

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-1-

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

(1) FAO-2394-2012(O&M)

Smt.Bedo Devi

...Appellant

Versus

Sushil Kumar @ Gila and others

...Respondents

(2) FAO-2395-2012(O&M)

Smt.Jiwani

...Appellant

Versus

Sushil Kumar @ Gila and others

...Respondents

(3) FAO-3868-2012(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Smt.Jiwani and others

...Respondents

(4) FAO-3869-2012(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Smt.Bedo Devi and others

...Respondents

Date of Decision:-19.11.2019

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-2-

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sandeep Lather, Advocate
for the appellant in FAO-2394-2012 and FAO-2395-2012
and for respondents No.1 to 3 in FAO-3868-2012 and FAO-
3869-2012.

Mr.Rajesh K. Sharma, Advocate
for the appellant in FAO-3868-2012 and FAO-3869-2012
and for respondent No.3 in FAO-2394-2012 and FAO-2395-
2012.

Mr.R.K. Hooda, Advocate
for respondents No.1 and 2 in FAO-2394-2012 and
FAO-2395-2012 and for respondents No.4 and 5 in
FAO-3868-2012 and FAO-3869-2012.

H.S. MADAAN, J.

CM-16526-CII-2012 in
FAO-3868-2012 and
CM-16528-CII-2012 in
FAO-3869-2012

Heard.

For the reasons mentioned in the applications, the same are
allowed and delay of 28 days in filing of FAO-3868-2012 and delay of 29
days in filing of FAO-3869-2012 stand condoned.

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

By this order, I shall dispose of four FAO-2394-2012(O&M),
FAO-2395-2012(O&M) filed on behalf of the claimants and FAO-3868-
2012(O&M), FAO-3869-2012(O&M) filed on behalf of insurance
company, which have arisen out of the same accident.

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-3-

Briefly stated, the facts of the case as per the version of the claimants are that on 28.11.2010 Bhim Singh and Mange Ram were going from village Budana to village Badhana in a car bearing registration No.HR-12D-7617 being driven by Bhim Singh; their relative Dalbir Singh was following the car on his motorcycle; at about 7:30/8:00 p.m. when they had reached near village Shahpur on Dhankhari road, in the meanwhile a Tata – 407 canter bearing registration No.HR-56-7804 (hereinafter referred to as the offending vehicle) driven by respondent No.1 – Sushil Kumar @ Gila in a rash and negligent manner and at a high speed, came from opposite side and hit the car being driven by Bhim Singh having Mange Ram as its occupant; resultantly both of them suffered serious injuries and became unconscious; after the mishap, respondent No.1 – Sushil Kumar @ Gila sped away his vehicle; after seeing the accident Dalbir Singh also become unconscious; all three of them were shifted to General Hospital, Jind, however on reaching there, Bhim Singh and Mange Ram succumbed to the injuries; postmortem examination on their dead bodies was conducted; formal FIR No.362 dated 28.11.2010 for the offences under Sections 279 and 304-A IPC was registered at Police Station Sadar, Jind in respect of the accident.

The legal heirs/legal representatives of deceased Mange Ram i.e. his widow – Smt.Jiwani and sons – Surender and Ajit had filed a claim petition under Section 166 of the Motor Vehicles Act bearing MACT Case No.193 of 2010 against respondents i.e. Sushil Kumar @ Gila – driver, Hari Pal – owner and United India Insurance Company Ltd. -

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-4-

insurer of the offending vehicle, claiming compensation to the tune of Rs.25 lakhs contending that deceased Mange Ram was aged about 58 years and was an agriculturist owning 8 acres of land besides engaged in avocation of dairy farming and was earning Rs.20,000/- per month; a sum of Rs.40,000/- was spent on transportation of his dead body and performing his last rites; the claimants were fully dependent upon the earnings of the deceased.

The legal heirs/legal representatives of deceased Bhim Singh i.e. his widow Smt.Bedo Devi and sons Harinder and Virender had also brought a claim petition under Section 166 of the Motor Vehicles Act bearing MACT Case No.194 of 2010 against the above-said respondents, claiming compensation to the tune of Rs.25 lacs contending that deceased Bhim Singh was a retired military personnel aged about 55 years owning 9 ¼ acres of agricultural land and was earning Rs.20,000/- per month; that a sum of Rs.40,000/- was spent on transportation of his dead body and performing last rites; that untimely death of Bhim Singh had deprived the claimants from his love and affection besides his earnings; they had also suffered great mental shock and agony and their future had become dark; that they were fully dependent upon earnings of the deceased.

