

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

Date of Decision: November 08, 2019

1. **FAO-1871-2012 (O&M)**

Ajmer Singh Pannu

Appellant

Versus

Inderjit Kaur and others

Respondents

2. **FAO-3650-2016 (O&M)**

Inderjit Kaur and others

Appellants

Versus

Ajmer Singh Pannu

Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kulvir Narwal, Advocate
for the appellant.

Mr. N.P. Bhardwaj, Advocate
for respondents No. 1 to 3 in FAO-1871-2012 and
for the appellants in FAO-3650-2016.

None for respondent No. 4.

Mr. Vishal Aggarwal, Advocate
for respondent No. 5 in FAO-1871-2012 and
for respondent No. 3 in FAO-3650-2016.

JAISHREE THAKUR, J. (Oral)

1. By this common order this Court proposes to dispose of two appeals which have been filed seeking to assail the award dated 01.11.2011 passed by the MACT, Ambala whereby the appellant (Owner) in

FAO-1871-2012 has been directed to pay the compensation to the respondents, and the claimants in FAO-3650-2016 seek enhancement of the compensation so awarded.

2. Briefly the facts of the case are that on 8.11.2008, Bir Singh (since deceased), on his bicycle was on way to Ambala Cantt. from village Tepla. At about 2.00 p.m., when he reached opposite Maruti showroom on Ambala-Jagadhari Road, a Santro car bearing registration No. HR-99-BT (T)-5869, which was driven in a rash and negligent manner hit his bicycle. Due to the impact, the deceased-Bir Singh fell down and received serious injuries. He was immediately taken to Civil Hospital, Ambala Cantt., from where he was shifted to PGI, Chandigarh, where he succumbed to injuries on 12.11.2008, on which, an FIR under Section 279 and 337 of the IPC was registered against respondent No.1 at Police Station Industrial Area, Saha, District Ambala. The claimants-respondents No.1 to 3 herein filed a claim of ₹30,00,000/- before MACT, Ambala claiming the deceased - Bir Singh was 50 years of age and was working with Indian Bank and earning ₹19,000/- per month. The claim petition was contested by the appellant and others by filing separate written statements.

3. After taking into consideration the evidence led by the parties, the Tribunal while awarding the compensation, assessed the income of the deceased as ₹13,715/- and after deduction of 1/3rd amount, the annual dependency of the claimants upon the deceased was assessed to be Rs.1,09,228/-. The Tribunal after applying multiplier of '9' awarded compensation to the tune of ₹9,87,552/- and also allowed ₹10,000/- each to the claimants for performance of last rites of the deceased as well as loss of

estate. The total sum awarded was ₹10,07,552/-, out of ₹8,50,000/- was allowed to Smt. Inderjit Kaur, respondent No.1 herein and the remaining amount to the other claimants in equal shares along with interest @9% per annum from the date of filing of the claim petition up to the date of actual realization. The Tribunal further decided that the aforesaid compensation shall be paid by the appellant-Ajmer Singh, as the driver of the vehicle without a valid driving licence, at the time of the accident, and absolved the insurance company from paying the compensation.

4. That the appellant has challenged the award dated 01.11.2011 passed by the MACT, Ambala through the present appeal maintaining that the Tribunal did not properly appreciate the evidence led by him. It is submitted that he was not the driver of the vehicle at the time of the accident and therefore could not be fastened with the liability to pay the compensation. It was argued that in fact Mukesh Kumar was the driver who was holding a valid driving license and therefore the compensation was to be paid by the insurance company. He also disputes the presence of PW-3 Jagir Singh, the eye witness, on the spot. It is argued that in fact he was the person who took the injured to the Hospital as would be evident from the admission card , and not Jagir Singh who is related to the deceased. It is further submitted that even in the Ruqa sent by the police, there was no mention of the alleged eye witness and in fact the Ruqa/report was sent about an unknown person having met with an accident. It is submitted that in case Jagir Singh was present he would have mentioned the name and address of the injured in the Ruqa sent.

5. Per contra, the counsel for the insurance company submits that the eye-witness has categorically mentioned in the FIR that he saw Ajmer

Singh the appellant, driving the car in a rash and a negligent manner which resulted in causing the death of Bir Singh. Since Ajmer Singh did not have a valid driving license, he sought to plant Mukesh Kumar in his place as driver of the offending vehicle.

