

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 03.12.2018

1. FAO No.784 of 2018 (O&M)

New India Assurance Company Ltd.

..... Appellant

Versus

Savitri Devi and others

..... Respondents

2. FAO No.783 of 2018 (O&M)

New India Assurance Company Ltd.

..... Appellant

Versus

Manisha and others

..... Respondents

3. FAO No.785 of 2018 (O&M)

New India Assurance Company Ltd.

..... Appellant

Versus

Munesh Devi and others

..... Respondents

4. FAO No.786 of 2018 (O&M)

New India Assurance Company Ltd.

..... Appellant

Versus

Smt. Munesh and others

..... Respondents

5. FAO No.787 of 2018 (O&M)

New India Assurance Company Ltd.

..... Appellant

Versus

Nirmala and others

..... Respondents

6. FAO No.788 of 2018 (O&M)

New India Assurance Company Ltd.

..... Appellant

Versus

Priya and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Vinod Gupta, Advocate for the appellant(s).

Mr. Aman Dhir, Legal Aid Counsel for respondent No.2 in all cases.

Ms. Sushma Singh, Advocate for
Mr. Harjit Yadav, Advocate for
respondent No.1 in FAO Nos.783, 786 to 788 of 2018,
respondent Nos.1 to 5 in FAO No.784 of 2018 and
respondent Nos.1 and 3 in FAO No.785 of 2018.

Mr. Chanderhas Yadav, Advocate for
respondent Nos.3 and 4 in FAO Nos.783, 786 to 788 of 2018,
respondent Nos.7 and 8 in FAO No.784 of 2018,
respondent Nos.5 and 6 in FAO Nos.785 of 2018.

B.S. WALIA, J. (ORAL)

[1] This order shall decide six appeals (i.e. FAO Nos.783 to 788 of 2018) since common question of contributory negligence is involved in all six cases except FAO No.784 of 2018 where in addition to the question of contributory negligence, the issue with regard to quantum of compensation payable is also involved. Facts have been taken from FAO No.784 of 2018.

[2] The learned Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as “the Tribunal”) vide its award dated 19.07.2017 in paragraph No.10 held the driver of the Bolero as negligent, accordingly, awarded compensation as per details given as under:-

Sr. No.	Claim petition Nos.	Compensation
1.	43 of 2015 (Manisha v. Umed Singh and others)	Rs.3,59,640/-. Fifty percent of the amount be deposited in her bank account and the other fifty percent be kept in fixed deposit in nationalized bank for a period of 18 months.
2.	44 of 2015 (Savitri Devi v. Umed Singh and others)	Rs.8,66,000/-. It is directed that Rs.1,00,000/- awarded on account of loss of consortium be paid to claimant No.1; Rs.1,00,000/- awarded on account of loss of love and affection be paid to the claimants No.2 to 5 which shall be shared equally by them and out of the remaining amount of compensation 40% be paid to claimant No.1, 20% amount to claimant No.4 being unmarried daughter of the deceased and 10% each be paid to the claimants No.2, 3 and 5. 50% amount of the claimants No.1 and 4 be paid to them in cash and remaining 50% amount of them be deposited in fixed deposit in their names in a nationalized bank for a period of 18 months whereas the share of remaining claimants be paid to them in cash.
3.	46 of 2015 (Munesh Devi v. Umed Singh and others)	Rs.5,00,000/-. The amount of compensation shall be shared equally by the claimants. Total amount be deposited in their bank account.
4.	47 of 2015 (Munesh Devi v. Umed Singh and others)	Rs.1,31,076/-. Total amount be deposited in her bank account.
5.	48 of 2015 (Nirmala Devi v. Umed Singh and others)	Rs.68,220/-. Total amount be deposited in her bank account.
6.	49 of 2015 (Priya v. Umed Singh and others)	Rs.72,045/-. Total amount be deposited in her bank account.

[3] Learned counsel for the appellant(s) – Insurance Company contended that the learned Tribunal failed to take into account the evidence on record, thereby rendered a finding holding driver of the Bolero as responsible for the accident resulting in the death of Bhag Mal and Dev Kumar whereas PW-6 Vikram who had registered a FIR on the date of accident itself had mentioned the driver of the truck as responsible for the rash and negligent driving resulting in the accident with the Bolero. However, on account of the truck being un-insured a volte-face was done by the respondents/claimants in the claim petition by alleging the driver of the Bolero to be exclusively responsible for the rash and negligent driving resulting in the accident with the truck in question.