Both the claim petitions were tried together by Motor Accidents Claims Tribunal, Jind (hereinafter referred to as the Tribunal) since those related to the same accident.

On being put to notice, only respondents No.1 and 3 had appeared through counsel and filed separate written statements contesting

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-5-

the claim petitions. However, respondent No.2 did not appear despite service and was proceeded against ex parte in both the claim petitions.

In the written statements filed by respondent No.1, the contents of the claim petitions were denied stating that no such accident had ever taken place with the canter in question on the alleged date, time and place and the police had registered a false case against the answering respondent; that the claim petitions were bad for non-joinder of necessary parties as the owner and insured of the car had not been impleaded as parties. However, according to the answering respondent, the canter in question was insured with respondent No.3 – insurance company at the relevant time. In the end, such respondent prayed for dismissal of the claim petitions.

In the written statements filed by respondent No.3 – insurance company it denied involvement of the canter in question in the accident stating that the canter had been wrongly involved in the criminal case as well as in the present claim petitions by the claimants in connivance with the police; that respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident and respondent No.2 had violated the terms and conditions of the insurance policy. Various other legal objections were taken. In the end, such respondent also prayed for dismissal of the claim petitions.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, after hearing arguments, the claim

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-6-

petitions were partly allowed with costs by Tribunal vide award dated 3.2.2012. In claim petition bearing MACT Case No.193 of 2010, the claim of claimant No.1 Smt.Jiwani only was allowed, whereas that of her sons and co-claimants Surender and Ajit was rejected and compensation of Rs.3,12,400/- was awarded to her. Similarly in connected claim petition bearing MACT Case No.194 of 2010, the claim of claimant No.1 – Smt.Bedo Devi only was accepted, whereas that of her sons and co-claimants Harinder and Virender was rejected and she was awarded compensation of Rs.3,55,600/-. Interest @ 9% per annum from the date of institution of the claim petitions till final realisation was awarded. The liability to pay the compensation amount was held to be joint and several of all the respondents. It was directed that out of the awarded amounts, 25% shall be paid in cash and remaining 75% be deposited in some fixed deposit scheme fetching maximum rate of interest in the nationalized bank for a period of ten years. However, Smt.Jiwani and Smt.Bedo Devi successful claimants would be entitled to receive periodical interest thereon.

The insurance company felt aggrieved by the Award passed by the Tribunal and filed two separate appeals before this Court.

The claimant No.1 in both the petitions were also dissatisfied with the amount of compensation awarded to them by the Tribunal and have filed the separate appeals.

Notices of the appeals were issued to the respective respondents, who put in appearance through counsel.

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-7-

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence adduced by the claimants i.e. eye witness account provided by PW3 Dalbir Singh and statement of PW4 ASI Dharambir Singh and PW5 Sh.Rajesh Kumar, Addl. Ahlmad and relying upon copy of FIR Ex.P1 and other documents came to the conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1 – Sushil Kumar @ Gila in which Mange Ram and Bhim Singh had suffered injuries to which they had succumbed. The fact that respondent No.1 was facing trial for causing the accident was also taken into consideration. It was also considered that the evidence adduced by the claimants had gone unrebutted and unchallenged since respondent No.1 – Sushil Kumar @ Gila had not appeared to rebut the evidence so produced by the claimants. The finding is proper and appropriate and does not call for any interference. It being so widows of the deceased were found entitled to claim compensation. Whereas it was not with regard to major sons of both the deceased. Since they have not approached this Court challenging the award, therefore no necessity is being felt to examine the entitlement of major sons of both the deceased to get compensation.

Now coming to the quantum part. Firstly taking up FAO-2395-2012 filed by appellant Smt. Jiwani wife of deceased Mange Ram.

