IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1)

FAO No.3206 of 2012 (O&M)
Date of Decision: May 29, 2019.

Oriental Insurance Company Limited

..........APPELLANT(s).

VERSUS

Sunita Devi and others

........RESPONDENT(s).

(2)

FAO No.3207 of 2012 (O&M)

Oriental Insurance Company Limited

..........APPELLANT(s).

VERSUS

Nepal Singh and others

........RESPONDENT(s).

(3)

FAO No.3544 of 2012 (O&M)

Sunita Devi and others

..........APPELLANT(s).

VERSUS

Ashraf Ali and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Yadav, Advocate
for the appellant in FAO Nos.3206 & 3207 of 2012
and for respondent No.3 in FAO No.3544 of 2012.

Mr. Anshul Mangla, Advocate for
Mr. Rajiv Sidhu, Advocate
for respondents No.1 to 4 FAO No.3206 of 2012,
for respondent No.1 in FAO No.3207 of 2012 and
for appellants in FAO No.3544 of 2012.

****

SURINDER GUPTA, J.

The above captioned appeals have been taken up together for disposal by common judgment as these arise from common award dated 10.03.2012, passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari (later referred to as the tribunal), awarding compensation of ₹20,000/- for the injuries sustained by claimant-injured Nepal Singh and ₹4,26,000/- for death of Surinder Singh (later referred to as the deceased) to claimant No.1 Sunita Devi, wife, claimants No.2 and 3, sons and claimant No.4 mother, in a motor vehicle accident with truck bearing registration No.HR-58-A-0341 (later referred to as the offending vehicle).

Brief facts of the case as detailed in para 2 of the award are reproduced as follows:-

> "As per the claim put forth by the claimants, on 03.05.2010 Nepal Singh Claimant in petition No.70 of 2010 and one Surinder Kumar (since deceased) had started their journey from village Sadholi (UP) for village Mali Majra (Yamuna Nagar) at 9.15 a.m. on a motor cycle bearing registration No.UP-11-Y-2774. Claimant Nepal Singh was driving the motorcycle while Surinder Singh was riding over the same as pillion rider. Around 09.39 a.m. when they reached near tax barrier at Kalanaur (Yamuna Nagar) then a truck bearing registration No.HR-58-A-0341, being driven by respondent No.1 at high speed and also in a rash and negligent manner, came from behind and hit their motorcycle. Due to the impact both the motor cycle riders fell down on the road. Claimant Nepal Singh sustained multiple injuries on his person while his companion namely Surinder Singh had died at the spot. It is alleged that the respondent No.1 after causing the accident fled

> away from the spot along with his truck. It has been further added that the registration number of the offending truck could not be noticed at that time, however, later on, with the help of CC Camera fitted on the tax barrier, the registration number could be known. The accident was also witnessed by one Shamshad and Rakesh Kumar, who were following the claimant Nepal Singh and deceased Surinder Singh, on their separate motorcycle. It has been further alleged that the accident in question was an outcome of rash and negligent driving of the respondent No.1 who was driving the offending truck bearing registration No.HR-58-A-0341, owned by respondent No.2 and insured with the respondent No.3."

<u>FAO Nos.3206 & 3207 of 2012</u>

Learned counsel for appellant-insurance company has argued that the FIR in this case was registered against an unknown vehicle and after two months, offending vehicle has been frivolously planted to get the compensation. The tribunal has committed error while relying on the testimony of PW5 ASI Yashpal that he came to know about the offending vehicle as well as driver of the offending vehicle through video footage taken from CCTV camera installed at tax barrier Kalanaur, Yamuna Nagar. The accident took place on 03.05.2010 while the compact disc (CD) of the accident produced before the Court was of 05.03.2010. The place of accident is 10 to 20 feet away from tax barrier and it is highly improbable that the vehicle could be at a very high speed from the tax barrier.

It is true that the description of offending vehicle nowhere find mentioned in the FIR, which was registered on the statement of respondent-claimant Nepal Singh. However, while appearing as PW2 claimant Nepal

Singh has stated that the accident was caused by the offending vehicle which was being driven by respondent No.1 in a rash and negligent manner and hit their motorcycle from behind resulting in injuries to him and Surinder Singh, who later on succumbed to his injuries. At the time of accident, he could not notice registration number of the offending vehicle but later on from the footage of CCTV camera installed at the tax barrier, he came to know about the registration of the offending vehicle. He had also recognised the driver who had fled away from the spot. Shamshad son of Lalu Shah and Rakesh Kumar were also going behind their motorcycle and had witnessed the accident. He has stated that they had crossed the tax barrier and had gone only 10 to 20 feet from there when the accident took place.

Constable Amarjeet Singh, PW3 has stated that on 03.05.2010, CCTV Camera installed at tax barrier, Kalanaur had recorded the event of the day. On that day, offending vehicle, which was empty, had crossed Kalanaur tax barrier. The accident had taken place at 9.38 am and only one truck had crossed during timing 9.38 am to 9.42 am. ASI Yashpal had investigated the criminal case. He has stated that during investigation, he had taken into possession CD of CCTV footage prepared by Sandeep Jain on 8.10.2010. In cross-examination, he has stated that identity of the offending vehicle had come to notice through CCTV footage.

