

(1)	FAO-1780-2005 (O&M)	
Union of India and another		...Appellants
Versus		
Jasbir Kaur and others		...Respondents
(2)	FAO-1781-2005 (O&M)	
Union of India and another		...Appellants
Versus		
Charanjit Kaur and others		...Respondents
(3)	FAO-1794-2005 (O&M)	
Jasbir Kaur and another		...Appellants
Versus		
Union of India and others		...Respondents
(4)	FAO-1863-2005 (O&M)	
Charanjit Kaur and another		...Appellants
Versus		
Union of India and others		...Respondents

Date of Decision:- 14.10.2019.

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

Present: Mr. P.K. Longia, Advocate for the appellants.

in FAO-1780 and 1781 of 2005 and
for respondent (UOI) in FAO-1794 and 1863-2005.

Mr. Rishav Jain and Mr. Arihant Jain, Advocates
for the appellants in FAO-1794 and 1863-2005
and for respondent Nos. 1 & 2
in FAO-1780 and 1781-2005.

Mr. H.S. Oberoi, Advocate for
Mr. Lokesh Narang, Advocate for UOI.

H.S. MADAAN, J.

Briefly stated facts of the case as per version of the claimants are that on 07.02.2003 at about 10.30 pm, deceased Gurcharan Singh was returning home from Deepak Palace, Chheharta after attending a party. He was travelling in Maruti Zen Car bearing registration No. PB-11-L-3033, his uncle Gurcharan Singh and friends Kulwant Singh Nanda, Ajay Sehgal and J.R. Thapa were also travelling in that very car. The car was being driven by deceased Gurcharan Singh in a very careful manner on the left hand side of the road. In the meanwhile, a Military truck bearing No.1676(1) belonging to 676 (Tetra) (for short' the offending vehicle') driven by respondent No.3 Constable R. Behsami on the right side of the road in violation of the traffic rules came from the opposite side being driven in a rash and negligent manner beyond permissible speed limit and hit the Maruti Zen Car. Resultantly, the occupants of the car suffered multiple injuries, whereas, the car was damaged extensively. Manjit Singh and Gurcharan Singh had died at the spot. Formal FIR No.43 dated 07.02.2003, for offences under Sections 304-A, 337, 338 and 427 IPC was registered with Police Station Chheharta against respondent No.3.

Legal representatives of both the deceased had filed separate claim petitions i.e. FAO No.1863-2005 was filed by parents of Manjit Singh deceased who was a bachelor, namely his mother Smt. Charanjit Kaur, aged about 45 years and father Kulwant Singh aged about 50 years against the respondents i.e. Union of India through Principal Secretary, Ministry of Defence, New Delhi and The Commanding Officer, 676, The Tank Transporter Platoon (Tatra) c/o 56 A.P.O.-owners and Constable R. Behsami-driver of the offending vehicle, claiming compensation of Rs.15 lacs. According to the claimants, the deceased was aged about 25 years and was working as an agent of Life Insurance Corporation of India. In addition to that, he was running a workshop of scooter and motorcycle repair at Chheharta, Amritsar and was earning a total sum of Rs.10,000/- per month.

On being put to notice, all the three respondents appeared and filed written statements, contesting the claim petitions, taking various legal objections with regard to the claim petition being not maintainable; petition being bad for non-joinder of necessary parties, inasmuch as owner of the Maruti Zen Car and its insurance company had not been impleaded as respondent. On merit, material assertions in the claim petitions were denied, contending that the military truck/vehicle was at the stand still since the dual carriage was blocked by the PWD near police station Chheharta and only one side of the road was open. The military vehicle was being led by representative military police and it was following the laid down vehicle at that time. Vehicles of the army were

towing a trailer loaded with a tank and at the time of alleged accident, the army vehicle was stand still on the extreme left side of the road. Manjit Singh deceased was driving the Maruti Zen Car in a rash and negligent manner at a very fast speed. He was not in full senses, since he was under the influence of liquor and he struck his car against the army vehicle. He had neither blown horn nor applied brakes. There was enough space to pass for Maruti Zen car to cross the army vehicle. The army vehicle was part of a convoy and the accident took place due to rash and negligent driving of the car in question driven by Manjit Singh deceased. That a Court of enquiry was conducted by the Army Authorities where statements of all the persons connected with the accident were recorded and it came to the conclusion that the accident had taken place due to rash and negligent driving of the car by Manjit Singh. According to the respondents, the claimants are influential persons, as such, a false FIR was got registered against respondent No.3. Refuting the remaining assertions, such respondents prayed for dismissal of the claim petitions.

