

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-1-

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

(1) FAO-4498-2012(O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Ramesh @ Rameshwar and others

...Respondents

(2) FAO-4499-2012(O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Kuldeep and others

...Respondents

(3) FAO-4500-2012(O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Smt.Sudesh Devi and others

...Respondents

(4) FAO-1657-2013(O&M)

Smt.Sudesh Devi and others

...Appellants

Versus

Satpal and another

...Respondents

Date of Decision:-4.4.2019

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-2-

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

Present: Mr.Vinod Gupta, Advocate
for the appellant – insurance company in
FAO Nos.4498, 4499 and 4500 of 2012.

Mr.Amit Maan, Advocate for
Mr.Jasbir Mor, Advocate for the appellants in
FAO No.1657-2013 and for respondents No.1 to 3 in FAO
No.4500-2012.

Mr.V.Ramswaroop, Advocate
for the insurance company in FAO Nos.4498, 4499 and 4500
of 2012.

None for respondent No.1 in FAO-1657 of 2013.

Mr.D.S. Adlakha, Advocate for
respondent No.2 – insurance company in FAO-1657-2013.

H.S. MADAAN, J.

By this order, I shall dispose of four FAOs i.e. FAO-4498-2012, FAO-4499-2012 and FAO-4500-2012 filed on behalf of New India Assurance Company Ltd. and , FAO-1657-2013 filed on behalf of claimants of MACT Case No.138 of 2011, which have arisen out of the same accident.

Briefly stated, the facts of the case are that on 14.2.2011 at about 4:30 a.m., Rajesh alias Raja and Jitender @ Kala, both of them since dead along with Kuldeep were going to Palwal from Narwana in Alto Car bearing registration No.HR-32-B-7788 being driven by Ankur; that when the car had crossed Jind city and was in the area of near bus stand of village Bishanpura, a Mahindra Xylo vehicle bearing registration

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-3-

No.PB-29K-0915 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 Satpal in a rash and negligent manner came from the opposite side; that Ankur took the Alto car on right hand side in order to avoid the accident but the offending vehicle struck the Alto car in the middle, as a result all the occupants of the Alto car suffered grievous injuries; that after the mishap, the respondent No.1 – Satpal ran away from the spot, however, several people had gathered there and they took out the injured from the ill-fated vehicle; in the meanwhile a police PCR reached there; that all the injured were taken to General Hospital, Jind and after being provided first aid there, keeping in view the serious condition of the injured, they were referred to PGI, Rohtak, however, they were taken to Jindal Hospital, Hisar; that unfortunately injured Rajesh @ Raja and Jitender @ Kala succumbed to their injuries on the way to Jindal Hospital, Hisar; that their family members brought their deadbodies to Narwana and cremated them there without getting the post-mortem examination conducted; that formal FIR No.36 dated 19.2.2011 for the offences under Sections 279, 338 and 304-A IPC was registered at Police Station Sadar, Jind with regard to the accident.

Smt.Sudesh Devi – widow, Master Deepansu – son and Smt.Shanti Devi – mother of deceased Rajesh @ Raja had brought a claim petition bearing MACT Case No.138 of 2011 against respondents i.e. Satpal – driver-cum-owner and United India Insurance Company through its Branch Manager, Jind Branch - insurer of the offending vehicle, claiming compensation to the tune of Rs.20 lacs on account of death of

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-4-

Rajesh @ Raja in the motor vehicular accident, contending that deceased Rajesh @ Raja was aged about 25 years; that he was working as agriculturist and dairy farmer, earning Rs.15,000/- per month and he was also preparing for B.A. Examination; that he was sole bread winner of the family.

Sh.Ramesh @ Rameshwar and Smt.Roshni Devi, parents of deceased Jitender @ Kala had brought a claim petition bearing MACT Case No.156 of 2011 against the above-said respondents, claiming compensation to the tune of Rs.10 lacs on account of death of Jitender @ Kala in the motor vehicular accident contending that their deceased son Jitender @ Kala was aged about 25 years; that he was working as a driver and earning Rs.4,500/- per month; that the claimants were dependents upon his earnings.

