IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 774 of 2002 (O&M)**
Date of decision : February 15, 2019

New India Assurance Company Limited .....Appellant

Versus

Shri Narinder Singh and others ....Respondents

2. FAO No. 773 of 2002 (O&M)

New India Assurance Company Limited .....Appellant

Versus

Lidia Singh Sandhu and others ....Respondents

3. FAO No. 775 of 2002 (O&M)

New India Assurance Company Limited .....Appellant

Versus

Rajinder Kaes Mann and others ....Respondents

4. FAO No. 776 of 2002 (O&M)

New India Assurance Company Limited .....Appellant

Versus

Kulwant Kaur and others ....Respondents

5. FAO No. 3010 of 2002 (O&M)

Lidia Singh Sandhu and another .....Appellants

Versus

Shri Baljeet Singh and others ....Respondents

6. FAO No. 3011 of 2002 (O&M)

Kulwant Kaur and others .....Appellants

Versus

Baljit Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjay Jain, Advocate
or the appellants/claimants (in FAO Nos. 3010 & 3011 of 2002,
for respondents no.1 & 3 in FAO No.773 of 2002 and
for respondents no.1 to 4 in FAO No.776 of 2002.

Mr. Deepak Suri, Advocate
for the appellants in FAO Nos.773, 774, 775 and 776 of 2002
and for respondent no.4 in FAO No.3011 of 2002.
Mr. Ravinder Arora, Advocate
for respondent no.3 in FAO Nos.3010 & 3011 of 2002,
for respondent no.5 in FAO No.774 of 2002,
for respondent nos.6 in FAO Nos. 773 & 775 of 2002 and
for respondent no.7 in FAO No.776 of 2002.

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LISA GILL, J.

This judgment shall decide FAO Nos.773, 774, 775, 776, 3010 and 3011 of 2002.

All the said appeals emanate from claim petitions arising out of the accident which took place on 03.04.2018 which have been decided by the learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to 'the Tribunal') vide separate awards of even date.

FAO Nos.773, 774, 775, 776 of 2002 have been filed by the insurance company challenging award dated 03.04.2018.

FAO Nos. 3010 & 3011 of 2002 have been filed by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Kanwaljit Singh and Lakhbir Singh, respectively vide award dated 10.11.2001.

Brief facts of this case are that in a motor vehicle accident which took place on the intervening night of 03/04.08.1998 at about 11.40 p.m., five persons lost their life. The accident took place between the ill-fated Esteem car bearing registration No. HR-01-D-5555 and the offending truck bearing registration No. PB-10G-9977. It was pleaded that all the five occupants of the Esteem car were returning from Jalandhar to Ambala Cantt. Kanwaljit Singh (deceased) was driving the Maruti Esteem car, Lakhbir

Singh, Jasdeep Singh, Navtej Singh, Surinder Kaur (all deceased) as well as Saranpal Kaur were its occupants.

Four claim petitions were preferred seeking compensation on account of death of the four occupants. All the petitions were consolidated with the petition titled 'Smt. Lidia Singh Sandhu and others versus Baljeet Singh and others' (MACT No. 140 of 2000). In the FIR (Ex.P3), it is mentioned that Kanwaljit Singh (deceased) was driving the Maruti Esteem car bearing registration No. HR-01D-5555. His family members i.e. Lakhbir Singh, Jasdeep Singh, Navtej Singh, Surinder Kaur and Saranpal Kaur were its occupants. They were coming from Jalandhar to Ambala Cant. It is further mentioned that on the intervening night of 3/4.08.1998 at about 11.40 p.m., when the car reached about 10/13 kilometres ahead of Sirhind, a truck bearing registration No. PB-10-G-9977 was standing parked on the pucca portion of the road without any indicator. There were flashing lights of on-coming vehicles due to which the Maruti Esteem car dashed against the truck from behind. The accident was witnessed by the occupants of the Zen car which was just behind the Maruti Esteem car. FIR (Ex.P3) was registered on the statement of Rajinder Singh PW4, who was an occupant of a Zen car which was following the Esteem car. PW4 Rajinder Singh, who was travelling in the Zen car behind the Esteem car found that Kanwaljit Singh, Lakhbir Singh and Jasdeep Singh had died on the spot. They extricated Surinder Kaur, Navtej and Saranpal Kaur and arranged for them to be taken to Civil Hospital, Fatehgarh Sahib. Surinder Kaur and Navtej, however, died. Accident, it was stated, was caused due to the sole negligence of the truck driver.

