

impugned award dated 01.10.2011 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as, the 'Tribunal') vide which compensation has been awarded to the claimants on account of death of Joginder Singh in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, a petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') was filed by the claimants (i.e., appellants in FAO No.4216 of 2012) seeking compensation on account of death of Joginder Singh in a motor vehicle accident which took place on 12.07.2008. As per averments in the claim petition, Sanjiv Kumar, Anil Kumar, Babbu, Naresh and Deep were proceeding from Maur Mandi to Patiala in a Scorpio vehicle bearing registration No.PB-03P-2025. This vehicle, it is averred, was being driven at a fast speed by Pargat Singh, who was arrayed as respondent No.3 in the claim petition. When they reached near Bhawanigarh Bus Stop at about 11.30 p.m., Joginder Singh asked for the lift and boarded the vehicle. It is further pleaded that when they were half a kilometer short of village Rajgarh on the road leading from Bhawanigarh to Patiala, the Scorpio vehicle struck against a tractor-trolley bearing registration No.PB-44A-4076, which was moving in a zigzag manner ahead of Scorpio vehicle. Tractor-trolley, it was stated, was driven in a negligent fashion by its driver, Ram Singh. The accident, it is claimed, had taken place due to the composite negligence of both the drivers of Scorpio vehicle as well as tractor-trolley. As a result of the accident, Joginder Singh and the other occupants of the Scorpio vehicle received serious injuries. Injured were taken to Rajendra Hospital, Patiala, where Joginder Singh succumbed to his injuries. Another occupant, Naresh also died in the

accident. FIR No.303 dated 13.07.2008, under Sections 279/337/338/304A IPC was registered at Police Station Sadar, Patiala against the driver of the tractor-trolley. Deceased-Joginder Singh was claimed to be serving the Punjab Police as Assistant Sub Inspector. Compensation was thus prayed for by the claimants.

Respondents No.1 and 2 in the petition i.e., driver and owner of the tractor-trolley (appellants in FAO No.7008 of 2011) contested the petition while stating that tractor-trolley was being driven at a slow speed on the correct side of the road. Sufficient and proper reflectors were affixed on the backside of the tractor, which were visible from afar. Driver of the Scorpio vehicle was, in fact, driving his vehicle at a very high speed in a rash and negligent manner. He tried to overtake the tractor without seeing the oncoming truck. Driver of the Scorpio vehicle lost control and hit against the tractor from behind. Thus, it is due to his negligence that the accident occurred. Petition was contested by the other respondents as well. Dismissal of the claim petition was prayed for.

On the basis of pleadings of the parties, following issues were framed by the learned Tribunal:-

1. Whether Joginder Singh died on account of injuries sustained by him in a motor vehicular accident, which took place on the road leading from Bhawanigarh to Patiala, half kilometer short from village Rajgarh on 12.7.2008 at about 11.30 p.m. due to rash and negligent driving of the Tractor bearing No.PB-44A-4076 being driven by the respondent No.1? OPP
2. Whether the claimants are entitled to compensation? If so to what extent and from whom? OPP
3. Whether the claimants have no locus standi to file the claim petition? OPR
4. Whether the claim petition is not maintainable? OPR
5. Whether the driver of the Scorpio bearing No. PB-03P-2025 was not holding a valid driving licence? If so effect? OPR5
6. Relief.

Learned Tribunal on considering the facts and evidence on record

concluded that the accident in question took place due to the rash and negligent driving of the tractor-trolley. It was observed that the FIR was registered only against the respondent-driver of the tractor-trolley and dispensation by Motor Accident Claims Tribunal, Bathinda in the case of Naresh Garg, cannot be of any avail to the driver of the tractor-trolley for the simple reason that it was a petition under Section 163A of the Act filed by the legal representatives of Naresh. Therefore, question of rash and negligent driving of the offending vehicle was not in question.

Learned Tribunal while accepting the salary of the deceased-Joginder Singh to be ₹18,925/- per month, awarded a total sum of ₹14,76,600/- to the claimants, which is detailed as hereunder:-

Annual income assessed	:	₹2,00,000/-
Deduction effected	:	1/3 rd
Multiplier applied	:	11
Funeral expenses	:	₹5,000/-
Loss of consortium to the widow	:	₹5,000/-

Both, driver and owner of the tractor-trolley were held jointly and severally liable to pay the compensation to the claimants. Aggrieved therefrom, FAO No.7008 of 2011 has been filed by the driver and owner of the offending tractor-trolley challenging their liability to pay the abovesaid compensation. FAO No.4216 of 2012 has been filed by the claimants seeking enhancement thereof.

