IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 3871 of 2012 (O&M)**
Date of decision : July 23, 2019

Rachna Monga .....Appellant
Versus
National Insurance Company Ltd. and others ....Respondents

2. **FAO No. 3872 of 2012 (O&M)**

Rachna Monga .....Appellant
Versus
National Insurance Company Ltd. and others ....Respondents

3. **FAO No. 3873 of 2012 (O&M)**

Rachna Monga .....Appellant
Versus
National Insurance Company Ltd. and others ....Respondents

4. **FAO No. 5418 of 2012 (O&M)**

Parminder Singh .....Appellant
Versus
Maghar Singh and others ....Respondents

5. **FAO No. 5419 of 2012 (O&M)**

Narender Kaur and another .....Appellant
Versus
Maghar Singh and others ....Respondents

6. **FAO No. 5806 of 2012 (O&M)**

Harbhajan Kaur and others .....Appellants
Versus
Maghar Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajesh Sethi, Advocate
for the appellant (in FAO Nos. 3871, 3872, 3873 of 2012) and
for respondent No.2 (in FAO Nos. 5418, 5419 & 5806 of 2012)

Mr. J.S. Thind, Advocate
for the appellant (in FAO Nos. 5418, 5419 & 5806 of 2012)and
for respondent No. 2 (in FAO Nos. 3871, 3873 of 2012)
for respondents No. 2 and 3 (in FAO No. 3872 of 2012)

Mr. Rajesh Verma, Advocate
for the insurance company in all the appeals.

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LISA GILL, J.

This judgment shall dispose of FAOs No. 3871 to 3873, 5418, 5419 and 5806 of 2012.

All the above said appeals emanate from claim petitions arising out of a motor vehicle accident which took place on 14.01.2011. The claim petitions have been decided by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to 'the Tribunal') vide a common award dated 23.03.2012.

FAO Nos. 3871, 3872, 3873 of 2012 have been filed by the owner of the offending vehicle challenging the recovery rights afforded to the insurance company vide award dated 23.03.2012 passed by the learned Tribunal.

FAO Nos. 5419 & 5806 of 2012 have been filed by the claimants for enhancement of compensation awarded by the Tribunal on account of death of Jitender Singh and Daljit Singh vide award dated 23.03.2012.

FAO No. 5418 of 2012 has been filed by the appellant – Parminder Singh for enhancement of compensation on account of injuries and disability suffered by him in the motor vehicle accident, which took place on 14.01.2011.

Brief facts necessary for adjudication of the case are that the claimants filed three separate petitions under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Daljit Singh, Jitender Singh and on account of injuries suffered by Parminder Singh in a motor vehicle accident caused due to rash and negligent driving of the offending vehicle, i.e. Truck bearing registration No. HR-39/2898, by respondent No.1.

Learned Tribunal concluded that there was an element of contributory negligence on the part of the deceased, therefore, the claimants were held entitled to only 75% of the awarded compensation. Contributory negligence on the part of the deceased was assessed as 25%. Insurance company was afforded the right to recover the amount deposited by it from the owner and driver on the ground that the licence placed on record by the respondent – driver is fake.

Learned counsel for the appellant argues that recovery rights have been afforded to the insurance company on the ground that the driving licence placed on record by the respondent – driver was fake. However, this finding of the learned Tribunal is falsified by the report dated 26.07.2016 submitted by the learned Tribunal pursuant to order dated 14.03.2016 passed by this Court. Learned counsel submits that application under Order 41 Rule 27 CPC was filed in order to prove that the driver of the offending vehicle was holding a valid driving licence. The appellant – owner sought to place on record the original driving licence of the driver namely Maghar Singh. The driving licence of the driver of the offending vehicle is proved to be genuine, therefore, it is prayed that appeals filed by the owner be allowed.