6. The counsel for the claimants in **FAO-3650-2016** seek enhancement of compensation on the ground that the Tribunal has not awarded the same in consonance with the Judgment rendered in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009.***

7. I have heard the counsel for the parties and with their assistance have perused the pleading and the evidence.

8. The accident that took place on 8.11.2008 at 2.00 p.m., when Bir Singh (since deceased), who was on his bicycle was on way to Ambala Cantt. from village Tepla and was hit by a car. He was initially taken to the local hospital and then referred to the PGI at Chandigarh where he succumbed to his injuries. The FIR that was registered on the 9.11.2008 by Jagir Singh, namely the eye-witness who appeared as a witness and testified about the accident. In his cross-examination, he clearly stated that Ajmer Singh was the driver of the offending vehicle and the same is in consonance with the FIR that was registered.

9. Learned counsel for the appellant has urged that in case Jagir Singh was an eye witness, the Ruqa would have contained the name of the person injured, which is not the case. It is also argued that the initial report of the hospital would have mentioned that the injured was brought by Jagir Singh, but, that is again not the case. This argument would have no bearing as it is the admitted case that the injured was taken to the hospital by Ajmer

Singh the driver of the offending vehicle, and that is why his name was mentioned in the column as a person who brought the injured. However, that is not enough to absolve the appellant of the accident, since the eye witness has stated that the injured was taken to the hospital in the offending vehicle. The FIR was registered on the next day and the delay in recording the same was because the injured had to be shifted to PGI Chandigarh from Ambala. When a person is in a critical stage the focus of the family members is to try and take every step to save the life of a loved one.

10. Counsel for the appellant also lays great stress on the fact that the insurance company, on due investigation allowed the claim of the appellant for car repairs. In the claim for insurance, the driver of the offending vehicle had been mentioned as Mukesh Kumar. However this plea cannot be looked into for want of any evidence. Merely because a cheque was made out for the car repair, it cannot be held that the driver of the offending vehicle was Mukesh Kumar. It is also worthwhile to note that after the evidence of the appellant had been closed by submitting documents, the appellant had sought permission to lead additional evidence by examining the IO of the insurance company and himself by stepping into the witness box , which application was dismissed and the revision filed against the said order too was dismissed by the High Court in CR- 6366-2011. This order has attained finality. Both appellant and Mukesh Kumar had filed their written statement but did not step into the witness box to record their statements or be subjected to cross examination.

11. The Tribunal rightly appreciated the statement of the eye witness and his cross examination. PW3 has categorically deposed that the driver of the offending vehicle was Ajmer Singh the appellant and there is

nothing on the record to show otherwise. Mere argument that the appellant brought the injured to the hospital is not enough to absolve him of the liability. There would be no cause for the eyewitness to name the appellant when he could easily have said otherwise and mentioned the name of Mukesh Kumar. Even the appellant at the time of taking the injured to the hospital could have stated that the accident occurred on account of the negligent driving of Mukesh Kumar. No doubt, a report under Section 173 Cr.P.C was presented by the police against the said Mukesh Kumar, but there is nothing on the record to show on what basis the IO exonerated the appellant and held Mukesh Kumar to be the driver at the time of the accident. The IO was not examined as a witness. Jagir Singh PW-3 has specifically deposed that after recording the initial statement he was never called upon by the IO.

12. Therefore there is no infirmity in the award of the Tribunal to warrant inference by this Court.

13. The claim of the appellants in **FAO-3650-2016** for enhancement deserves to succeed. The Tribunal took the age to be 57 and income of the deceased at ₹13,715/- and then deducted 1/3rd towards personal expenses. Taking the age of the deceased as 57 years, a multiplier of 9 was applied and the compensation was assessed to be ₹9,87,552/-. Further a sum of ₹10,000/- was allowed to each of the three claimants for performing the last rites of the deceased, as well as loss of estate. In all a sum of ₹10,07,552/- was allowed. However, the compensation is not in consonance with the judgment as rendered in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*** and

the future prospects have not been allowed @ 10% of his income.

Therefore, compensation payable is re-worked and tabulated as under:-

Sr. No.	Heads of claim	Calculation
1	Name of the deceased	Bir Singh
2	Date of accident	08/11/08
3	Age of the deceased	57 years
4	Monthly income of the deceased	13,715/- per month
5	10% of (iv) is to be added towards future prospects	(13715+1371)=15086/-
6	1/3 rd of (v) above deducted towards personal expenses	(15086-5028)=10058/-
7	Compensation calculated after applying the multiplier of 9	10058x12x09=10,86,264/-
8	Conventional heads	70,000/-
9	Total : (7+8)	1156264/-

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable is assessed at ₹11,56,264/- The amount in excess over and above what was awarded will also attract interest @7.5% per annum from the date of filing of the appeal in this Court till the date of payment.

In view of above, the appeal filed by the driver-Ajmer Singh Pannu in FAO-1871-2012 is dismissed and the appeal filed seeking enhancement of compensation in FAO-3650-2016 is allowed in above said terms.

November 08, 2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No