The claim petitions were resisted. A joint written statement was filed by respondents No. 1 and 2 and separate written statements were filed by respondents No. 3 and 4.

Following issues were framed by the learned Tribunal:-

1. Whether the accident took place due to rash and negligent driving of truck No. PB-10-G-9977 by its driver of Shri Kanwaljit Singh Sandhu, Shri Lakhbir Singh, Shri Jasdeep Singh and Smt. Surinder Kaur as alleged?OPP.
2. If issue No. 1 is proved, to what amount of compensation the claimants are entitled to and from whom?OPP.
3. Whether the driver of the offending vehicle was not holding a valid and effective driving licence as alleged?OPR 3 & 4.
4. Whether the insurance company is not liable to make any payment of compensation on account of the preliminary objections taken by it in its written statement?OPR.
5. Relief.

Evidence was led by both the parties.

Learned Tribunal on considering the facts and circumstances of the case besides the evidence on record concluded that the accident in question took place due to the negligence of both the offending truck as well as the driver of the Esteem car. They were both found guilty of negligence to the extent of 50% each. Compensation to the claimants was afforded and all the petitions decided accordingly.

New India Assurance Company Limited i.e. the insurer of the offending Esteem car has approached this Court challenging all the four awards dated 10.11.2001 to the extent of the liability imposed upon the said insurance company on the ground that contributory negligence on the part of the driver of Esteem car is not made out in any manner. FAO Nos.773, 774, 775, 776 of 2002 have been filed by the said insurance company.

FAO Nos. 3010 & 3011 of 2002 have been filed by the claimants seeking enhancement of the compensation awarded to them. FAO No. 3010 of 2002 has been filed by the legal representatives of Kanwaljit Singh (deceased) i.e. widow and minor. FAO No. 3011 of 2002 has been filed by the legal representatives of Lakhbir Singh (deceased) i.e. widow and three children. It is to be noticed that Lakhbir Singh and Kanwaljit Singh were brothers.

Learned counsel for New India Assurance Company Limited argues that finding of the learned Tribunal in respect to the contributory negligence on the part of the driver of the Esteem car is clearly erroneous in the wake of the evidence on record and is liable to be set aside. It is contended that even if it is accepted that the truck in question did not reverse but was standing parked in the middle of the road, the driver of the Esteem car cannot be held guilty of any kind of contributory negligence as the indicators of the truck were not turned on, neither was there any reflector or indication of any sort to point out the presence of the truck in the middle of the road. Learned counsel relies upon the judgment of this Court in FAO No. 45 of 2013 decided on 22.11.2018. It is, thus, prayed that the appellant - insurance company be absolved of the liability imposed upon it by the learned Tribunal.

Learned counsel for the respondent i.e. insurer of the offending truck, however, refutes the said averments while submitting that first and foremost Rajinder Singh PW4 sought to introduce a falsehood that the truck reversed when the Esteem car approached it. Such was never the averment in the FIR registered on the statement of PW4. Furthermore, in case the driver of the Esteem car had exercised proper care, caution while driving at a normal speed, he would have been able to avert the accident. Thus, the finding of the contributory negligence on the part of the driver of the Esteem car should be upheld.

Learned counsel for the claimants vehemently argues that income of the deceased has been assessed on the lower side. Meagre compensation has been afforded by the learned Tribunal which should be enhanced.

I have heard learned counsel for the parties and have gone through the available record.

It is relevant to note at this stage that the present are appeals, the paper book thereof were destroyed alongwith the record in the fire which took place on the premises of this Court in 2011. The files have been re-constructed. Part of the record available with the learned counsel for the parties has been placed on record.

There is no dispute that an accident took place between the Esteem car and the offending truck on 03.08.1998 at about 11.40 p.m. PW4 Rajinder Singh, who is an eyewitness of the accident, deposed that he was proceeding behind the Esteem car in a Maruti Zen car. The number of the offending truck is duly mentioned by him. It is specifically stated that the truck was stationed in the middle of the metalled road without any indicators or lights. In the FIR (Ex.P3), it is mentioned that the truck in question was lying parked in the middle of the road without any light or indicator. There was on-coming traffic, thus, because of glare of lights the truck could not be seen and the Esteem car struck against the back of the stationary truck. Doubtlessly PW4 in his testimony before the learned Tribunal added that the truck in question reversed when the Esteem car approached. However, this fact by itself does not detract from the stand taken by the claimants. It is a matter of record that the said truck was lying parked in the middle of the metalled road. There were no indicators, lights or reflectors indicating the presence of the truck in the middle of the road. Merely because the Esteem car struck against the offending truck from behind, does not per se lead to inference of contributory negligence on the part of the said vehicle's (Esteem) driver.