It is relevant to note at this stage that, this Court vide order dated 14.03.2016 afforded an opportunity to the driver and owner to lead evidence with reference to the original document, i.e. the driving licence held by the driver of the offending vehicle at the relevant time, before the learned Tribunal and benefit of evidence was also provided to the insurer to prove the relevant records from the RTO's office. Report from the learned Tribunal in this respect was called for. Relevant part of order dated

14.03.2016 reads as under:-

> " As regards the appeals in FAO Nos.3871 to 3873 of 2012, there are applications for reception of additional evidence. The additional evidence is the driving licence said to have been issued in favour of the driver by the DTO's office at Hardoi. The grievance of the appellant-owner is that the Tribunal merely relied on a verification made by the insurer's representative and no evidence was given by the insurer to prove the violation of terms of policy by summoning the records from the DTO's office. The order was pronounced on the same day when the investigator filed his report.
>
> For any violation of terms of policy, the insurer could only have the benefit of stay but it cannot be fully exonerated. The manner of dismissal of the issue of violation of terms of policy is unsatisfactory and the driving licence would require to be proved. The document filed before court does not evoke the prima facie credibility to the genuineness of the document, in that the document contains an inherent inconsistency. In one portion of the document, it states that the driver had a licence to drive a light motor vehicle only and states that the licence to drive transport vehicle was valid from 20.03.2011 to 19.03.2014. Elsewhere in the same document, it is stated that it is endorsed for MTV only upto 20.03.2008 and valid upto 19.03.2011. The so-called endorsement cannot be from 2008 itself, for, it is stated elsewhere, as I have observed, that endorsement was valid from 2011 to 2014 only. There has been gross indiscretion on the part of the appellant in not filing document at the Tribunal but the issue regarding violation of terms of policy would require to be examined by calling for a report from the Motor Accident Claims Tribunal. The documents filed with the applications filed under Order 41 Rule 27 CPC are ordered to be received and they are despatched to MACT at Sirsa for giving an opportunity to the driver and owner to give evidence with reference to the original document and allow the benefit of evidence also to the insurer to bring the

> relevant records from the RTO's office, if they seek to discredit the documents filed in court as not genuine. The report shall be sent to this court within a period of three months."

Pursuant thereto, report dated 26.07.2016 has been received from the learned Tribunal/learned Additional District and Sessions Judge, Sirsa.

Perusal of the report dated 26.07.2016 reveals that RW3 Kishan Chand, the concerned Clerk from the office of ARTO Hardoi (UP) was examined by the insurance company. RW3 has specifically deposed that the licence in question was firstly issued on 09.02.2000 for a motorcycle and LMV Private only. This licence was endorsed for HTV on 20.03.2008 upto 19.03.2011. It was subsequently again renewed w.e.f. 20.03.2011 upto 19.03.2014. It is specifically stated by RW3 that licence was issued in the name of Maghar Singh son of Pyara Singh. Photograph was also affixed on the register. RW3 specified that the photocopy of the licence Ex. RZ was issued by the office and it bears the same photograph as affixed on the register. Learned Tribunal has categorically observed that the licence in question is a valid driving licence. It is a matter of record that the accident in question took place on 14.01.2011, therefore, it is proved that at the relevant time driver of the offending vehicle was holding a valid driving licence. It is pertinent to note that no objections have been filed by the insurance company challenging the report and neither is learned counsel able to point out any infirmity therein.

Keeping in view the facts and circumstances as above, finding of the learned Tribunal in respect to the driving licence held by the driver of the offending vehicle is set aside. Driving licence held by the driver of the offending vehicle at the time of the accident is proved to be valid. No breach of the terms and conditions of the insurance policy is proved. Consequently, the insurance company is liable to indemnify the owner and has no right to recover the amount of compensation deposited by it.

In respect to the appeals filed by the claimants, learned counsel for the claimants argues that the learned Tribunal has awarded meagre compensation to the claimants in all the three claim petitions. In the matter regarding death of Daljit Singh and Jitender Singh, learned Tribunal, it is submitted, has erred in assessing the income of the deceased on a lower side. No increment on account of future prospects has been afforded. Multiplier has also been wrongly applied.

In respect to the matter pertaining to compensation to the injured - Parminder Singh, it is submitted that the appellant suffered 100% functional disability. He was only 19 years old at the time of the accident and was pursuing his +2. No compensation has been awarded towards loss of income. Moreover, meagre compensation has been afforded under the other heads.

Learned counsel for the claimants – appellant further argues that learned Tribunal has erred in holding that there was contributory negligence on the part of the deceased to the extent of 25%. The claimants are entitled to the entire compensation.

Learned counsel for the insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement and that the finding regarding contributory negligence is correct, therefore, should be upheld. It is, thus, prayed that the appeals filed by the claimants be dismissed.