The Tribunal had taken the age of deceased Mange Ram as 58 years since it is so mentioned in his postmortem report and contention

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-8-

of claimants that he was aged about 50 years was rightly rejected. The claimants could not produce any revenue record showing that deceased owned any agricultural land and had just examined PW7 Balbir Singh, Proprietor of firm M/s Khatkar Trading Company, Commission Agent, Grain Market, Uchana, who had deposed that deceased had sold his crops through his Commission Agency vide J Form Ex.P8 to Ex.P11 but then in his cross-examination, he admitted that after death of Mange Ram, his sons used to sell their produce through his Commission Agency. The land is still there, going to the legal heirs of the deceased. The claimants could not bring any cogent and convincing evidence to show that the deceased was engaged in avocation of dairy farming also fetching income therefrom. The Tribunal has assessed the monthly income of the deceased in light of the minimum wages payable to casual labourer at the relevant time i.e. Rs.120/- per day and Rs.3,600/- per month.

However, the counsel for the appellants/claimants has referred to a communication by Labour Commissioner, Haryana dated 24.2.2010 showing minimum wages for a skilled worker in the range of Rs.4,604/- to Rs.4,734/- per month. As it comes out that from the statement of PW7 Balbir Singh, the deceased was an agriculturist. Though his land holding must have been inherited by his legal heirs, but then the family is to be compensated on account of efforts for management of the land. Such efforts quantified as Rs.3,600/- per month are somewhat on the lower side and considering the minimum wages payable to a skilled worker at the relevant time, I find it proper and appropriate if the amount

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-9-

is taken as Rs.5,000/- per month.

The Tribunal has not added any amount towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in case the deceased was self-employed and was in the age group of 50 to 60 years, in such an eventuality 10% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.5000 + 500 = Rs.5,500/-.

The Tribunal has not deducted any amount towards personal expenses of the deceased. In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** where the number of dependent family members are 2 to 3, deduction towards self-expenses is to be taken as 1/3rd. Doing that the dependency of claimant comes out to Rs.3,667/- per month, annual dependency comes out to Rs.3,667 x 12 = Rs.44,004/-.

The Tribunal has used multiplier of 7. However, in terms of ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.**(supra), multiplier of 9 is to be used. Doing that the compensation payable comes out to Rs.44,004 x 9 = 3,96,036/-.

The Tribunal has awarded a sum of Rs.10,000/- only towards funeral, transportation and consortium. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimant No.1 is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate,

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-10-

Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 3,96,036 + 70,000 = 4,66,036/-.

The Tribunal has awarded compensation of Rs.3,12,400/-.

In this way, the additional amount comes out to Rs.1,53,636/- (4,66,036 - 3,12,400). The claimant No.1 would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount of Rs.1,53,636/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, FAO-2395-2012 filed by appellant Smt. Jiwani is allowed partly with costs.

Now taking up FAO-2394-2012 filed by appellant Smt. Bedo Devi wife of deceased Bhim Singh.

The Tribunal has taken the age of deceased Bhim Singh to be 55 years and he was taken to be ex-serviceman getting pension as per payment order Ex.P12. The date of birth of deceased was 5.3.1955 and the accident had taken place on 28.11.2010, in that way he was aged about 55 years and 8 months at that time. As per the pension order, the deceased was drawing pension of Rs.8,391/-. After his death his widow Smt.Bedo Devi is getting pension of Rs.5,200/- and the loss was taken to be that of Rs.3,200/- per month. Towards income from agriculture since as per case of the claimants, deceased owned 9 ¼ acres of land, even if it is taken that land is still there inherited by his legal heirs but for the services being

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-11-

provided by the deceased to the family on account of management of land and otherwise those cannot be ignored. The Tribunal has quantified those services to be Rs.3,600/- per month. As above-said, counsel for the appellants/claimants has referred to a communication by Labour Commissioner, Haryana dated 24.2.2010 showing minimum wages for a skilled worker in the range of Rs.4,604/- to Rs.4,734/- per month. The efforts quantified as Rs.3,600/- per month are somewhat on the lower side and considering the minimum wages payable to a skilled worker at the relevant time, I find it proper and appropriate if the amount is taken as Rs.5,000/- per month.

The Tribunal has not added any amount towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in case the deceased was self-employed and was in the age group of 50 to 60 years, in such an eventuality 10% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.5,000} + 500 = \text{Rs.5,500/-}$, annual to be $\text{Rs.66,000/-(5500} \times 12)$.

