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

**FAO No.2879-2005(O&M)
Date of decision: 29.05.2019**

Kamlesh Lamba and another

…..**Appellants**

versus

Jatinder and others

……**Respondents**

FAO No.3445-2005(O&M)

The Oriental Insurance Company Limited

…..**Appellant**

versus

Kamlesh Lamba and others

……**Respondents**

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Rajesh Garg, Advocate for the appellants in FAO No.2879-2005 and respondent nos.1 and 2 in FAO No.3445-2005
Mr.Sanjiv Pabbi, Advocate for the appellant in FAO No.3445-2005 and respondent no.3 in FAO No.2879-2005

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

By this common judgment, I shall dispose of two connected appeals arising out of the same award dated 18.3.2005 passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari (for short, 'the Tribunal'). The claimants-appellants have filed FAO No.2879-2005 for enhancement of compensation, whereas appellant-Insurance Company has filed FAO No.3445-2005 challenging the quantum of compensation as well as denying its liability to pay the compensation. For facility of reference, facts are being mentioned from FAO No.2879-2005.

Facts of the case are that on 30.10.2002 at about 7.30 p.m., Anurag Lamba son of the claimants-appellants, aged about 22 years, who was student of 5th year of LLB, along with his friend Mandeep son of Rohtas, was coming from Rohtak side on a scooter bearing Registration Number DL-4SS-3388. The scooter was being driven by Anurag Lamba at a very slow speed. Near crossing, a tractor trolley bearing Registration Number HR-06F-7295 came rashly and negligently from Delhi side and dashed against the scooter. Anurag Lamba fell down from the scooter and was run over by the tyre of the tractor trolly. His friend also received multiple injuries. Manu Rattan son of Jasbir Rattan along with his friend Ramanjit Singh, who was standing nearby, pulled out Anurag Lamba from under the tyre of the tractor trolley and took him to PGI Rohtak, from there, he was shifted to Apollo Hospital, Delhi, where he remained under treatment till 4.4.2003, when he succumbed to the injuries.

On the statement of Manu Rattan, an FIR against the driver of the tractor trolley was registered.

Deceased Anurag Lamba was unmarried. His parents filed claim petition, stating that during his admission in the hospital, he has to undergo various operations, a huge amount was spent on the treatment, medicines, transportation, diet and attendant. They had to spend Rs.20,000/- on the transportation of dead body, funeral and last rites. Deceased was to start legal practice. He was working in the office of Senior Advocate Sh.B.B.Batra at Rohtak, who was paying him Rs.5000/- per month honorarium. Claimants-appellants claimed Rs.70 lakhs as compensation.

Respondent nos.1 and 2 driver and owner of the offending tractor trolley in the written statement took a plea that the tractor was purchased after obtaining loan from respondent no.4-State Bank of India. Due to defect in the engine, tractor was got replaced from the firm. Respondent no.4-Bank, vide letter dated 27.5.2003 informed respondent no.3 about change of engine and chassis number and also asked respondent no.3 insurance company to make necessary corrections in the cover note. Earlier, tractor was bearing Chassis No.99/156500366 and Engine No.43/001/N9900373 (herein after called as 'old tractor'). It was purchased from M/s Parnami Enterprises on 24.3.2000 and was financed by State Bank of India, Assan Kalan Branch. The bank got the same insured from Oriental Insurance Company Limited. After the change of the tractor, a new tractor bearing Engine No.E43/001/A0001035 and Chassis No.00A156500374 was supplied to respondent no.2 (herein after called as 'new tractor'). The intimation in this regard was sent to respondent no.4-Bank with the particulars of new tractor. This fact was confirmed by M/s Parnami Enterprises vide letter No.MT/2003 dated 14.5.2003, which was duly received by respondent no.4-Bank. Tractor of respondent no.2 was got insured from respondent no.4, from time to time. After exchange of the tractor, same was allotted Registration Number HR-06F-7295. However, the bank did not effect the change of Engine and Chassis number in its record due to which, respondent no.4 bank continued to get the tractor of respondent no.2 insured on the previous engine and chassis number. The tractor was comprehensively insured by Oriental Insurance Company Limited -respondent no.3 vide cover No. No.107248 dated 23.3.2002 which was valid from 30.3.2002 to 29.3.2003. Respondent no.1 was having valid licence at the time of insurance.

Respondent no.3 -insurance company took the plea that the said tractor No. HR-06F-7295 was not insured with respondent no.3-insurance company. One tractor make Swaraj make-744 PE Model 2000 HP-35 Engine No.43.1001/N 9900373 Chassis No.99P 156500366 was insured with respondent no.3. The policy was valid from 30.3.2002 to 29.3.2003. Therefore, the insurance company is not liable to pay the compensation.