Heard learned counsel for the parties and have perused the available record with their able assistance.

Learned Tribunal has held that there is contributory negligence on the part of injured - Parminder Singh as well as both the deceased inasmuch as three of them were riding a two wheeler. It is on account of triple riding of the two wheeler that the finding of contributory negligence has been returned by the learned Tribunal. A perusal of the record, however, does not reveal that it was triple riding, which was the causative factor of the accident in question. Triple riding is doubtlessly a violation of the traffic rules but that by itself cannot per se, lead to a finding of contributory negligence on the part of the injured/deceased in the absence of any such evidence on record. Learned counsel for the insurance company is indeed unable to point out any evidence on record to show that triple riding was the causative factor for the accident in question.

Keeping in view the facts and circumstances as above, the finding returned by the learned Tribunal, that there was a contributory negligence to the extent of 25% on the part of the injured and deceased, is set aside. It is held that the claimants are entitled to the entire amount of compensation.

FAO No. 5806 of 2012

There is no dispute that Daljit Singh lost his life in a motor vehicle accident, which took place on 14.01.2011 caused due to the rash and negligent driving of Truck bearing registration No. HR-39/2898 driven by respondent No.1. The deceased - Daljit Singh was admittedly 19 years old at the time of the accident. It is specifically pleaded by the claimants that after completing his +2, Daljit Singh had passed a diploma in Mobile Repair and was also doing a course in Computers. It is further claimed that he was working at a workshop being run by his uncle for the time being and would have earned at least ₹15,000/- per month in future after completing his education. Senior Secondary Certificate Examination of Daljit Singh is on record, which shows that he has cleared the said examination in March, 2010. Learned Tribunal has assessed income of the deceased as ₹4,000/- with reference to the wages of an unskilled labourer at the relevant time. It is a matter of record that the deceased had completed his +2 and had a diploma in Mobile repair, therefore, it is not justified to assess the income of the deceased with reference tot he minimum wages available to an unskilled labourer. Income of the deceased is, thus, assessed ₹6,000/- per month (instead of ₹4,000/- per month). In view of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase on account of future prospects at the rate of 40% (₹2400/-) is afforded, as the deceased was 19 years old at the time of accident, which takes income of the deceased to ₹8400/- per month. The claimants, in this case, are the widowed mother, unmarried sister and minor brother of the deceased. It is apparent that there is no evidence on record to nullify the claim that all of them were living together and that the claimants were dependents upon the deceased. Therefore, in view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, present is a fit case where deduction of 1/3rd should be applied, thereby rendering income of the deceased to be ₹5600/-(8400-2800). Applying a multiplier of 18 instead of

16 in terms of the judgment of the Hon'ble Supreme Court in ***Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347***, dependancy of the claimants is assessed as ₹12,09,600/- (₹5600 x12x18). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others,** appellant No. 1 i.e. mother of the deceased are entitled to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹12,79,600/- detailed as under:-

Loss of dependency (₹5600 x12x18)	₹12,09,600/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹12,79,600/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants are entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

FAO No. 5419 of 2012

There is no dispute that Jitender Singh too, lost his life in a motor vehicle accident, which took place on 14.01.2011 caused due to the rash and negligent driving of Truck bearing registration No. HR-39/2898 driven by respondent No.1. The deceased – Jitender Singh was admittedly 19 years old at the time of the accident. It is specifically pleaded by the claimants that after completing his +2, Jitender Singh was working as a labourer on a saw mill. Senior Secondary Certificate Examination of Jitender Singh is on record, which shows that he has cleared the said examination in March, 2009. Learned Tribunal has assessed income of the deceased as ₹4,000/- with reference to the wages of the unskilled labourer at the relevant time. It is a matter of record that the deceased had completed his +2, therefore, it is not justified to assess his income with reference to wages earned by an unskilled labourer. Income of the deceased is, thus, assessed ₹6,000/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 40% (₹2400/-) is afforded, as the deceased was 19 years old at the time of accident, which takes income of the deceased to ₹8400/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Sarla Verma*** (supra), 50% deduction has been rightly effected as the deceased was a bacehlor, thereby rendering income of the deceased to be ₹4200/-(8400-4200). Applying a multiplier of 18 instead of 16, in terms of the judgment of the Hon'ble Supreme Court in ***Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347***, dependancy of the claimants is assessed as ₹9,07,200/- (₹4200 x12x18). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and**

other 2018 (4) RCR (Civil) 333 and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others,** appellants i.e. parents of the deceased are entitled to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹9,77,200/- detailed as under:-