The respondent - owner and driver of the truck did not step in the witness box, therefore, an adverse inference has been rightly drawn against them. In their written statement, it was pleaded that the truck was not involved in the accident in question. It was sought to be explained that the shaft of the truck had broken and it was parked on the left side of the road without its indicators on. Bushes had been spread around the truck. Respondent No. 1, it was claimed, had gone to Sirhind for getting the truck repaired whereas respondent No. 2 was sitting on the top of the truck. It was claimed that the car was being driven rashly and negligently at a fast speed and the driver of the Esteem car was under the influence of liquor. There is, however, not an iota of evidence on record to substantiate this stand. As noticed earlier, respondents No. 1 and 2 did not even step in the witness box.

It has been held by the Hon'ble Supreme Court in the case of **Archit Saini and another versus Oriental Insurance Company Limited and others 2018 (5) RCR (Civil) 80** that merely because a vehicle strikes against a vehicle from behind does not, per se, lead to an inference of contributory negligence on the part of the vehicle coming from behind. In the present case, the accident took place at about 11.40 p.m. The truck in question is proved to have been parked in the middle of the road without any kind of indicator or light to indicate its presence on the road. Though in the written statement of the owner and driver of the truck, it has been pleaded that shaft of the truck was broken, there is indeed no evidence on record to indicate the same, neither is it proved on record that due care and caution had been exercised by the driver of the truck to warn the commuters of the presence of the stationary truck in the middle of the road, in the dead of the night.

In this view of the matter, in my considered opinion, finding of the learned Tribunal in respect to contributory negligence on the part of the driver of the Esteem car to the extent of 50% is unjustified, untenable, hence set aside. It is held that the accident in question took place solely due to the rash and negligent act of the driver of the offending truck bearing registration No. PB-10G-9977. As there is no dispute regarding liability of the insurer of the said truck, needless to say the said insurance company is liable to fulfil the entire claim.

FAO No. 3010 of 2002

Learned Tribunal awarded a sum of ₹9,75,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased (Kanwaljit Singh) was assessed as ₹10,000/- per month. 50% deduction was effected. Multiplier of 16 was applied. Additionally, a sum of ₹5,000/- on account of loss of consortium was awarded besides a sum of ₹10,000/- on account of funeral expenses and last rites.

Claim petition was filed by the appellant – Lidia Singh, appellant No. 2 alongwith Piotr-Gniewosl. Learned Tribunal held that the latter was not entitled to file the claim petition and neither was there any power of attorney executed by him on record. No appeal has been filed by the said claimant. Appellants in the present appeal were held to be the legally wedded wife and son of the deceased. No challenge thereto has been raised by any of the parties.

The deceased Kanwaljit Singh was claimed to be engaged in the business of import and export besides being a Proprietor of three firms. It was stated that he was living at Poland alongwith his wife, the claimant - Lidia and their minor child. Kanwaljit Singh alongwith Lakhbir Singh had come to India at the time of the accident. Lidia PW5, produced her passport (Ex.P12) and stated that she had come from Poland for recording of her testimony. Her husband Kanwaljit Singh, was stated to be a partner in Sumit Group of Companies besides working with the firms M/s Kamal Import and Export and M/s Surinder and Company. Returns of M/s Kamal Import and Export from 01.01.1990 to 31.03.1998 (Exs. P13 to P49), their business transactions (Exs.P65 to P83) were produced by PW5. She also produced transactions of M/s Surinder and Company from 01.01.1997 to 31.03.1998 (Exs.P50 to 64). PW5 stated that her husband was earning about 25,000 dollars per month. Learned Tribunal, however, assessed income of the deceased Kanwaljit Singh to be ₹10,000/- per month on the ground that the documents as referred to above were not proved in accordance with law. Validity and legality of the said documents, it was observed, was not established.