Sandeep Jain, who appeared as PW6, has stated that he prepared the CD of CCTV footage from 9.25 am to 9.42 am. In that footage, truck number appears from its backside.

From the ample evidence that has come on record, this argument of the learned counsel for the appellant-insurance company that the offending vehicle had been planted at later stage, has no merits. The mere fact that vehicle number is not mentioned in the FIR is not a ground to arrive at any conclusion. During the investigation, police has to take notice of various facts and circumstances. In this case, it has relied on the CCTV footage of nearby tax barrier where the truck had crossed at the time when the accident took place. The claimants are residents of village Sadholi, District Saharanpur while the offending vehicle is owned by Tilak Raj of Yamuna Nagar. The Investigating Officer has no reason or motive to falsely implicate the offending vehicle in this case and to charge-sheet its driver Ashraf Ali. The tribunal has taken note of all the facts and evidence on record while concluding that the accident is proved to have been caused due to rash and negligent driving of the offending vehicle. I find no legal or factual infirmity in the conclusion so drawn by the tribunal calling for any interference in these appeals.

<u>FAO No.3544 of 2012</u>

The compensation awarded by the tribunal was computed as follows:-

(i)	Name of the deceased	Surinder Singh
(ii)	Date of accident	03.05.2010
(iii)	Age of the deceased	49 years
(iv)	Dependants	4
(v)	Income of the deceased	₹4000 p.m.= ₹48000 p.a.
(vi)	Deduction towards personal expenses 1/3	₹48000-16000=₹32000 p.a.
(vii)	Multiplier applied 13	₹32000X13 = ₹416000
(viii)	Loss of Consortium	₹5000
(ix)	Funeral Expense	₹5000
	Total	₹4,26,000/-

Learned counsel for the appellants-claimants has argued that the tribunal while assessing income of the deceased has observed that he was an able-bodied person with family to support. In the absence of any documentary evidence regarding his income, the same was assessed as ₹4000/- per month which is less than the minimum wages prescribed by the Labour Commissioner, Haryana in the year 2010. As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009,*** claimants are entitled to addition of 25% in the income of the deceased towards loss of future prospects and are also entitled to compensation of ₹70,000/- under the conventional heads.

Learned counsel for respondent-insurance company has not disputed allowing of compensation as per the law settled by Hon'ble Apex Court in the above referred case. Regarding income of the deceased, he has argued that the accident took place in the year 2010 and the tribunal has rightly assessed income of the deceased as ₹4000/- per month, as such the claimants are not entitled to seek any enhancement in his income as assessed by the tribunal.

The claimants have alleged that deceased was running a shoe shop and was also doing agricultural work thereby earning ₹50000/- per month. A certificate issued by the President, Gram Panchayat Sadholi, Block Nukad, Distt. Saharanpur was also placed on file, wherein, he has certified that deceased was running a shoe shop at Bus Stand of that village. Receipt Mark A & B were also produced on file by the claimants in support of their contention about business of the deceased. Mark A is the receipt issued by Zila Panchayat, Saharanpur concerning deposit of licence fee of ₹50/- for running shoe business by the deceased. This receipt is dated 08.06.2010. Mark B is the receipt issued by Zila Parishad for recovery of ₹350/- from Surinder Singh. The above documents may not be taken as evidence of income of deceased but it can be safely concluded/held that deceased was running a shoe shop and even if his income be equated with a skilled worker, as per letter dated 24.02.2010 issued by Labour Commissioner, Haryana, minimum wages of skilled worker as on 01.01.2010 were ₹4604/-, rounded of ₹4600/-. As per law settled in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (*****supra**), claimants are entitled to addition of 25% in the income of the deceased towards his future prospects. The deceased had left behind 4 dependants, as such, deduction towards his personal expenses is to be made $1/4^{th}$ of his income. Claimants are also entitled to compensation of ₹70000/- under the conventional heads.

In view of discussion above, the compensation to which the claimants are entitled, is reassessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹4600 per month
(ii)	25% of above (i) to be added as loss of future prospects	(₹4600+₹1150)= ₹5750 per month
(iii)	Deduction of $1/4^{th}$ towards personal expenses of the deceased	(₹5750-₹1438)= ₹4312 per month
(iv)	Compensation after multiplier of 13 is applied	(₹4312X12X13)= ₹672672
(v)	Loss of consortium	₹40000
(vi)	Loss of estate	₹15000
(vii)	Funeral expenses	₹15000
Total		₹7,42,672/-

As a sequel of my above discussion, appeals (FAO Nos. 3206 and 3207 of 2012) filed by Oriental Insurance Company, have no merits and the same are dismissed. Appeal (FAO No.3544 of 2012) filed by claimants Sunita Devi and others has merits and is accepted. The award of the tribunal is modified and the compensation allowed to the claimants is enhanced from ₹4,26,000/- to ₹7,42,672/- for death of Surinder Singh. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

(i)	Claimant No.1-widow	: 55%
(ii)	Appellants-claimants No.2 to 4	: 15% each

Respondent-insurance company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal.

In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

(SURINDER GUPTA)
JUDGE

May 29, 2019.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***