Loss of dependency (₹4200 x12x18)	₹9,07,200/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹9,77,200/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants are entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

FAO No. 5418 of 2012

The appellant – Parminder Singh admittedly suffered injuries in the accident in question, which visited him with a permanent disability of 88%. PW4 Dr. Ishwar Singh, Associate Professor and Head of Department of Neuro Surgery, PGIMS, Rohtak categorically opined that after examination of the patient Parminder Singh by the Board, it was found that Parminder was,

> "88% permanently disabled on account of head injury with quardriparesis with urinary incontinance (occasional) with

moderate mental retardation".

PW4 proved the medical certificate issued by the Board Ex.PW4/A. It is specifically stated by PW4 that the claimant cannot do his routine activity and he requires help of another person even for the routine chores. PW5 Dr. Gulzar Gupta, Assistant Professor, Department of Neuro Surgery, DMC, Ludhiana testified that Parminder Singh was admitted at DMC, Ludhiana on 14.01.2011 as a case of roadside accident with head injury and orthopedic injury. He remained under treatment till 07.02.2011. The claimant was again admitted on 11.02.2011 and discharged on 12.02.2011. Thereafter, claimant - Parminder Singh was yet again admitted on 03.03.2011 in the Neuro surgery department and discharged on 08.03.2011. All the discharge certificates were proved by PW5. The bills, which did not include the costs of medicines purchased from outside, were proved by PW5, who further stated that the disability is permanent in nature and is not likely to improve.

A perusal of the record reveals that functional disability of the appellant – Parminder Singh is 100%. He is unable to even carry out his routine chores what to say earn a livelihood. He is totally dependent upon someone else for even the smallest of chores. In this situation, it was incumbent upon the learned Tribunal to have awarded compensation for loss of earnings. There is no evidence on record to prove the income of the injured. No educational qualification of the appellant has been pointed out from the record, by learned counsel for the appellant. In the facts and circumstances, it is considered just and expedient to assess the income of the injured - claimant to be ₹5,400/- per month, as minimum wage of an unskilled labourer in the State of Haryana at the time of the accident was

₹5,351/- per month. Appellant is entitled to 40% increment on account of loss of future prospects in view of his age i.e. 19 years at the time of accident. A multiplier of 18 has to be applied.

As per the guidelines laid down by the Hon'ble Supreme Court in ***Sayed Sadiq etc. versus Divisional Manager, United India Insurance Company 2014 (1) R.C.R. (Civil) 765***, the appellant is entitled to loss of future income of ₹16,32,960**/-** [(₹5400x100/100) + (40/100 x 100/100 x ₹5400) x 12 x 18]. Compensation for a sum of ₹3,36,126/- towards medical expenses as awarded by the learned Tribunal is maintained. The appellant is further entitled to a sum of ₹1,00,000/- for pain and suffering (instead of ₹20,000/-) awarded by the learned Tribunal. A sum of ₹5,00,000/- awarded by the learned Tribunal on account of loss of amenities and a sum of ₹1,00,000/- on account of loss of marriage prospects are upheld. The appellant is entitled to a sum of ₹20,000/- for special diet (instead of ₹4000/-) and ₹15,000/- for transportation charges (instead of ₹4000/-). Keeping in view of the fact that the appellant would constantly require an attendant, he is held entitled to ₹2,00,000/- as attendant charges.

The appellant is, thus, entitled to compensation detailed as under:-

Loss of future income	₹16,32,960**/-**
Pain and suffering	₹1,00,000/-
Loss of amenities	₹5,00,000/-
Loss of marriage prospects	₹1,00,000/-
Attendant charges	₹2,00,000/-
Special diet	₹20,000/-
Transportation	₹15,000/-
Medical expenses	₹3,36,126/-
Total	**₹29,04,086/-**

Amount of compensation already awarded to the appellant shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realisation.

With the abovesaid modification in the amount of compensation, FAO Nos. 5418, 5419 and 5806 of 2012 are disposed of. FAO Nos. 3871, 3872 and 3873 of 2012 are allowed.

(Lisa Gill)
Judge

July 23, 2019
rts

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