Learned counsel for the appellants in FAO No.7008 of 2011 argues that liability has been wrongly fastened upon the appellants inasmuch it is the case of the claimants that the accident in question took place due to the composite negligence of drivers of both the vehicles i.e., the tractor-trolley and Scorpio. It is

contended that first and foremost, falsity of the stand against the tractor-trolley is apparent from the fact that such a vehicle which was admittedly loaded with wheat-chaff, could not have moved in a zigzag manner as alleged. It is contended that the propounder of the FIR was not examined before the learned Tribunal. It is only the statement of PW2 ASI Palwinder Singh, which has been taken into consideration by the learned Tribunal to conclude that there was negligence only on the part of the tractor-trolley's driver. Reference is made to the site-plan (Ex.P10) which is part of challan/final report under Section 173 Cr.P.C. filed in FIR No.303, to submit that negligence on the part of the Scorpio vehicle is evident.

It is further submitted that the driver of the tractor-trolley has since been acquitted by the learned Additional Chief Judicial Magistrate, Patiala vide judgment dated 20.08.2011 (Ex.R2). Sanjiv Kumar, propounder of the FIR, at the time of lodging of the FIR stated that driver of the tractor-trolley suddenly and without any indication, firstly came towards his right side and then towards his left side, due to which scorpio vehicle collided with the tractor-trolley loaded with chaff. Perusal of judgment dated 20.08.2011 (Ex.R2) reveals that Sanjiv Kumar while deposing as PW1 in the said proceedings stated that the driver of the tractor-trolley was on the correct side of the road and was not at fault in causing the accident. Pargat Singh, the driver of the Scorpio vehicle appeared as PW6 in the said criminal proceedings and he stated that the accident took place due to reflection of lights of a truck coming from the opposite side and none was at fault. It is submitted that in the given facts and circumstances, appellants in FAO No.7008 of 2011 should be exonerated of any liability to pay the compensation as

it is clear that the accident took place due to the rash and negligent driving of the Scorpio vehicle. It is thus prayed that FAO No.7008 of 2011 be allowed.

Learned counsel for the claimants (appellants in FAO No.4216 of 2016) prays for enhancement of the compensation awarded by the learned Tribunal. It is submitted that as per the salary certificate, deduction of ₹9,664/- made in the salary towards components of GPF, LIC and house loan should be included in the income of the deceased-Joginder Singh. Increment on account of future prospects should be awarded. Compensation under the conventional heads is meagre. It is however not disputed that in the claim petition, it is specifically pleaded that drivers of both the vehicles were guilty of rash and negligent driving due to which accident in question took place. It is urged that the present is claimed to be a case of composite negligence by the claimants.

Learned counsel for the driver and owner as well as insurer of the Scorpio vehicle refute the arguments regarding composite negligence in this case. It is submitted that as per the evidence on record accident in question took place due to the sole negligence of the driver of the tractor-trolley. Learned counsel further argue that no ground for enhancement of compensation awarded by the learned Tribunal is made out as just and reasonable compensation has already been awarded. It is thus prayed that both the appeals be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Perusal of the record reveals that the accident in question took place at about 11.30 p.m. at night. Deceased-Joginder Singh was admittedly travelling in the Scorpio vehicle with the other persons as mentioned above. Perusal of the

site-plan (Ex.P10) reveals that the tractor in this case was towards the left side of the road. Trolley/trailer of the tractor was positioned a little towards its right and the Scorpio vehicle had struck against the trolley/trailer at its right rear end. I find merit in the argument raised by learned counsel for the driver of tractor-trolley to the extent that there is an element of negligence on the part of the driver of the Scorpio vehicle as well. Present is indeed a case of composite negligence. I say so for the reason, that positioning of the vehicles as per the admitted site-plan (Ex.P10) is reflective of the same. Tractor-trolley is admittedly loaded fully with wheat-chaff (Toori). Ex.P11 is a mechanical report regarding the Scorpio vehicle and Ex.P12 is the mechanical report regarding the tractor-trolley. These reports were prepared at the instructions of police official by the Head Mechanic Pyara Singh. The said reports coupled with the specific stand taken by Pargat Singh, driver of the Scorpio vehicle in the proceedings emanating from FIR No.303, lends credence to the stand of the tractor-trolley's driver, that the Scorpio vehicle was trying to overtake the tractor-trolley, but due to an oncoming truck (with blinding lights), he was not successful and rammed his vehicle into the trolley. As per the site-plan (Ex.P10) an attempt, it appears, was made by the driver of the tractor-trolley to steer his trolley to the extreme left of the road. Trolley however had not yet progressed towards left and the Scorpio vehicle being driven at a fast speed, could not be controlled by its driver, may be due to oncoming vehicle, and it resultantly hit against the trolley from behind. At the same time, it cannot be ignored that the trolley was fully loaded with wheat-chaff (Toori). This is apparent from the statement of PW2 ASI Palwinder Singh, who admitted in his cross-examination that the tractor-trolley was fully loaded. In this view of the matter, it is possible that an obstruction was created by the trolley which could

