

FAO-2335-2001(O&M) &
FAO-40-2002(O&M)

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

(1) FAO-2335-2001(O&M)

Himachal Road Transport Corporation

...Appellant

Versus

Smt.Sanjha Devi and others

...Respondents

(2) FAO-40-2002(O&M)

Smt.Sanjha Devi and another

...Appellants

Versus

Himachal Road Transport Corporation and others

...Respondents

Date of Decision:-16.1.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Neeraj Khanna, Advocate &
Mr.Ravinder Arora, Advocate
for the appellant in FAO-2335-2001 and
for respondents No.1 and 2 in FAO-40-2002.

Mr.Sandeep Jasuja, Advocate
for the respondents No.1 and 2 in FAO-2335-2001 and
for the appellants in FAO-40-2002.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-2335-

2001 filed on behalf of appellant – Himachal Road Transport Corporation and FAO-40-2002 filed on behalf of appellants – Smt.Sanjha Devi and another, which have arisen out of the same accident.

Briefly stated, the facts of the case are that Smt.Sanjha Devi – mother and Gurdial Mehta – father, both petitioners/claimants had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondent No.1 – Himachal Road Transport Corporation, Sarka Ghat Depot, District Mandi, Himachal Pradesh and Himachal Road Transport Corporation, Shimla – owners and Ram Lal – driver of bus having registration No.HP-28-0795 (hereinafter referred to as the offending vehicle) claiming compensation of Rs.10 lacs on account of death of their son Shashi Mohan Mehta in a road side accident caused due to rash and negligent driving of the offending vehicle by respondent No.3 Ram Lal.

As per the case of the petitioners/claimants on 19.6.1999 at about 8:00 a.m., Shashi Mohan Mehta – deceased was going from Killa towards Mundi Kharar on his bicycle in the area of Kharar; that Shambhu Kumar nephew of deceased was going along with him on a different bicycle; that when they reached near a turn, the offending vehicle came from Chandigarh side being driven by respondent No.3 in a rash and negligent manner and struck against the bicycle of the deceased; that the deceased suffered injuries; he was taken to hospital, however he succumbed to the injuries on 23.6.1999. The petitioners/claimants further contended that the deceased was aged about 22 years working as a mason drawing income of Rs.3,600/- per month; that they were dependent upon

his earnings.

Notice of the claim petition was given to respondents, who put in appearance. Respondents No.1 and 2 filed a joint written statement denying that any accident had been caused by bus in question contending that police had registered a false FIR against respondent No.3.

In the written statement filed on behalf of respondent No.3 – driver, he took up a stand that on the fateful day while he was driving the offending vehicle and had reached about 2 kms. from Kharar on Chandigarh Kharar Road, then a CTU bus was parked on the right side of the road; that the deceased appeared on the road all of a sudden and on seeing the offending vehicle coming from Chandigarh side, he got nervous and was unable to control over the bicycle, resultantly he fell on the road and sustained injuries.

In the end, the respondents prayed for dismissal of the claim petitions.

On the pleadings of the parties following issues were framed:

1. Whether the deceased Shashi Mohan died in a motor vehicle accident caused by respondent No.3 (Driver) while driving the bus no.HP-28-0795 in a rash and negligent manner? OPP.
2. If issue No.1 is proved, whether the petitioner are the only legal heirs of the deceased Shashi Mohan? OPP.
3. Whether the petitioners are entitled for the compensation, if so, how much and from whom? OPP.
4. Relief.

Both the parties led evidence in support of their respective

claims.

During the course of evidence, the claimant No.2 appeared himself as PW1. The claimants further examined Shambhu Kumar as PW2.

On the other hand, the respondent No.3 Ram Lal himself appeared as RW1. However, no evidence was led on behalf of respondents No.1 and 2.

After hearing arguments, the Tribunal allowed the claim petition and granted compensation of Rs.1,80,000/- with interest and cost to the claimants payable by all the three respondents jointly and severally.