The claimants filed replication, controverting the allegations in the written statement whereas reiterating the averments in the claim petition.

On pleadings of the parties, the following issues were framed:-

1. Whether respondent No.3 caused the death of Manjit Singh on 07.02.2003 at 10.30 p.m on the GT Road, Opposite Petrol Pump, Chheharta Chowk, Amritsar due to rash and negligent driving of Military Truck bearing

- No.1676(1) belonging to respondent No.2? OPA.
2. Whether the applicants are entitled to compensation, if so, to what amount and from whom? OPA.
 3. Whether the respondent No.3 was holding a legal and valid driving licence at the time of accident, if so to its effect? OPA.
 4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Amritsar (for short 'the Tribunal') decided issue No.1 in favour of claimants and against the respondents, issue No.3 against the claimants and in favour of the respondents, issue No.4 in favour of the claimants and against the respondents. As a result of findings on issues, the claim petition was accepted and the claimants were awarded a total compensation of Rs.2,06,000/-, payable by the respondents jointly and severally. It was directed that in case the amount of compensation was deposited within three months, then the the claimants would get interest @ 6% p.a. on the compensation amount from the date of application. Otherwise, rate of interest would be 9% p.a. from the date of claim petition till actual realization.

Similarly, Smt. Jasbir Kaur Narang-widow, aged about 47 years, Ms. Manmeet Kaur-minor daughter, aged about 13 years and Sh. Uttam Singh-father of Gurcharan Singh Narang-deceased had brought a claim petition bearing MACT No.22 of 17.03.2003/.01.08.2003 against those very respondents with regard to death of Sh. Gurcharan Singh

which was contested by the respondent almost on the same lines as in the connected matter bearing FAO No.1863-2005. On pleadings of the parties, the following issues were framed:-

1. Whether death of Gurcharan Singh was caused by respondent No.3 while driving military truck No.1676(1) belonging to 676, The Tank Transporter Platoon (Tatra) on 07.02.2003 at 10.30 pm in the area of GT Road, Opposite Petrol Pump, near Chheharta Chowk, Amritsar ? OPA.
2. Whether the applicants are legal representatives of deceased Gurcharan Singh? OPA.
3. Whether the applicants are entitled to compensation, if so, how much and from whom? OPA.
4. Whether the application is bad for non-joinder of necessary parties? OPR.
5. Relief.

After affording opportunities to the parties to lead evidence, the Tribunal returned a finding that respondent No.3 was author of the accident by his rash and negligent driving of the offending vehicle, resulting in death of Sh. Gurcharan Singh and compensation of Rs.15,11,932/- was awarded to the claimants, payable by the respondents jointly and severally along with interest @ 6% p.a. from the date of application, if amount was deposited within three months. Otherwise, rate of interest would be 9% p.a. from the date of filing of claim petition till actual realization. Directions with regard to apportionment of compensation were also issued.

The claimants in both the appeals i.e. FAO-1794 and 1863 of

2005 were not satisfied with the amount of compensation awarded to them by the Tribunal and they have approached this Court, by way of filing appeals seeking enhancement of that compensation, whereas, respondents were also aggrieved by the impugned awards allowing the claim petitions and have filed separate appeals i.e. FAO-1780 and 1781 of 2005, seeking setting aside of those awards and dismissal of the claim petitions.

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

The Tribunal on analysis of the evidence both oral as well as documentary brought on file by the parties has come to the conclusion that the accident in which Gurcharan Singh and Manjit Singh had lost their lives had taken place on account of rash and negligent driving of offending vehicle by respondent No.3. The version set up by the respondents that the accident had taken place on account of rash and negligent driving of the Maruti Zen car which had hit the stationary truck was rejected by the Tribunal, giving valid reasons. This aspect was also taken into consideration that formal FIR with regard to the accident had been registered against respondent No.3. Though, a plea was raised on behalf of the respondents that Ajit Pal Singh, who had appeared as an eye witness on behalf of the petitioners/claimants had got his statement recorded before the Court of inquiry proceedings, stating that he had arrived at the spot after the accident, therefore, his testimony cannot be taken into consideration. But that plea was not accepted. It was rightly so

done. Any statement recorded during Court of inquiry proceedings by the Army Authorities and any finding recorded by such Authorities is certainly not much relevant binding upon the Tribunal. The Tribunal has to reach its own conclusion on the basis of evidence adduced before it. It has to be kept in mind that Section 166 of the Act is a piece of welfare legislation, which was enacted to provide compensation to the victims of the road side accidents. The strict rules of evidence and procedure are not applicable while adjudicating such type of petition. Therefore, the Tribunal was justified in deciding issue No.1 in favour of petitioners/claimants and against the respondents, holding that the accident in which both the deceased had expired had taken place on account of rash and negligent driving of offending vehicle by respondent No.3. The claimants being legal representatives of the deceased have got every locus standi to file the claim petitions and the petitions so filed by them were perfectly maintainable.

