounted to negligence on the part of driver of unattended truck and it was not a case of contributory negligence on the part of motorcyclist. Keeping in view ratio decidendi of above said rulings and in a given set of facts, once it has come on the record that in case FIR No.369 dated 13.11.2009, as detailed above, respondent No.1 Vijay Kumar has been arrayed as accused in the cause of accident, the fact that he is facing criminal trial with regard to accident, in question, the fact that PW-2 Rohit Kumar, who actually witnessed the accident, has narrated in detail the cause of accident, thus, in terms of unrebutted evidence as led on the record at the instance of petitioners; it can be conveniently held that offending vehicle was parked in the middle of the road without any indicator or parking lights and that too in foggy night at about 2.30 am, which act itself is sufficient to hold that driver of offending vehicle was negligent and resultantly, accident had occurred due to sole negligent act of respondent No.1, driver of offending vehicle, wherein Rinku Verma had suffered fatal injuries whereas Rohit Kumar (petitioner) had received multiple injuries and, thus, no contributory negligence can be attributed on the part of petitioner Rohit Kumar (PW-2), driver of car No.PB-26E-5858, in the cause of accident."

9. In the facts and circumstances of the case as discussed above, I find no reason to interfere with the findings of the tribunal on issue No.1 and the same is affirmed.

<u>Compensation in FAO No.9938 of 2014:-</u>

10. The tribunal computed the compensation for the death of deceased Rinku, aged 28 years by taking note of his income shown in the income tax returns. The income tax returns of Rinku for the financial year 2004-05 shows his income as ₹75,474/-; for the financial year 2005-06 as ₹1,08,632/-; for the financial year 2006-07 as ₹1,00,216/-. The tribunal has taken income of the deceased Rinku as shown in his last income tax return and then made addition of 50% in the income of the deceased towards future prospects. As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017***

(4) R.C.R. (Civil) 1009, claimants are entitled to addition of 40% in the income of the deceased towards future prospects. Besides this, they are also entitled to compensation of ₹30,000/- under the conventional heads.

11. Both the learned counsel for the parties in this appeal have not contested the legal proposition settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra).***

12. In view of above discussion, the compensation to which the claimants are entitled, is re-assessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Annual income of the deceased (taken by the tribunal on the basis of last income tax return)	₹100216
(ii)	40% of above (i) to be added as future prospects	(₹100216+₹40086) =₹140302 p.a.
(iii)	Deduction of 1/2 towards personal expenses of the deceased	(₹140302-₹70151)= ₹70151 per annum
(iv)	Compensation after multiplier of 17 is applied	(₹70151X17)= ₹1192567
(v)	Loss of estate	₹15000
(vi)	Funeral expenses	₹15000
Total		₹1222567/-

<u>FAO Nos.9937 of 2014 and 627 of 2015</u>

13. The tribunal awarded compensation of ₹28,71,490/- for the injuries suffered by claimant Rohit Kumar, which was computed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Pain and suffering	₹50000
(ii)	Loss of amenities of life	₹50000
(iii)	Loss of expectation of life	₹50000
(iv)	disfigurement	₹50000
(v)	Loss of marital prospects	₹50000
(vi)	Loss of earning	₹2248110

Sl.No.	*Heads*	*Calculation*
(vii)	Medical and hospital expenses	₹333380
(viii)	Attendant and nursing charges	₹20000
(ix)	Special diet and feeding expenses	₹10000
(x)	Transportation to hospital	₹10000
Total		₹28,71,490/-

14. Learned counsel for the insurance company has argued that the tribunal has taken loss of income of Rohit Kumar as 45% due to permanent disability. It was not his functional disability but was disability of a limb on account of optic atrophy. This has not affected the earning capacity of Rohit Kumar to the tune of 45%. The loss of income could be taken as 50% of the disability i.e. 22.5%.

15. Learned counsel for claimant Rohit Kumar has argued that claimant Rohit Kumar is an income tax assessee. He was working as stamp vendor at Khanna. The loss of vision of right eye has badly affected his business. Though the tribunal has taken his income as shown in his last income tax return but has not made any addition in it toward loss of future prospects.

16. The tribunal while computing the loss of income for the deceased has taken his last income as shown in his income tax return for the assessment year 2009-10 (financial year 2008-09) and assessed the loss of income to the tune of 45%. I agree with the contention of learned counsel for the insurance company that loss of income of Rohit could not be taken as 45% of his income as his function disability can be taken to the tune of 20% and loss of income to this extent but at the same time addition is to be made in the income of the injured-claimant towards loss of future prospects, while computing the loss of income. The loss of vision in the right eye to

the tune of 45% has also affected the future avenues of the claimant.

17. Keeping in view all these facts and circumstance, I find no reason to interfere with the compensation as awarded to claimant Rohit. The compensation awarded to claimant Rohit Kumar under the other heads has not been challenged.

18. As a sequel of my above discussion, FAO Nos.9937 of 2014 and 627 of 2015 have no merits and are dismissed. FAO No.9938 of 2014 is allowed to the extent that compensation awarded for the death of Rinku is reduced from ₹13,02,754/- to ₹12,22,567/-. The insurance company is entitled to recover the excess amount, if paid to claimants Bimla Devi and Satnam Singh.

(SURINDER GUPTA)
December 18, 2018. **JUDGE**
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***