Sh.Ankur had brought a claim petition bearing MACT Case No.203 of 2011 against the above-said respondents and also against respondent No.3 - Ved Parkash – owner and respondent No.4 - New India Assurance Company Ltd. - insurer of Alto car bearing registration No.HR-32-B-7788, claiming compensation to the tune of Rs.10 lacs on account of injuries suffered by him in the motor vehicular accident by contending he was earning Rs.15,000/- per month from his private business and due to suffering injuries in the accident, he remained admitted as indoor patient in Jindal Hospital, Hisar from 14.2.2011 upto 19.2.2011; that he was operated upon there and a sum of Rs.1 lac was spent on his treatment till date and since he is not fully cured, he is getting

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-5-

further treatment spending money; that he has become disabled to do any work; that he was the only bread earner of the family.

Sh.Kuldeep had brought a claim petition bearing MACT Case No.207 of 2011 against the respondents as mentioned in MACT Case No.203 of 2011, claiming compensation to the tune of Rs.20 lacs on account of injuries suffered by him in the motor vehicular accident contending that he has been a practising Advocate at Narwana, earning Rs.50,000/- per month; that due to suffering of injuries in the road side accident, he was admitted as indoor patient in Jindal Hospital, Hisar from 14.2.2011 upto 2.3.2011 and underwent surgery there; that a sum of Rs.3 lacs were spent on his treatment till date; that since he has not been fully cured, he is still getting treatment facing great physical hardship; that he has become disabled due to suffering injuries in the mishap and is unable to do practice.

Since all the four claim petitions arose out of the same accident, those were tried together and disposed of vide a single Award dated 5.4.2012 passed by Motor Accidents Claims Tribunal, Jind.

On notice, the respondents put in appearance. Initially respondent No.3 had appeared in two connected claim petitions through counsel but later on such counsel absented and there was no other representation on behalf of such respondent No.3, as such was proceeded against ex parte. Respondents No.1, 2 and 4 had however offered contest to the claim petitions.

Respondent No.1 in the written statements filed in all the

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-6-

cases offer denial to the assertions in the claim petitions stating that no such accident had ever taken place with the vehicle in question and that driver of the Alto car was driving it in a rash and negligent manner and as such was responsible for the mishap; that the car had hit some unknown vehicle; that the FIR was lodged after delay of five days wrongly roping the offending vehicle in question; nevertheless this vehicle was insured with respondent No.2 and he was having a valid and effective licence at the time of alleged accident, therefore, the compensation, if any, is to be paid by the insurance company. Such respondent took up various legal objections in the written statements filed while craving for dismissal of the claim petitions.

Respondent No.2 in the written statements also denied involvement of the offending vehicle in question in the accident stating that the accident, if any, had taken place due to sole fault of Alto car driver Ankur or in the alternative, it was a case of contributory negligence, therefore since drivers of both the vehicles were not holding any valid and effective driving licence at the time of accident and the vehicles were being plied in violation of terms and conditions of the insurance policy. Such respondent also craved for dismissal of the claim petitions.

Respondent No.4 – insurance company of Alto Car in two petitions took up a plea that accident took place due to rash and negligent driving of offending vehicle by respondent No.1; that there was an inordinate and unexplained delay of five days in lodging the FIR creating a doubt in the mind about truthfulness of allegations. According to the

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-7-

answering respondent, it was not liable to pay any compensation since the driver of the car was not having a valid and effective driving licence and it was being plied in violation of the terms and conditions of the insurance policy; that the claim petitions were bad for non-joinder of necessary parties since Alto car was not the offending vehicle, therefore answering respondent was unnecessary party. Such respondent also prayed for dismissal of the claim petitions.