Coming to the quantum of compensation, firstly, in the claim petition preferred by Smt. Charanjit Kaur and Kulwant Singh, with regard to death of their son Manjit Singh, who was a bachelor, aged about 25 years. The Tribunal had not accepted the version of claimants that he was earning Rs.10,000/- per month by working as an agent in Life Insurance Corporation besides running a workshop of scooter and motorcycle repair at Chheharta, Amritsar. This was so done for the reason that no documentary proof had been produced. He was treated as a labourer and his income was taken to be Rs.3000/- per month. The Tribunal was

justified in doing so. However, no addition has been made towards future prospects keeping in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil) 1009**, keeping in view the age of deceased at the time of his death in the road side accident, 40% of the income is to be added towards future prospects. Doing that monthly income of deceased is worked out to Rs.4200 (3000+1200).

The Tribunal has deducted 1/3rd of the amount towards personal and living expenses of the deceased, however, in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, if the deceased happened to be bachelor, 50% of the amount is to be deducted towards his personal and living expenses. Doing that, the dependency of the claimants who are his parents, comes out to Rs.2100 per month, annual dependency is worked out to Rs.25,200/-.

The Tribunal has wrongly applied multiplier of 13, keeping in view the ages of petitioners/claimants between 45 to 50 years. In view of the judgment **Pranay Sethi's** (supra), multiplier of 18 is to be applied. Doing that total compensation comes out to Rs.4,53,600/-.

The claimants are entitled to get Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses. Thus, the total compensation payable is arrived at Rs.4,83,600/-.

The Tribunal has awarded compensation of Rs.2,06,000/- to the claimants. The claimants would be entitled to get additional compensation of Rs.2,77,600/- with interest @ 7.5% p.a. from the date of

filing of appeal till actual realization. The amount of enhanced compensation would be apportioned among both the claimants in equal shares.

Next coming to the appeal filed by Jasbir Kaur Narang and others with regard to death of Sh. Gurcharan Singh, the Tribunal considering the statement of AW-3 Vijay Kumar Sharma that deceased was working as Manager in Punjab National Bank and had proved his salary certificate as Ex.AW3/1 and Ex.AW3/2. The date of birth of the deceased comes out to be 12.08.1956. The accident had taken place on 07.02.2003. As such his age was taken to be 47 years. As per his salary certificate, total salary was Rs.21,253.96/-. The Tribunal has deducted Rs.7147.70/- on account of income tax and installment of loans. This has been wrongly done. The gross salary of the deceased was required to be taken into consideration, though, amount of income tax payable would be deducted there from but installment towards payment of home loan is not to be deducted from the salary. The Tribunal has not added any amount towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, 25% of the income is to be added towards future prospects. Doing that monthly income of deceased is worked out to Rs.26,567/-.

Keeping in view the number of dependents upon income of deceased, 1/3rd of the amount is to be deducted towards his personal and living expenses. Doing that, the dependency of the claimants comes out to Rs.17711 per month, annual dependency is worked out to

Rs.2,12,532/-. Deducting 10% of the amount towards income tax, the balance comes out to be Rs.1,91,279/-.

Considering the age of deceased multiplier of 13 is applicable. Doing that total compensation comes out to Rs.24,86,627/-.

In view of the judgment **Pranay Sethi's** (supra), a sum of Rs.70,000/- is to be awarded under the 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. Thus, the total compensation payable is arrived at Rs.25,56,627/-.

The Tribunal has awarded compensation of Rs.15,11,932/- to the claimants. The claimants would be entitled to get additional compensation of Rs.10,44,695/- with interest @ 7.5% p.a. from the date of filing of appeal till actual realization. Since Ms. Manmeet Kaur was aged about 13 years at the time of filing of claim petition on 01.08.2003 and 16 years have elapsed therefrom, she must have attained majority by now. Therefore, share be released to all the claimants without any rider with regard to deposit thereof in the form of FDR with some nationalized bank. Consequently, the claim petitions filed by the claimants i.e. FAO-1794 and 1863 of 2005 are partly allowed and the appeals filed by the respondents i.e. FAO-1780 and 1781 of 2005 are dismissed.

14.10.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No