The claimants and insurance company felt aggrieved by the award and they have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

As far as **FAO-2335-2001** filed by Himachal Road Transport Corporation through its Managing Director, Shimla is concerned, the main grouse of such appellant is that respondent No.3 has wrongly been held responsible for causing accident on account of rash and negligent driving of the bus, whereas it was not so; that the deceased had appeared on the road all of a sudden and on observing the offending vehicle coming from Chandigarh side, he got nervous and was unable to control over the bicycle, resultantly he fell on the road and sustained injuries to which he succumbed subsequently; that a wrong FIR was lodged against respondent

No.3. Therefore, the appeal be accepted and the impugned award be set aside.

However, I find little merit in this contention. The Tribunal had framed a specific issue as issue No.1 to the effect “*Whether the deceased Shashi Mohan died in a motor vehicle accident caused by respondent No.3 (Driver) while driving the bus no.HP-28-0795 in a rash and negligent manner? OPP*”. The parties were afforded opportunities to lead evidence. The claimants had examined Shambhu Kumar as PW2, who provided eye-witness account of the accident supporting the case of the claimants on material points categorically stating that the accident had taken place since the offending vehicle was being driven at high speed and going on the wrong side it hit the deceased, resulting in the accident and that accident had taken place due to negligent driving of the bus. He further added that the police had recorded his statement on 23.6.1999, which formed basis for registration of the FIR Ex.PW2/1. In rebuttal Ram Lal – respondent No.3 had appeared as RW1 and repeated on oath his version as given in the written statement. In his cross-examination, he admitted that FIR was registered against him and criminal case was pending against him in the Court at Khanna. On analysis of the evidence, the Tribunal observed that FIR in this case was lodged by Shambhu Kumar and version in the FIR is on the same lines as deposition of PW2 Shambhu Kumar. As such, it was proved that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.3 – Ram Lal. The eye-witness had no previous enmity with the respondent – driver to depose falsely against him. The registration of the

FIR against respondent No.3 – Ram Lal and he having been sent up to face trial *prima facie* goes to show that it was respondent No.3 – Ram Lal, who was author of the accident by rash and negligent driving of the offending vehicle. The Tribunal was justified in deciding such issue in favour of the claimants and against the respondents and due to that very reason, the claim petition was accepted and compensation was awarded to the claimants. The appellant is feeling aggrieved unnecessarily and the appeal filed by the appellant is without any merit.

Thus, ***FAO-2335-2001*** stands dismissed.

It may be mentioned here that appellant in this appeal had challenged the compensation awarded by the Tribunal stating that it was on a higher side. Whereas the grouse of the appellants in FAO-40-2002 is otherwise. As far as FAO-40-2002 filed by appellants Smt.Sanjha Devi and Sh.Gurdial Mehta is concerned, the grouse of these appellants seems to be justified. The Tribunal on analysis of evidence produced before it, believed the assertion in the petition that deceased was earning Rs.120/- per day since PW1 and PW2 had also stated so on oath while getting their statements recorded before the Tribunal. The contention of respondents that the deceased was simply a labourer and earning of Rs.60/- per day was rejected. The Tribunal had taken the monthly income of deceased to be Rs.2,100/- per month. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.2,100} + 840 = \text{Rs.2,940}$.

Since the deceased was a bachelor, 50% of his monthly income is to be deducted towards his personal and living expenses. Doing that the dependency of claimants comes out to Rs.1,470/- per month, annual dependency comes out to Rs.1,470 x 12 = 17,640.

Considering the age to be 22 years at the time of accident, the Tribunal had applied multiplier of 15. However, in view of ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, multiplier of 18 was required to be used. Doing that the compensation payable comes out to Rs.17,640/- x 18 = 3,17,520/-.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs.3,17,520 + 70,000 = 3,87,520.

Thus the claimants are found entitled to compensation of Rs.3,87,520/- payable by all the respondents jointly and severally. The Tribunal has awarded compensation of Rs.1,80,000/-.

In this way, the enhanced amount comes out to Rs.2,07,520(3,87,520 - 1,80,000). The enhanced compensation be paid to the claimants i.e. claimant No.1 - mother to the extent of 75% and claimant No.2 – father to the extent of 25% in cash. The appellants/claimants would be entitled to interest at rate of 7.5% per annum from the date of filing appeal till actual payment.

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With such modification, the ***FAO-40-2002*** is allowed partly
with costs.

16.1.2019
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No