[4] Learned counsel for the appellant(s) – Insurance Company has taken me over the contents of paragraph Nos.9 and 10 of the claim petition as well as the cross-examination of PW-2 and PW-6. A perusal of paragraph No.10 of the award reveals that the learned Tribunal held that the accident took place on account of rash and negligent driving by respondent No.2 i.e. the driver of the Bolero while in the process of overtaking the truck and further observed that it was the duty of the driver who was overtaking the other vehicle to be cautious while overtaking. In arriving at its aforementioned conclusion, the learned Tribunal held that claimant Manisha (PW-2) who was travelling in the Bolero at the time of accident had in her cross-examination admitted that the speed of the Bolero was high at the time of accident and further that they i.e. the passengers had told the driver (respondent No.2) of Bolero to drive the vehicle at a slow speed and that she further specifically admitted that the accident took place on account of rash and negligent driving of respondent No.2, driver of Bolero.

[5] PW-6, Vikram who had registered a FIR admitted in his cross-examination before the learned Tribunal that the Bolero struck the truck from the back side near the rear right side tyre of the truck and that the Bolero was being driven at a high speed at the time of the accident and that the passengers had told the driver of the Bolero to drive the vehicle at a slow speed. He also admitted that the accident took place on account of the rash and negligent driving of the driver of the Bolero.

[6] Driver of the truck i.e. Umed Singh appeared as RW-1 and described the accident levelling allegations of rash and negligent driving on the part of the driver of the Bolero vehicle and also produced the photographs of the accident i.e. Ex.R1 to Ex.R4 which show that the truck was on the correct left hand side of the road and it was the Bolero which hit the truck from back right hand side of the truck and that from the photographs it was apparent that the accident took place on account of rash and negligent driving by respondent No.2 i.e. driver of the Bolero. The learned Tribunal further observed that the mere fact that FIR was registered against the driver of the truck and challan was submitted against him was not sufficient to hold that the accident took place on account of negligence of the driver of the truck. The learned Tribunal also took into account the decision of this Court in **Ram Kishan and others v. Himachal Road Transport Corporation, Shimla and another, 2015 (1) Law Herald (P&H) 860** wherein it was held that the FIR is not a prerequisite for seeking compensation and is no substitute for evidence in compensation cases and that the Tribunal ought to see the evidence led before it. The learned Tribunal also took into account that the driver (i.e. respondent No.2) of the Bolero had not stepped into the witness box to counter the version of the

accident as given by respondent No.1/driver of the truck. Therefore, in view of decision in **Bhagwati v. Krishan Kumar Saini, 1986 ACJ 331** an adverse inference was also liable to be drawn against the driver (i.e. respondent No.2) of Bolero vehicle.

[7] Admittedly, PW-2 claimant Manisha in her cross-examination stated that it was the driver of the Bolero who was driving rashly and negligently and that the passengers travelling therein had cautioned him to drive the vehicle slowly. Likewise, even PW-6 Vikram who had registered an FIR also deposed on similar lines though further in his cross-examination he admitted that the accident took place due to the rash and negligent driving of the truck driver also and that even the driver of the Bolero was negligent. Even in the criminal case, PW-2 as well as PW-6 deposed that the accident occurred due to the rash and negligent driving of the truck driver, however, the criminal trial against the driver of the truck resulted in judgment of acquittal dated 19.03.2018 by giving the driver of the truck the benefit of doubt. Thus, the respondents/claimants have blown hot and cold in their evidence before the criminal Courts as well as before the Tribunal. In the criminal Court, the respondents/claimants i.e. PW-2 and PW-6 have alleged that accident took place due to rash and negligent driving of the truck driver whereas in the claim petition, it has been alleged that the accident took place due to rash and negligent driving of the driver of the Bolero, though PW-6, Vikram has gone to the extent of saying that the accident took place due to rash and negligent driving of the truck driver also. In the circumstances, it has to be ascertained from the evidence on record as to who exactly was responsible resulting in the accident taking place.

[8] Learned counsel for the appellant(s) – Insurance Company contended that it was apparent that it was a case of contributory negligence. However, who exactly was at fault has to be ascertained from the evidence and not merely on the basis of deposition given by the parties because that can depend upon the perception of a particular party. A perusal of paragraph No.10 of the award reveals that the truck was going on the correct left hand side and that the accident took place at the time when the driver of the Bolero attempted to overtake the truck after getting signal from the truck driver.