Respondent no.4 bank took the plea that the tractor was hypothecated with it. He has not got no concern with the present case.

From the pleadings, following issues were framed:-

1. *Whether the accident was caused due to rash and negligent driving of tractor no.HR06E-7295 by Jatinder-respondent no.1, as alleged? OPP*
2. *Whether the claimants are entitled to recover any amount of compensation on account of death of their son Anurag Lamba in the accident, if so, to what amount and from whom? OPP*
3. *Whether the insured violated any terms and conditions of insurance policy, if so, to what effect? OPR*
4. *Relief.*

Following issue no.3A was also framed:-

3A. Whether the tractor bearing no.HR-06E-7295 was insured with respondent no.3 covering the date 30.10.2002? OPR 1 & 2.

The Tribunal, while deciding issue no.1, held that the accident took place due to rash and negligent driving of tractor by respondent no.1. While deciding issue no.2, the Tribunal came to the conclusion that the deceased was getting honorarium of Rs.5000/- per month from Sh.B.B.Batra, Advocate. He was a student of 5th year in LLB. The Tribunal assessed the notional income of the deceased to be Rs.10000/- per month and considering that he was 22 years of age and unmarried at the time of accident, took the dependency of the deceased to the parents at Rs.3000/- per month and applied the multiplier of 16 and calculated the compensation at Rs.5,76,000/-. Rs.20,000/- on account of transportation expenses and Rs.5,000/- on account of funeral expenses were allowed. Unreimbursed medical bills to the tune of Rs.5,24,000/- were also allowed. In this way, the total compensation was awarded to the tune of Rs.11,25,000/-. The same was allowed with interest @ 9% per annum from the date of filing of claim petition till realization.

The claim petition against respondent no.4 -bank was dismissed.

Respondent nos.1 to 3 were made jointly and severally liable to pay the compensation.

Regarding liability of insurance company, the Tribunal came to the conclusion that the insurance company is liable to pay the compensation. It is against this award that cross appeals have been filed.

I have heard learned counsel for the parties and have also carefully gone through the file.

First of all, I will take up the appeal filed by the Insurance company, in which, it has tried to avoid the liability.

Admittedly, the tractor was purchased by respondent no.2 after obtaining loan from said State Bank of India-respondent no.4. The bank has insured the same with Oriental Insurance Company Limited. Old tractor was purchased on 24.3.2000. It met with accident on 30.10.2002. It also comes out that since there was a manufacturing defect, old tractor was got exchanged and in its place new tractor with different Engine and Chassis number was supplied to the owner. Owner intimated the bank. The bank had insured the said tractor with Oriental Insurance Company Limited. Therefore, it was for the bank to intimate the insurance company.

It comes out that the bank for one or the other reason did not inform the insurance company and intimated the insurance company only on 14.5.2003 i.e. much after the accident. The evidence of Sh.B.K.Khurana Assistant Administrative Officer of Oriental Insurance Company Limited (RW2) reveals that after the tractor was insured with Engine and Chassis, the registration number of the tractor was also required to be mentioned in the insurance policy whenever same is allotted. However, the insurance company did not do it. In fact, it so happened that the old tractor was re-sold to one Ram Singh. It was also financed by the same State Bank of India, Assan Kalan Branch. The State Bank of India again got the said old tractor insured from the same insurance company by giving same Engine and Chassis number. In this way, the tractor having same Engine and Chassis number was got insured in the name of two persons i.e Ram Singh and Kartar Singh and it continued to be done for 2 -3 years. The insurance company lapsed in not conducting the physical verification of the tractor at the time of fresh insurance. In fact, insurance company was supplied business by the State Bank of India Branch Assan Kalan. Both bank and insurance company were negligent. When Kartar Singh on the purchase of the tractor found that it has got some defect in the Engine, he approached the company, which replaced the said tractor with a new tractor. The bank was required to keep inspection of the tractor to see that it is not sold or damaged. The said fact of replacement of tractor was within the knowledge of the State Bank of India. When the old tractor was returned, the company again sold the said tractor to one Ram Singh, who also got it financed from State Bank of India Assan Kalan Branch which is the same Branch from which Kartar Singh got financed the tractor. The bank continued to get the tractor with same Engine and Chassis No. insured in the name of two persons separately i.e. Ram Singh and Kartar Singh and the insurance company continued to get the premium.

The Tribunal has considered this aspect of the matter very exhaustively and has taken the view that the policy in favour of Kartar Singh was enforced when the tractor owned by him met with accident. The Tribunal also took the view that the insurance policy remained valid even after the allotment of new Registration no. Subsequent change in the Engine and Chassis no. had not effected any change in the ownership of the vehicle. Therefore, it was failure of the insurance company to correct the Engine and Chassis no. and that same will not invalidate the insurance policy. As such, the insurance company cannot avoid the liability.