It is relevant to note at this stage that learned counsel for the appellants or the insurance company are unable to furnish most of the said exhibits on which reliance was sought to be placed. Some of the documents available with learned counsel for the appellants are in Polish and it is stated that they were produced as such before the learned Tribunal. Learned counsel for the appellants – claimants does not dispute that the said documents do not indicate the exact income of the deceased neither does it show the status of the deceased in the said companies or his share thereof. However, it is not denied by learned counsel for the insurance companies that the deceased Kanwaljit Singh alongwith Lakhbir Singh were residing in Poland and were carrying on the business of Import and Export. PW2 Manmohan Singh, another brother of the deceased is also admittedly a Non Resident Indian. In the factual matrix of the case, it is considered just and expedient to assess the income of the deceased to be ₹15,000/- per month (approximately 500 dollars per month) i.e. ₹1,80,000/- per annum. It is fairly stated that a sum of ₹29,000/- per annum is, however, to be deducted from the income of the appellant on account of income tax. Thus, total income of the appellant after deducting tax is ₹1,51,000/- per annum (1,80,000-29,000). In view of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase on account of future prospects at the rate of 40% (₹60,400/-) has to be afforded, as the deceased was 38 years old at the time of accident, which takes income of the deceased to ₹2,11,400/- per annum. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of 1/3rd is to be applied as number of dependants is two (2), thereby rendering income of the deceased to be ₹1,40,933/- per annum (2,11,400-70,467). Applying a multiplier of 15, dependancy of the claimants is, therefore, assessed as ₹25,36,794/- (₹1,40,933x18). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333,** appellant No. 2 i.e. son of the deceased is entitled to ₹40,000/- on account of loss of parental consortium. Claimants are, thus, entitled to total compensation of ₹26,46,794/- detailed as under:-

Loss of dependency(₹1,40,933x18)	₹25,36,794/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹26,46,794/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

FAO No. 3011 of 2002

Learned Tribunal awarded a sum of ₹10,43,550/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased, Lakhbir Singh was assessed as ₹8,000/- per month. 50% deduction was effected. Multiplier of 15 was applied. Additionally, a sum of ₹5,000/- on account of loss of consortium was awarded besides a sum of ₹10,000/- on account of funeral expenses and last rites.

Income of the deceased Lakhbir Singh was assessed as ₹8,000/- per month. This was so done on the basis of a suggestion put to the claimant – Kulwant Kaur that the deceased was not earning more than ₹7000-8000 per month which she has denied. Deceased Lakhbir Singh was the brother of Kanwaljit Singh and it is not denied by learned counsel for the respondents that he too was engaged in the business of Import and Export and was conducting his commercial enterprises from Poland. As income of Kanwaljit Singh has been assessed as ₹15,000/- per month, it is considered just and expedient to assess the income of deceased Lakhbir Singh to be ₹15,000/- per month as well because both of them are similarly placed. A sum of ₹29,000/- per annum is deducted from the income of the appellant on account of income tax. Thus, total income of the appellant after deducting tax is ₹1,51,000/- per annum (1,80,000-29,000). In view of the guidelines of the Hon'ble Supreme Court in **Pranay Sethi's** case (supra) increase on account of future prospects at the rate of 25% (₹37,750/-) has to be afforded, as the deceased was 45 years old at the time of accident, which takes income of the deceased to ₹1,88,750/- per annum. In view of the guidelines laid down by the Hon'ble Supreme Court in ***Smt. Sarla Verma's*** case (supra) 2009 (3) RCR (Civil) 77, deduction of $1/4^{th}$ has to be applied as number of dependants is four (4), thereby rendering income of the deceased to be ₹1,41,562/-(1,88,750-47,188). Applying a multiplier of 14, dependancy of the claimants is, therefore, assessed as ₹19,81,868/- (₹1,41,562x14). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate. The claimant widow is entitled to ₹40,000/- on account of loss of consortium. As the deceased is survived by more than two children, it is considered appropriate to afford a total sum of ₹1,00,000/- as loss of parental consortium. Claimants are, thus, entitled to total compensation of ₹21,51,868/- detailed as under:-

Loss of dependency (₹1,41,562x14)	₹19,81,868/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹1,00,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹21,51,868/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, FAO Nos. 3010 & 3011 of 2002 are disposed of and FAO Nos.773, 774, 775, 776, 3010 and 3011 of 2002 are allowed.

(Lisa Gill)
February 15, 2019 **Judge**
rts

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

Correction slip :

It is brought to my notice that in the final order dated 15.02.2019 passed in FAO No. 774 of 2002, there is a typographical error, in the last para at page 13.

The same is ordered to be corrected and the last para of the order dated 15.2.2019 be read as under:

> " With the above modification in the amount of compensation, FAO Nos. 3010 and 3011 of 2002 are disposed of and FAO Nos. 773, 774, 775, 776 of 2002 are allowed."

This order shall form part of order dated 15.02.2019.

(Lisa Gill)
Judge

March 15, 2019
rts