On the pleadings of the parties, following consolidated issues were framed :-

1. Whether the accident in question was caused by respondent no.1 while driving XYLO Mahindra car No.PB-29K-0915 in a rash and negligent manner causing death of Rajesh Kumar @ Raja son of Badan Singh and Jitender @ Kala son of Ramesh @ Rameshwar and injuries to Ankur son of Ved Parkash and Kuldeep son of Miya Singh as alleged? OPP.
2. If issue No.1 is proved, whether claimants Sudesh Devi etc. are entitled to any compensation and if so, to what extent and from whom? OPP.
3. If issue No.1 is proved whether claimants Ramesh etc. are entitled to any compensation and if so, to what extent and from whom? OPP.
4. If issue No.1 is proved whether claimant Ankur is entitled to any compensation and if so, to what extent and from whom?OPP.
5. If issue No.1 is proved whether claimant Kuldeep is entitled to any

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-8-

compensation and if so, to what extent and from whom? OPP.

6. Whether respondent no.1 had violated any term and condition of insurance policy? OPR-2.

7. Relief.

Both the parties led evidence in support of their respective claims.

During the course of evidence, the claimants Ramesh @ Rameshwar, Kuldeep, Ankur and Smt.Sudesh Devi got recorded their statements as PW1 to PW3 and PW8, respectively besides examining ASI Dharambir as PW4, Dr.Satish Verma as PW5, Sh.Vikram Sharma as PW6, Sh.Rajinder as PW7, Sh.Prem Singh, Recordkeeper as PW9.

On the other hand, respondents tendered into evidence documents Ex.R1 to Ex.R6.

After hearing arguments, the Tribunal allowed the claim petitions partly. Claimants Smt.Sudesh Devi etc. in Claim Petition bearing MACT Case No.138 of 2011 were awarded compensation of Rs.4,70,800/-; the claimants Ramesh @ Rameshwar and his wife in claim petition bearing MACT Case No.156 of 2011 were awarded compensation of Rs.2,80,000/- in equal shares; the claimant Ankur of claim petition bearing MACT Case No.203 of 2011 was awarded Rs.25,200/- and claimant Kuldeep of claim petition bearing MACT Case No.207 of 2011 was awarded compensation to the tune of Rs.2,08,000 along with proportionate costs and interest at the rate of 9% per annum from the date of filing of the petitions till final realization. Further both the sets of

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-9-

respondents i.e. owners and insurer of both the vehicles in question shall jointly and severally liable to pay half of the amount awarded to the claimants in all the claim petitions except to claimant Ankur in claim petition bearing MACT Case No.203 of 2011 in the ratio of 50:50. The claimant Ankur held entitled to get the compensation only from respondent No.1 and respondent No.2 i.e. owner and insurer of the offending vehicle to the extent of 50% only and his claim petition against respondents No.3 and 4 was dismissed.

The manner in which the compensation is to be apportioned was also given in the award.

Feeling dissatisfied with the award New India Assurance Company Ltd – insurer of Alto Car bearing registration No.HR-32-B-7788 filed FAO-4498-2012, FAO-4499-2012 and FAO-4500-2012 and petitioners/claimants - legal representatives of deceased Rajesh @ Raja in MACT Case No.138 of 2011 filed FAO-1657-2013.

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

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

Firstly taking up the appeal filed by Smt.Sudesh Devi etc. - legal representatives of deceased Rajesh @ Raja bearing No. FAO-1657-2013 as well as appeal filed by New India Assurance Company Ltd. i.e. FAO-4500-2012 against Sudesh Devi and others.