There is no illegality and infirmity in the findings of the Tribunal in this regard. Therefore, same are affirmed.

Regarding appeal on quantum of compensation, the same will be discussed with the appeal of the claimants-appellants for enhancement of compensation.

The claimants-appellants have sought the increase in the compensation under the following heads:-

1. Funeral and other expenses from Rs.5000/- to Rs.70000/-
2. Transportation charges from Rs.20,000/- to Rs.50,000/-
3. Attendant charges for five months
4. Increase in the notional income

So far as compensation under the conventional heads are concerned, learned counsel for the insurance company admits that in view of *National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009* authority, Rs.70,000/- are to be allowed as compensation under the conventional heads i.e. funeral expenses, loss of estate and loss of love and affection/ consortium to the parents. As such, compensation on account of conventional heads is increased from Rs.5000/- to Rs.70,000/-.

Regarding transportation charges, it is stated that Rs.20,000/- have been allowed on account of transportation. In the claim petition, only Rs.20,000/- were claimed.

Learned counsel for the claimants-appellants contends that parents of the deceased had to repeatedly visit their son for five months of his admission in Apollo Hospital, New Delhi. Therefore, their journey charges are also payable.

I am of the view that the transportation charges for the deceased as claimed have been allowed and no further increase is possible, as the travelling charges on account of travelling by the parents were never claimed before the Tribunal.

Now, coming to the attendant charges for five months. I am of the view that the deceased remained admitted in Apollo Hospital, New Delhi from 31.10.2002 to 4.4.2003, when he succumbed to the injuries. Period of admission comes to 156 days. The Tribunal though allowed medical expenses but has not allowed any attendant charges. Undoubtedly, when a young son of the parents is admitted in a serious condition in the hospital, they have to regularly visit him and somebody has to remain present to look after them. Therefore, considering the price level in the year 2003, Rs.500/- per day as attendant charges are allowed to the claimants-appellants, which comes to Rs.156x500 = Rs.78,000/-. The said amount is allowed to the claimants.

Now, this Court will discuss as to what should be the notional income of the deceased. The Tribunal has taken notional income as Rs.10,000/-. Admittedly, the statement of Sh.B.B.Batra, Advocate shows that since deceased was 5th year student of LLB, he was visiting his office in the evening and helping in searching case laws and drafting of the cases. He was paying him Rs.5000/- per month honorarium. In addition to this, after completion of LLB, the deceased was either to get a job or start his own practice.

In *Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma and another, 2014(4) RCR (Civil) 543,* the Apex Court considered the case of death of boy aged 19 years, who was a student of Medicine. It increased the future income from Rs.18,000/- to Rs.25,000/-. In the said case, the accident was on 12.7.2002, which is before the present accident. The Apex Court considered that the deceased was pursuing a professional course and had a bright future.

Both the parties have failed to produce case law as to what should be the notional income in case of a student of LLB. course Admittedly, LLB course is also a professional course. After completion of LLB, one can start practice or he can compete for some job and get a good job. Therefore, the prospects of a person having professional degree of LLB are quite high. Family background of the deceased shows that his father was working as Additional Sessions Judge. Deceased belonged to a family having good background. Therefore, family would have helped to settle him in profession or get necessary facilities to compete for a good job and succeed in the competition.

In these circumstances, the notional income of Rs.10,000/- per month is on lower side, considering that he had already started earning Rs.5,000/- per month when he was a student of 5th year of LLB. Therefore, considering entirety of facts and circumstances, background and skill of the deceased, I am of the view that notional income of the deceased cannot be less than Rs.20,000/-. Since, the deceased was 22 years of age, multiplier of 18 is to be applied. As the deceased was unmarried, a cut of one half is to be applied and dependency of the claimants-appellants comes to Rs.10,000/-. The amount of compensation comes to Rs.10,000/- x 12 x 18 + Rs.21,60,000/-. Therefore, the amount of compensation is allowed as under:-

1. Loss of dependency	Rs.21,60,000/-
2. Conventional heads	Rs.70,000/-
3. Transportation charges	Rs.20,000/-
4. Attendant charges	Rs.78,000/-
5. Medical Bills	Rs.5,24,000/-
Total	**Rs.28,52,000/-**

Enhanced compensation shall be payable with interest @ 7.25 per annum from the date of filing of claim petition till realization.

In view of the foregoing discussion, FAO No.2879-2005 filed by the claimants-appellants is allowed and FAO No.3445-2005 filed by the appellant-Insurance Company is dismissed.

A photocopy of the order be placed on the file of connected case.

29.05.2019 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: Yes