not be manoeuvred as efficiently. Mechanical report of the Scorpio vehicle does indicate that it was being driven at a fast speed. Element of rashness and negligence on the part of both the vehicles is apparent from a perusal of the record.

Learned Tribunal has clearly erred in holding that as the FIR in question was registered only against the driver of the tractor-trolley, therefore, no negligence can be attributed to the driver of the Scorpio vehicle. At this stage, it is relevant to refer to the cross-examination of PW2 ASI Palwinder Singh, who has admitted in the cross-examination that Ram Singh (driver of the tractor-trolley) had filed an application for inquiry in this case, but the senior officers had directed presentation of the Challan/final report under Section 173 Cr.P.C. Therefore, learned Tribunal has clearly erred in, firstly, not framing a proper issue regarding composite negligence of both the drivers of Scorpio and tractor-trolley, despite specific pleading to this effect and further, it is wrongly concluded that the accident in question took place due to the sole negligence of the driver of the tractor-trolley. This finding of the learned Tribunal on Issue No.1 is set aside and it is held that both the tractor-trolley and Scorpio vehicles were equally responsible for the accident in question, in which Joginder Singh lost his life. Both the drivers of the said vehicles are thus held guilty of negligence to the extent of 50% each.

There is no dispute regarding deceased-Joginder Singh to be serving the Punjab Police as an Assistant Sub Inspector (ASI). He was 53 years old at the time of the accident, his date of birth being 15.09.1955, as per the service record. Ex.P13 is the salary certificate of the deceased. His gross salary is mentioned as ₹18,925/- per month. Deduction of ₹9,664/- i.e., ₹6,000/- towards GPF, ₹1,464/-

towards LIC and ₹2,200/- towards house loan are mentioned. It cannot be denied that the said amounts have to be included in the income of the deceased. Income of the deceased is thus assessed as ₹28,589/- per month. After applying deduction of 10% towards income tax, annual income of the deceased is assessed as ₹3,08,761/-.

Claimants are entitled to addition in income at the rate of 15% on account of future prospects in terms of the judgment of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680. Deduction of 1/3rd towards personal expenses has been correctly effected by the learned Tribunal. Multiplier of 11 has been rightly applied as well. Instead of ₹5,000/- on account of funeral expenses, ₹15,000/- each on account of funeral expenses and loss of estate is awarded to the claimants. In view of the judgments of the Hon'ble Supreme Court in Pranay Sethi (supra) and Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333 as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others), ₹40,000/- is awarded to claimant-widow on account of loss of spousal consortium, besides, ₹40,000/- to claimants-children on account of loss of parental consortium.

Claimants are, thus, entitled to compensation which is re-worked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	₹3,08,761/- per annum
2.	Total income after addition at the rate of 15% on account of future prospects	3,08,761 +(3,08,761 x 15%) = 3,55,075

3.	Net income after 1/3 rd deduction on account of personal expenses	3,55,075 – (3,55,075 x 1/3) = 2,36,717
4.	Total dependancy after applying a multiplier of 11	(2,36,717 x 11) = 26,03,887
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium to claimant-widow	40,000
8.	Loss of parental consortium to both the children	40,000
Grand Total		₹27,13,887/-

Amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the entire amount at the rate of 7.5% per annum, instead of 6%, from the date of filing of the petition till realization. Manner of disbursement and ratio of disbursement as determined by the learned Tribunal shall remain the same.

Needless to say, keeping in view the fact that drivers of both the vehicles have been held to be guilty of negligence to the extent of 50% each, their liability is also fixed accordingly. Keeping in view the judgment of the Hon'ble Supreme Court in Khenyei v. New India Assurance Company Ltd., 2015(2) RCR(Civil) 1019, it is open to the claimants to recover the amount of compensation from either of the joint tort-feasors, which/who needless to say shall further be entitled to recover the commensurate sum from the other tort-feasor.

FAO No.7008 of 2011 is partly allowed and FAO No.4216 of 2012 is disposed of.

May 14, 2019.

‘om’

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No