The Tribunal on appreciation of evidence adduced by the

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-10-

parties and considering the facts and circumstances of the case while giving verdict on issue No.1 came to the conclusion that the drivers of both the vehicles had contributed equally in causing the accident, therefore, negligence of both the drivers was apportioned in the ratio of 50:50. Coming to the amount of compensation payable to the claimants - Sudesh Devi and others, the Tribunal took age of the deceased Rajesh @ Raja to be 31 years considering his date of birth entered in his matriculation examination certificate Ex.P4 and middle examination certificate Ex.R1 as 27.8.1979; though according to the claimants, he was aged about 25 years. The Tribunal was justified in relying upon the date of birth of deceased entered in his school certificates. Furthermore, though according to the claimants, he was earning Rs.15,000/- per month from the avocation of agriculture and dairy farming but considering the reply given by widow of the deceased Sudesh Devi appearing as PW8 in her cross-examination that they were having a ration card of below poverty line(BPL) and in absence of any relevant document showing that deceased owned any agricultural land in absence of any cogent and convincing evidence with regard to income of deceased treating him as a casual labourer, the Tribunal took his monthly income to be Rs.3,600/- per month. Though according to the counsel for the claimants, the minimum rates of wages in the State of Haryana on 1.7.2010 were Rs.4,348/- for unskilled worker and Rs.4,478/- for a skilled worker and he has shown photostat copy of document in that regard but in absence of any authentic document in the form of copy of notification, this Court is not inclined to

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-11-

rely upon this document. The Tribunal has applied a cut of 1/3rd towards personal expenses of the deceased, working out monthly dependency of the claimants to be Rs.2,400/- and annual dependency Rs.28,800/- (2400 x 12).

However, one thing to be noticed here is that no addition towards future prospects has been made.

The Tribunal had taken the monthly income of deceased to be Rs.3,600/- per month. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.3600 + 1440 = Rs.5040/-.

In this case the Tribunal has correctly deducted 1/3rd of the amount towards self expenses in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**. Doing that the dependency of claimants comes out to Rs.3,360/- per month, annual dependency comes out to Rs.3,360 x 12 = Rs.40,320/-.

The Tribunal has used multiplier of 16, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.40,320 x 16 = 6,45,120/-.

The Tribunal has granted a sum of Rs.10,000/- under conventional heads.

In view of the ratio of authority **National Insurance**

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-12-

Company Limited Versus Pranay Sethi and Ors.(supra), the claimants are 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.6,45,120 + 70,000 = 7,15,120/-.

The Tribunal has awarded compensation of Rs.4,70,800/-.

In this way, the enhanced amount comes out to Rs.2,44,320/- (7,15,120 - 4,70,800). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.2,44,320 /-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the **FAO-1657-2013** is allowed partly with costs.

Learned counsel for the appellant – New India Assurance Company Ltd. in FAO-4500-2012 has contended that the said claimants had not impleaded New India Assurance Company as a party in the claim petition. However, the Tribunal wrongly stated that the said insurance company was liable to pay compensation.

Whereas the counsel representing such claimants contended that since all the four claim petitions arose out of the same accident, those were tried together by the Tribunal and as a matter of fact all the four claim petitions were consolidated vide order dated 17.11.2011 and consolidated issues were framed; the parties were afforded opportunities to lead evidence and then after hearing arguments in all the four cases

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-13-

where this insurance company was being represented, the award had been announced. Therefore, this plea cannot be taken by the New India Assurance Company Ltd.

After hearing learned counsel for the parties, besides perusing the record, I find that the explanation rendered by learned counsel for the claimants is quite convincing. A perusal of the award goes to show that New India Assurance Company Ltd. was being represented in all the four cases including MACT Case No.138 of 2011 filed by Smt.Sudesh Devi and others with respect to death of Rajesh @ Raja in the motor vehicular accident and arguments were addressed in all the four cases. The Tribunal dealt with the said aspect observing as follows:

“Owner and insurer of the Alto car were not joined as respondents in the main claim petition and connected petition Ramesh @ Rameshwar etc. Vs. Satpal etc. However, in two connected claim petitions i.e. Ankur Vs. Satpal etc. and Kuldeep Vs. Satpal etc. they were joined as respondents No.3 and 4 respectively. Since all the four claim petitions arising out of the same accident have been consolidated treating claim petition titled Smt.Sudesh Devi etc. Vs. Satpal etc. as main, so both the sets of respondents shall be jointly and severally liable. However, claimant Ankur who was driving the Alto car at the relevant time, so he is not entitled to get compensation from its owner and insurer being his equally responsible for causing the impugned accident. Hence both

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-14-

the sets of respondents i.e. owners and insurers of both the vehicles in question shall be jointly and severally liable to pay half of the amount awarded to the claimants in all the claim petition except to claimant Ankur in claim petition MACT Case No.203 of 2011 in the ratio of 50:50. Claimant Ankur shall be entitled to get compensation only from respondent No.1 and 2 i.e. owner and insurer of Mahindra car to the extent of 50% only. Accordingly, this issue is decided in favour of the claimants and against the respondents in the manner indicated above.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. As such New India Assurance Company Ltd. cannot escape liability under this cover. Rather it is estopped from raising this plea at this stage.

Therefore, **FAO-4500 of 2012** filed on behalf of New India Assurance Company Ltd. stands dismissed.

As far as FAO No.4499 of 2012 filed on behalf of appellant New India Assurance Company Ltd. is concerned, the Tribunal on the basis of evidence brought on file in the form of medical bills brought on record, total amount of which was calculated to be Rs.87,025/- making it a

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M) -15-

round figure allowed a sum of Rs.88,000/- and considering his permanent disability to be 15% as per disability certificate Ex.P2, granted a sum of Rs.30,000/- on that account, while awarding total compensation of Rs.2,08,000/- as per details below:

1.	On account of actual expenses spent on medical treatment	Rs. 88,000-00
2.	Physical pain and mental agony	Rs.20,000-00
3.	Disability	Rs.30,000-00
4.	On account of loss of income during the treatment period of 3 months at the rate of Rs.20,000/- per month	Rs. 60,000-00
5.	On account of attendant, special diet expenses and transport expenses	Rs. 10,000-00
	Total	Rs. 2,08,000-00

Learned counsel for the appellant has raised the similar objection as has been taken in FAO-4500 of 2012 that appellant was not made party in the claim petition but this objection cannot be upheld in view of the detailed discussion supra.

The compensation so awarded can certainly be not taken to be exorbitant or on higher side and I do not see any ground to reduce such compensation. Thus ***FAO-4499-2012*** filed by appellant – New India Assurance Company Ltd. is bound to fail being without merit and stands dismissed.

Coming to FAO-4498 of 2012 filed by appellant New India Assurance Company Ltd., the Tribunal has taken age of deceased Jitender

FAO-4498-2012(O&M);
FAO-4499-2012(O&M);
FAO-4500-2012(O&M); and
FAO-1657-2013(O&M)

-16-

@ Kala to be 25 years, his avocation as driver and monthly earning Rs.4,500/-; considering that he was unmarried, 50% of the amount was deducted towards personal expenses, therefore, dependency of his parents was calculated to be Rs.2,250/- per month, annual to be Rs.27,000/- and multiplier of 10 was applied, keeping in view the age of parents, calculating the compensation to be Rs.2,70,000/-; a sum of Rs.10,000/- was awarded under conventional heads, total compensation was worked out to Rs.2,80,000/-.

The Tribunal obviously fell in error in using the multiplier considering the age of parents of the deceased when in view of the judgment *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*, the age of deceased is to be taken into consideration and not that of the dependents. Furthermore, a sum of Rs.70,000/- is not awarded under the conventional heads. However, since the claimants have not filed any cross appeal or cross-objections, I do not find it proper to grant such benefits to them.

Therefore, **FAO-4498-2012** filed by the appellant – New India Assurance Company Ltd. stands also dismissed.

4.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No