

**FAO No. 2723 of 2007 and
FAO No. 2258 of 2006 (O&M)**

:1:

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 2723 of 2007

Date of decision : October 16, 2019

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Mrs. Manjit Kaur

.....Petitioner

Versus

Harjit Singh Padam and another

.....Respondents

FAO No. 2258 of 2006 (O&M)

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M/s United India Insurance Co. Ltd., Chandigarh

.....Petitioner

Versus

Manjit Kaur and another

.....Respondents

*** * * * ***

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rajbir Singh Guron, Advocate for the appellant
in FAO No. 2723 of 2007 and for
respondent no.1 in FAO No. 2258 of 2006.

Mr. R.K Bashamboo, Advocate for insurance Company.

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RITU BAHRI, J.

By way of this common judgment, two appeals bearing FAO No.
2723 of 2007 (Mrs. Manjit Kaur vs. Harjit Singh Padam and another) and
FAO No. 2258 of 2006 (M/s United India Insurance Co. Ltd., Chandigarh

vs. Manjit Kaur and another) shall be decided as both these appeals involve similar set of circumstances and a common question of law arises for consideration in both of them.

FAO No. 2723 of 2007 has been filed by the claimant against the award dated 23.1.2006 passed in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 for enhancement of compensation. Vide the award dated 23.1.2006, the claimant had been awarded a compensation of Rs. 6,00,000/- on account of death of her son Prem Pal Singh, who was 26 years old at the time of the accident. FAO No. 2258 of 2006 has been filed by the United India Insurance Company Limited against the aforesaid award. In this appeal, the appellant-Insurance Company has prayed that the award dated 23.1.2006 may be set aside.

Briefly stated, the facts of the case are that Prem Pal Singh, an engineer by profession was serving with Quark System Private Limited Industrial Area Phase 7 Mohali and earning Rs.1,80,500/- per annum. He was also undergoing further graduation Diploma in Information System from Australia. On 18/02/2004, he was travelling in a car bearing registration No. PB 11 T-0677 being driven by respondent No. 1. Navdeep Singh was also travelling in the above said car. On the way while trying to overtake an Indica car at about 5 PM in the area of village Gharaunda, District Karnal on GT road, respondent No. 1, who was already driving the car in a rash and negligent manner lost control of the car. It hit against the divider of the route, spun around and then crossed over the divider and landed on the opposite side of the route before hitting into a tree. Prem Pal Singh sustained fatal injuries in the accident and his younger brother Navdeep Singh also received injuries and remained hospitalized. In the

background of this accident, claim petition was filed by the appellant-claimant.

Upon notice, written statement was filed by respondent No. 1, in which he took a stand that he was driving the car at a slow speed and in a proper manner. The driver of Indica car was driving it at a very high speed and he tried to overtake the car being driven by respondent No. 1. However on account of traffic on the road, the Indica struck into the car of respondent no.1 from behind. The accident occurred on account of rash and negligent driving on the part of the driver of Indica car. Respondent No. 2, the insurance company raised an objection that respondent No. 1 was not holding any valid licence at the time of the accident.

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

1. Whether Prem Pal Singh died in a motor vehicle accident which took place on 18/02/2004 in the area of Gharaunda on account of rash and negligent driving of Car No. PB-11-T-0677 by respondent No. 1? OPP.
2. Whether the claimant is entitled to be compensated? If so, how much and from whom? OPP
3. Whether the Respondent No. 1 was not holding a valid and effective driving licence at the time of the accident? If so, its effect? OPP.

On issue No. 1, the tribunal gave a finding that FIR No. 52 dated 18/02/2004 was lodged at police station Gharaunda District Karnal on the statement of Tejinder Kaur-RW-2. She accused driver of Indica being responsible for the accident. PW3 Navdeep Singh was taken to the hospital