[9] Admittedly, a perusal of the FIR reveals that the truck was loaded with 'Rori' (i.e. crushed stones) and the driver of the truck had given a signal indicating that the vehicle seeking to overtake could overtake. The accident took place by the left side of the Bolero striking against the right side of the rear tyre of the truck. Although PW-6 in the FIR as well as in his statement has alleged rash and negligent driving by the driver of the truck as also negligence by the driver of the Bolero but the fact remains that it is the left side of the Bolero which hit the rear wheel of the right side of the truck which was going ahead. It is obvious that a vehicle which is in the process of overtaking is to maintain a safe distance from the vehicle which it is overtaking. It has come in the evidence of PW-2 as well as PW-6 before the learned Tribunal that the driver of the Bolero was going at a fast speed and he was told to slow down by the occupants of the vehicle though PW-6 Vikram has also alleged rash and negligent driving by the driver of the truck also. However, the perception with regard to rash and negligent driving may differ from person to person but what has to be seen is as to what is the picture which emerges on the appreciation of the evidence on record.

[10] As has been observed above, although the Bolero was in the process of overtaking after getting a signal from the truck driver permitting it to overtake, yet the left side of the Bolero banged into the rear right side tyre of the truck resulting in accident. Apparently, the driver of the Bolero who was overtaking did not maintain an adequate distance. Therefore, to my mind, the negligence would exclusively be that of the driver of the Bolero. Accordingly, the plea raised by the Insurance Company of there being contributory negligence is rejected though on first blush the same appears to be with merit on account of registration of an FIR by PW-6 Vikram alleging rash and negligent driving by the truck driver, but, as has been noticed above, the question of rash and negligent driving is to be assessed on the facts of the case which point to the accident being attributable to the rash and negligent driving by the driver of the Bolero.

[11] Learned counsel for the appellant(s) – Insurance Company next argued that although the learned Tribunal had assessed the income of deceased Bhag Mal, aged 55 years at ₹ 7,000/- on the basis of minimum wages payable in the State of Haryana during the relevant period i.e. March 2015, yet learned counsel contends that the income has been assessed on the higher side since minimum wages for the relevant period in the State of Haryana was ₹ 5812/-. Besides, a sum of ₹ 2,50,000/- had been awarded under the conventional heads (i.e. ₹ 25,000/- towards funeral expenses, ₹ 25,000/- towards loss of estate, ₹ 1,00,000/- towards loss of love and affection and ₹ 1,00,000/- on account of loss of consortium). Learned counsel contended that the compensation on account of loss of estate and funeral expenses was liable to be reduced from ₹ 25,000/- to ₹ 15,000/- in each case. Likewise, sum of ₹1,00,000/- awarded to the widow of the

deceased on account of loss of consortium was liable to be reduced to ₹ 40,000/-. Learned counsel further contended that no amount was payable on account of loss of love and affection.

[12] Per contra, Ms. Sushma Singh, Advocate, learned counsel for the respondents/claimants while not disputing the aforementioned aspects of the plea raised by learned counsel for the appellant(s) – Insurance Company contended that no addition had been made on account of future prospects despite entitlement to addition of 10% of the established income of the deceased minus the tax component. Besides, in terms of paragraph No.8.7 of the decision in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram and others decided on 18.09.2018 in Civil Appeal No.9518 of 2018**, the respondents/claimants i.e. respondent Nos.2, 3 and 5 i.e. the sons as well as respondent No.4 i.e. the daughter of the deceased were also entitled to award of ₹ 40,000/- each on account of loss of parental consortium in FAO No.784 of 2018.

[13] As far as the plea qua future prospects is concerned, it needs noticing here that as per paragraph No.61(iv) of the decision in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, Hon'ble the Supreme Court has held that where the deceased was self-employed and was between 50-60 years of age, then in that eventuality addition of 10% of the established income of the deceased minus the tax component is to be made qua future prospects.

Since in the instant case, the deceased Bhag Mal admittedly was 55 years of age and self employed, therefore, 10% of the established income of the deceased i.e. ₹ 5812/- less tax component would be added on account of future prospects.

[14] As regards loss of love and affection, no amount is payable on account of the same in view of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra).

