

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

(1)

**FAO No.3058 of 2005 (O&M)
Date of Decision: March 01, 2019.**

Ram Bhateri and another

.....APPELLANT(s).

VERSUS

Lilu Ram and others

.....RESPONDENT(s).

(2)

FAO No.4127 of 2005 (O&M)

The Jamidar Transport Matanhail

.....APPELLANT(s).

VERSUS

United India Insurance Company Limited and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Rachna S. Lata, Advocate for
Mr. Rajinder Sharma, Advocate
for the appellants in FAO-3058-2005 and
for respondents No.2 & 3 in FAO-4127-2005.

Mr. Rakesh Nehra, Advocate
for respondent No.2 in FAO-3058-2005
and for appellant in FAO-4127-2005.

Mr. Paul S. Saini, Advocate
for respondent-United India Insurance Company
in both the appeals.

SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Jhajjar (later referred to as
'the tribunal') vide award dated 25.03.2005 allowed a compensation of
₹1,00,000/- for the death of Ravinder @ Mani Ram son of Ram Phul in a

motor vehicle accident with bus bearing registration No.HR63-1544 (later referred to as 'the offending vehicle').

Claimants Ram Bhateri mother and Jaswant brother of deceased have filed appeal FAO No.3058 of 2005 seeking enhancement of compensation as awarded by the tribunal while The Jamidar Transport, Matanhail through its Secretary Satyavir Singh, owner of the offending vehicle, filed appeal FAO No.4127 of 2005 seeking setting aside of the award and also for its modification to the extent insurer of the offending vehicle has been allowed right to recover the award amount from the owner of the vehicle.

Firstly, I take the appeal (FAO-3058-2005) filed by the claimant, who are seeking enhancement of compensation awarded to them. The tribunal assessed the amount of compensation awarded to the claimants as follows:-

(i)	Name of the deceased	Ravinder @ Mani Ram
(ii)	Date of accident	29.12.2002
(iii)	Age of the deceased	23years
(iv)	Marital status	Unmarried
(v)	Income of the deceased	₹2500 p.m.
(vi)	Deduction towards personal expenses 1/3 rd	₹2500-833=₹1667 p.m. i.e. ₹20000 p.a.
(vii)	Multiplier applied 5	₹20000X5 = ₹100000/-
<i>Total</i>		₹1,00,000/-

Learned counsel for the appellants-claimants and respondent(s) are ad idem that the claimants are entitled to compensation as per the observations in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009.***

Learned counsel for respondent-insurance company has argued

that the tribunal has assessed income of the deceased as ₹2,500/- per month, which is higher than the minimum wages prescribed for the daily wager at that point of time. He has argued that in the year 2005, income of the daily wager was fixed as ₹2133/- by the State. He has further argued that 1/3rd of the income of the deceased was deducted by the tribunal towards his personal expenses, however, as per the law settled in case of **National Insurance Company Limited Vs. Pranay Sethi and others (supra)**, 1/2 is to be deducted from the income of the deceased, who was unmarried.

As per the law settled by Hon'ble Apex Court in case of **National Insurance Company Limited Vs. Pranay Sethi and others (supra)**, claimants are entitled to 40% addition in the income of the deceased towards loss of future prospects. The deceased was 23 years of age, as such, multiplier attracted in this case is 18. As the deceased was unmarried, 1/2 of his income is to be deducted towards his personal expenses. Keeping in view the fact that the accident had taken place in the year 2002, a lump sum compensation of ₹15,000/- is awarded to the claimants under the conventional heads. Income of deceased as assessed by the tribunal call for no interference in this appeal as learend counsel for respondent has not shown me any government notification or letter referring minimum wages for a daily wager in the year 2005 as ₹2133/- per month.

As a sequel of my above discussion, the compensation to which the claimants are entitled, is reassessed as follows:-

Sl.No.	Heads	Calculation
(i)	Income of the deceased	₹2500 per month
(ii)	40% of above (i) to be added as loss of future prospects	(₹2500+₹1000)= ₹3500 per month

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(iii)	Deduction of 1/2 towards personal expenses of the deceased	(₹3500-₹1750)= ₹1750 per month
(iv)	Compensation after multiplier of 18 is applied	(₹1750X12X18)= ₹378000
(v)	Compensation under the conventional heads	₹15000
<i>Total</i>		₹3,93,000/-

Now, I take the appeal (FAO-4127-2005) filed by owner of the offending vehicle.

The tribunal while awarding the amount of compensation, allowed the right to recover the same from the owner and driver of the offending vehicle with observation that driving licence Ex.R1 is in the name of Narender Kumar and there is no evidence that respondent No.1-Lilu Ram was also known as Narinder Kumar. This licence was issued from Agra, a place which was never visited by Lilu Ram.

While appearing as RW1 Lilu Ram has stated that his original documentary name is Narender Kumar son of Desh Ram and his nick name is Lilu Ram. He has stated that he possessed a valid driving licence Ex.R1.

This licence Ex.R1 is admittedly in the name of Narender. FIR in this case was registered and learned counsel for appellant (owner of offending vehicle) submits that police has also presented challan against Narender @ Lilu, who had faced the criminal trial. Though no document regarding the presentation of challan against the driver of the offending vehicle has been produced on file but learned counsel for the appellants in FAO-3058-2005 has shown me copy of challan presented in case bearing FIR No.596 dated 29.12.2002 registered at Police Station Jhajjar for the offences punishable under Sections 279, 304-A IPC, which shows that the

challan was presented against Narender @ Lilu son of Desh Ram. That case

pertains to the FIR registered for the accident in this case. This makes the statement of Lilu Ram (RW1) that his original documentary name is Narender, reliable.

The tribunal has further observed that the driving licence was issued from Agra, a place which respondent No.1 had never visited, as such, this licence is fake.

Though Lilu Ram, an illiterate person, while appearing as RW1, has stated that he never resided or visited Agra but this does not lead to the inference that driving licence produced by him Ex.R1 is a fake document. The onus was on the insurance company to prove this fact. It cannot be believed that the insurance company had not got verified this licence from Licensing Authority, Agra. In case, this licence on verification was found fake, it must have produced the report obtained from the Licensing Authority and would have examined some official in support of its case. The tribunal has committed error while holding the licence as fake without any evidence produced by the insurer of the offending vehicle to this effect. The observations of the tribunal to this effect are not sustainable and as such, are set aside.

As a sequel of my above discussion, both the aforementioned appeals have merits and are allowed. The award of the tribunal is modified and the compensation allowed to the claimants is enhanced from ₹1,00,000/- to ₹3,93,000/- for death of Ravinder @ Mani Ram. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be paid to mother of the deceased as his

brother cannot be taken as dependant on the income of the deceased.

Liability to pay the amount of compensation shall be of insurance company. The award of the tribunal is set aside to the extent it allows right to the insurer to recover the compensation amount paid to the claimants from the owner and driver of the offending vehicle. Respondent-insurance company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal.

March 01, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***