in an injured condition. He was cross-examined at length by respondent No. 1 and 2 but nothing useful could be extracted from him. He stated that respondent No. 1 Harjit Singh was his uncle and testimony of Navdeep Singh established that the accident occurred on account of the rash and negligent driving of the car by respondent No. 1. PW-4 Dr. Sanjay Kumar, the Medical Officer at Public Health Centre Gharaunda stated that Navdeep Singh arrived in his hospital in an injured condition. This shows that he was not in the right condition to say anything to the police after the accident. The post-mortem report of Prem Pal Singh confirmed that cause of death of Prem Pal Singh was the injuries sustained by him in the roadside accident. RW-1 A.K.Jain Senior Divisional Manager of respondent No. 2 has deposed in his affidavit-cum-examination-in-chief that the accident did not occur in the manner, in which it has been claimed by the claimant. He referred to Mark A report made by the investigator appointed by his company. Since RW-1 A.K Jain was not eyewitness, issue No. 1 was decided in favour of the claimant and against the respondents. Harjit Singh lead into evidence the copy of his driving licence as Ex. RB issued to him by the licensing authority Patiala on 10/09/2004. It was valid up to 09/09/2009. Thus it was valid on the date of the accident. It was held that the accident took place on account of vehicle driven by respondent No. 1 Harjit Singh. Thereafter the compensation was assessed in this manner. The loss of dependency of Manjit Kaur was worked out to be Rs. 90,000 per annum. Since the age of Manjit Kaur was taken into consideration while applying the multiplier and as Manjit Kaur was 56 years of age at that time, multiplier applied was of 8 for the first 5 years. Thus, the loss of dependency of Manjit Kaur worked out to be Rs. 90,000 x 5 = Rs,4,50,000/- and for the remaining 3 years Rs.

45,000 x3 = Rs,1,35,000/- totalling Rs. 5,85,000/-. The claimant was also held entitled to Rs. 2000 funeral expenses totalling Rs. 5,87,000 rounded off to Rs. 6 lakh.

As regards the appeal of the claimants-appellant, regarding enhancement of compensation, I have heard counsel for the parties and perused the case file. The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Finding of negligence has rightly been given in favour of the claimant by the Tribunal and it does not require any interference on that account. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by the Hon'ble the Supreme Court in *Magma General Insurance Company Ltd. vs. Nanu Ram Alias Chuhru Ram and others, Civil Appeal No.9581 of 2018* and *National Insurance Co. Ltd. vs. Pranay Sethi and others, Special Leave Petition (Civil) No. 25590 of 2014 (decided on 31.10.2017)* and *Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77*, as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income	Rounded up to Rs.90,000/- per annum
(ii)	40% of (i) above to be added as future prospects	Rs. 90,000+36000=1,26,000/-
(iii)	½ of (ii) above is deducted as personal expenses of the deceased	Rs.1,26,000-Rs.63,000=Rs.63,000
(iv)	Compensation after multiplier of 17 is applied	Rs.63000x17= Rs.10,71,000/-
(v)	Funeral expenses	Rs.15,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of filial consortium	Rs. 40,000 (to the appellant-claimant)

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
	Total compensation awarded	Rs. 11,41,000/-
	Enhanced amount of compensation	Rs.11,41,000- Rs.6,00,000=Rs.5,41,000

The enhanced amount of compensation of **Rs.5,41,000/-** Shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara v/s. Shyam Singh Varma and others, Civil Appeal No. 4528 of 2019 (arising out of SLP © No.5720 of 2019)*** decided on **01.05.2019**. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly the award stands modified to the above extent and the appeal of the claimant-appellant, regarding enhancement of compensation is partly allowed.

As regards the appeal of the Insurance Company, counsel for the Insurance company has argued that claimant Manjit Kaur is the mother of the deceased. Manjit Kaur was 56 years old at the time of the accident and was employed as a Headmistress. She was not dependent on the income of the deceased. In fact she was helping her son for pursuing further studies in Australia. He has further argued that income has been taken on the higher side being Rs. 90,000 for the first 5 years. He has referred to the judgments in the cases of ***Manjuri Bera versus Oriental Insurance Company Limited 2005 ACJ 1622*** to contend that if the legal heirs are not dependent on the

deceased they have right to take compensation only under Section 140 of the Motor Vehicles Act, 1988. This question has come up for consideration before this court in the case of *FAO No. 4260 of 2008* titled, '*Charanjit Kaur versus Sudesh Kumar and others*' decided on May 08, 2014. In this case, brother of the claimant Charanjit Kaur had died and her claim had been rejected on the ground that she was married sister and cannot be held dependent on the brother. In this case, this court referred to a judgment in the case of *Montford Brothers of St Gabriel and another versus United India Insurance and another 2014 (1) RCR (Civil) 884*, wherein the deceased was a Catholic priest who had joined the Montford Brothers of St Gabriel. He died in an accident. The Brothers filed the claim petition on the ground that on joining the Brotherhood, everything received by Brothers as of right would go into the common purse. It was consequently their case that the society was legal. Supreme Court while upholding the award of the Tribunal held that even a religious order or organization may suffer considerable loss due to death of a voluntary worker. Resultantly, In *Charanjit Kaur's case (supra)*, it was held that the Tribunal erred in dismissing the claim petition in entirety by holding the appellant Charanjit Kaur to be not entitled to even file the claim petition in respect of the death of her brother Lakhwinder Singh.

In view of the aforementioned judgments, the appeal of the Insurance Company is hereby dismissed.

16.10.2019
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No