[15] Likewise, in terms of Paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), the claimants are entitled to ₹ 15,000/- on account of loss of estate, ₹ 15,000/- for funeral expenses and ₹ 40,000/- on account of loss of consortium.

Accordingly, in the light of the position as noted above, compensation of ₹ 25,000/- awarded on account of funeral expenses, ₹ 25,000/- awarded on account of loss of estate and ₹ 1,00,000/- awarded on account of loss of consortium to the deceased are reduced to ₹ 15,000/-, ₹ 15,000/- and ₹ 40,000/- respectively.

Further, as per paragraph 8.7 of the decision of Hon'ble the Supreme Court in Magma General Insurance's case (Supra), each of the children of the deceased i.e. respondent Nos.2 to 5 are entitled to award of ₹ 40,000/- on account of loss of parental consortium.

[16] In view of the position noted above, the appeals (i.e. FAO Nos.783 and 785 to 788 of 2018) are dismissed, whereas FAO No.784 of 2018 is allowed to the extent of holding the income of the deceased Bhag Mal to be ₹ 5812/- instead of ₹ 7,000/-. Likewise, the compensation on account of loss of consortium, funeral expenses, loss of estate are reduced though respondents/claimants are held entitled to award of future prospects to the extent of 10% of the established income of the deceased, besides, each of the respondents/claimants i.e. children of the deceased are also held entitled to loss of consortium @ ₹ 40,000/-.

[17] Accordingly, the compensation awarded in all five appeals (i.e. FAO Nos.783 and 785 to 788 of 2018) is upheld subject to appeal, if any, filed by the respondents/claimants. Details of the compensation to which the respondents/claimants would be entitled to in FAO No.784 of 2018 titled as New India Assurance Co. Ltd. v. Savitri Devi and others is as under:-

Sr. No.	Heads	Amount assessed by the Tribunal	Amount assessed by the Court
1.	Income	₹ 7000/-	₹ 5812/-
2.	Future Prospects	NIL	10% of ₹ 5812/- = ₹ 581/-
3.	Total Income assessed	₹ 7000/-	(₹ 5812/- + ₹ 581/-) = ₹ 6393/-
4.	Multiplier applied	11	11
5.	Deduction (towards personal expenses of deceased)	1/3 of ₹ 7000/- = ₹ 2333/-	1/3 of ₹ 6393/- = ₹ 2131
6.	Dependency (Annual)	(₹ 7000/- - ₹ 2333/-) = ₹ 4667/ (per month) ₹ 4667/- x 12 = ₹ 56,004/-	(₹ 6393/- - ₹ 2131/-) = ₹ 4262/- (per month) ₹ 4262/- x 12 = ₹ 51,144/-
7.	Compensation Awarded	₹ 56,004/- x 11 = ₹ 6,16,044/-	₹ 51,144/- x 11 = ₹ 5,62,584/-
8.	Loss of Love and affection	₹ 1,00,000/-	NIL
9.	Loss of Estate	₹ 25,000/-	₹ 15,000/-
10.	Funeral Expenses	₹ 25,000/-	₹ 15,000/-
11.	Loss of Consortium	₹ 1,00,000/- (to wife)	₹ 40,000/-
12.	Loss of Parental Consortium	NIL	₹ 40,000/- (each to respondent/claimants Nos.2 to 5 i.e. sons and daughter) Total = (₹ 1,60,000/-)
13.	Interest	7.5%	7.5%
	TOTAL	₹ 8,66,044/- (rounded off ₹ 8,66,000/-)	₹ 7,92,584/-

[18] Accordingly, as against compensation of ₹ 8,66,000/- awarded by the Tribunal, the respondents/claimants (in FAO No.784 of 2018) are

held entitled to compensation of ₹ 7,92,584/- along with interest @ 7.5 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[19] Needless to mention, the Insurance Company shall deduct income tax liability, if any, qua future prospects in accordance with the decision in Pranay Sethi's case (supra). It is further ordered that the apportionment of compensation awarded shall be in the manner indicated by the learned Tribunal after first making payment on account of loss of consortium to each of the respondents/claimants.

[20] Accordingly, appeals (i.e. FAO Nos.783 and 785 to 788 of 2018) are dismissed while FAO No.784 of 2016 is partly allowed by modifying Award dated 19.07.2017 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

03.12.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.