

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

1. F.A.O No. 4261 of 2009 (O&M)

Ranjit Kaur ...Appellant

Versus

Sukhdev Pal and others ...Respondents

2. F.A.O No. 2487 of 2010

Sukhdev Pal @ Bittu and others ...Appellants

Versus

New India Assurance Co Ltd and others ...Respondents

Date of decision:- 03.10.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Harsh Aggarwal, for the appellant
in FAO No. 4261 of 2009

Mr. R.P. Verma, Advocate for
Mr. R.C. Gupta, Advocate
for the Insurance Co.

Mr. Aashish Gupta, Advocate
for the appellants in FAO No. 2487-2010

RITU BAHRI J. (Oral)

1. The above mentioned two appeals, are being disposed of by this common judgment, having arisen out of the impugned award dated 11.04.2009 passed by the learned Motor Accident Claims Tribunal, Hoshiarpur.

Facts not in dispute

2. The facts which are not in dispute are that on 31.12.2006, Raghbir Singh (since deceased) along with his son Jasprit Singh and daughters Mandeep Kaur, Prabhjot Kaur and Ramanjit Kaur was coming

from Jalandhar to Hoshiarpur on his maruti car bearing registration No. PB-08-T-3235. He was followed by Hardip Singh and his son Surjit Singh. When they reached near petrol pump situated in the area of village Piplanwala, a truck bearing registration No. PN-08-A-7705 driven by respondent No. 1 in a rash and negligent manner came from opposite side and struck against the car driven by Raghbir Singh. The occupants of the car received multiple injuries and were taken to Civil Hospital, Hoshiarpur where Raghbir Singh and his minor son were declared brought dead. F.I.R No. 104 dated 31.12.2006 under Sections 279/337/338/427/304-A IPC was registered against respondent No. 1 at P.S.Model Town, Hoshiarpur.

3. While assessing the compensation, the Tribunal awarded the lumpsum amount of Rs.2,00,000 on account of death of minor Jasprit Singh (aged 12 years).

4.. In FAO No. 2487-2010, at the very outset, learned counsel for the appellant/owners and driver has referred to judgment of this Court in a case of *National Insurance Co. Ltd v. Raj Rani and others, 2009 ACJ 1684* wherein truck hit a motor cycle and motorcyclist sustained fatal injuries. The Insurance Company was seeking to avoid its liability on the ground that truck was being plied by the insured without any permit. However, the Insurance company failed to produce any evidence to the effect that owner had not obtained any permit or route permit which was required in the State. The appeal of the Insurance Company was dismissed and the Insurance company was held responsible to pay the compensation. The operative part of the judgment has been reproduced as under:-

*7. I have heard learned counsel for the appellant and
purused the record. However, I find no force in the contention*

raised by learned counsel for the appellant. There is no dispute with the proposition of law as canvassed by learned counsel for the appellant. However, in case in hand, the appellant has failed to prove that the truck in question was being plied by the insured in violation of the terms and conditions of the policy. The Tribunal has recorded a finding that a specific issue was framed to the effect that whether truck in question was being driven in violation of the terms and conditions of the insurance policy and the onus to prove this issue was upon the appellant and since the appellant has failed to produce any evidence to prove this issue, the finding on this issue was held against the appellant.

5. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and has referred to judgment of this Court in a case of ***Sunita Devi and another vs. Vijay Pal and others, 2018 (2) Law Herald 1659*** wherein this Court took the notional income of the deceased (child) at Rs.50000/- and applied the multiplier of 15.

6. On the other hand, the learned counsel for the respondent-driver has vehemently opposed the present appeal.

7. Heard learned counsel for the parties

8. The appeal of the owners and driver deserves to be allowed. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company v. Swaran Singh, 2004(2) RCR Civil 114*** wherein the Hon'ble Supreme Court has laid down that breach of condition of a policy committed by the insured, like non-issuance of licence, has to be proved by the Insurance Company if it wishes

to avoid liability. In the summary of defences in para 110 of the judgment, their Lordships have observed in sub-paras (iii) and (iv) as under:-

*(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in **sub-section (2)(a)(ii) of section 149**, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

09. Thus, the appeal filed by the owners/driver is liable to be allowed as the onus was on the Insurance Company to lead evidence that the driver was not having the route permit to ply the vehicle in State of Punjab. Since no evidence was led by the Insurance Company before the Tribunal, the recovery rights have wrongly been given to the Insurance Company by observing that it was the owner who had to place on record the copy of

route permit to show that he was having a valid route permit.

10. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of “**Kishan Gopal Vs. Lala and others 2013 AIR SC (Civil) 2465**” wherein in a case of death of child aged 10 years, Hon'ble the Supreme Court took the notional income of the deceased at Rs.30,000/- and applied the multiplier of 15 and the compensation came to Rs.4.50 lacs, Rs,50,000/- was given towards loss of love and affection, funeral expenses, last rites etc. Hon'ble the Supreme Court while dealing with a case filed under Section 163-A of the Motor Vehicles Act laid criteria for awarding the compensation in a case filed under Section 163-A of the Motor Vehicle Act. Hon'ble the Supreme Court in para 18 of the judgment has held as under:-

“18. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:

*“6. Notional income for compensation to those who had no income prior to accident: (a) Non-earning persons – Rs.15,000/- p.a.” The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of **Lata Wadhwa & Ors. v. State of Bihar & Ors. 2001 (4) RCR (Civil) 673, 2001 (8) SCC 197** while examining the tortious liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the*

above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecusable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution

*of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77, 2009 (3) Recent Apex Judgment (RAJ) 373: (2009) 6 SCC 121** the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in **Kerala SRTC v. Susamma Thomas 1994(2) SCC 176**, which is referred to in **Lata Wadhwa's case** and the said amount under the conventional heads is awarded even in relation to the death of children*

between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.”

11. Reference can be made to a judgment of a Coordinate Bench of this Court in the case of ***Nachhattar Singh and another vs. Jagga Singh and others, 2016 (2) PLR 718***, wherein annual income of the deceased boy, who was 15 years old at the time of the accident, which took place in the year 1999, was assessed as Rs.35,000/- per annum.

12. In the case of ***Krishan Gopal and another (supra)***, wherein the notional income of a 10 years old child was taken at Rs.30,000, the year of the accident was 1992. In the present case, the accident had taken place in the year 2006 and the age of the deceased at the time of the accident was 12 years. Since the value of rupee has come down drastically since the year 1992, the notional income can safely be taken as Rs.40,000/-. The compensation is being reassessed as per the judgments mentioned above:-

DECEASED-JASPRIT SINGH

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Notional Income	Rs.40000/- per annum
(ii)	Compensation after multiplier of 15 is applied	Rs.40000 X 15= Rs.06,00,000/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Total Compensation awarded	Rs.06,30,000/-
	Enhanced amount of compensation	Rs.06,30,000-Rs.02,00,000=Rs.4,30,000/-

13. In view of the above, the appeals (FAO No. 4261 of 2009 and 2487 of 2010) stands allowed and the award stands modified to the above

extent and the Insurance Company is liable to make the entire payment of compensation.

14. Accordingly, the claimants are entitled to compensation of Rs.04,30,000/- (in FAO No.4261-2009). The compensation shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% from the date of filing of the claim petition, in view of judgment of Hon'ble the Apex Court in *Civil Appeal No. 4528-2019 titled as Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019.*

14. Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellants at the time of filing of appeal FAO No. 2487 -2010 in the Registry of this Court be returned to them.

03.10.2019
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No