The Tribunal has observed that if the deceased was alive he would have spent some amount for his personal living expenses, as such loss of Rs.3,200/- in pension has not been considered. I find that Tribunal was justified in doing so.

The Tribunal has used multiplier of 8. However, in terms of ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.**(supra), multiplier of 11 is to be used. Doing that

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-12-

the compensation payable comes out to Rs. 66,000 x 11 = 7,26,000/-.

The Tribunal has awarded a sum of Rs.10,000/- only towards funeral, transportation and consortium. However, in view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors.*(supra), the claimant No.1 is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 7,26,000 + 70,000 = 7,96,000/-.

The Tribunal has awarded compensation of Rs.3,55,600/-.

In this way, the additional amount comes out to Rs.4,40,400/- (7,96,000 - 3,55,600). The claimant No.1 would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount of Rs.4,40,400/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, FAO-2394-2012 filed by appellant Smt. Bedo Devi is allowed partly with costs.

As regards the contention of learned counsel for the appellant – insurance company that the driving licence Ex.R1 of respondent No.1 happened to be a fake document, the Tribunal has dealt with this aspect in detail in paras No.22 and 23 of the Award, which for ready reference are being reproduced as under:

22. *After giving my thoughtful consideration to the*

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-13-

aforesaid submissions of both the sides, I find the aforesaid arguments of learned counsel for Insurance Company completely devoid of merit, because driving licence Ex.R1 relied upon by it was issued on 26.2.2002 as per statement of its own witness Naseeb Singh RW1. Contrary to it, from Faridabad Deep Chand examined by it as RW2 had brought the summoned record of driving licence issued on 6.5.2002 and not of 26.2.2002. Perusal of driving licence Ex.R1 shows that it was for driving heavy vehicles. Undisputedly, such type of driving licence are issued by R.T.A. In Haryana State, whereas driving licence for light motor vehicles are issued by Licencing Authority – S.D.O.(Civil) Deep Chand RW2 Clerk of S.D.O.(Civil), Faridabad had brought the record of driving licence for light motor vehicles. In his cross-examination he also could not compare the photograph on Ex.R1 with the photograph on the register brought by him. Moreover, its own witness Naseeb Singh RW1 has specifically stated that Ex.R1 was renewed after receiving NOC from R.T.O., Faridabad. Hence, in these circumstances, it can safely be inferred that the driving licence Ex.R1 relied upon by the Insurance Company was initially issued by R.T.A. Office, Faridabad in favour of respondent No.1 for driving heavy vehicles and the same was valid and effective even on the date of alleged accident. More so, respondent

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M)

-14-

No.1 had also placed on record his driving licence Ex.R7 by way of additional evidence. However, the Insurance Company has miserably failed to rebut the same despite availing sufficient opportunities.

23. In view of the above discussion, it is held that respondent no.1 was holding a valid and effective driving licence at the relevant time. Exs.R4 and R5 are the copies of route permits. Respondent No.3 has not led any other evidence to prove as to what other term or condition of the insurance policy Ex.R6 were violated by the insured. Accordingly this issue is answered against respondent no.3.

I do not see any reason to differ with the Tribunal on any point and upset that finding. Respondents No.4 and 5 have filed an application for placing on record the typed copy of verification report of the driving licence with photocopy of the vernacular, photocopy of the receipt issued for conversion of the same as smart card, photocopy of the smart card, driving licence etc. to show that as per verification report dated 28.6.2016 of driving licence No.70030/TV/Prof of respondent No.4, that driving licence was converted as smart card w.e.f. 28.6.2016 by giving it new smart card DL No.NL-520100011368 and details of such smart card was downloaded from the website of the Ministry of Road Transport and Highways Govt. of India dated 10.9.2016. Therefore, these documents also effectively counter the contention of counsel for the

FAO-2394-2012(O&M);
FAO-2395-2012(O&M);
FAO-3868-2012(O&M); and
FAO-3869-2012(O&M) -15-

insurance company that the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident, resulting in violation of the terms and conditions of the insurance policy absolving the insurance company of its liability to pay compensation.

Thus, FAO-3868-2012 and FAO-3869-2012 filed by the Insurance Company stand dismissed.

19.11.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No