

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

1.

**FAO No.6275 of 2012(O&M) with
XOBJC No.100-CII of 2014(O&M)**

Date of Decision: May 16 , 2019.

Reliance General Insurance Co. Ltd.

..... APPELLANT(s)

Versus

Jagwant Singh and others

..... RESPONDENT (s)

2.

**FAO No.6276 of 2012(O&M) with
XOBJC No.99-CII of 2014**

Reliance General Insurance Co. Ltd.

..... APPELLANT(s)

Versus

Pardeep Kaur and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. T.K.Joshi, Advocate
for the appellant-Insurance company.

Mr. Sandeep Kotla, Advocate
for respondent No.1/cross-objector in FAO No.6275 of 2012 and
for respondents No.1 to 5/cross-objectors in FAO No.6276 of 2012.

Mr. S.S.Sahu, Advocate
for respondents No.2 and 3 in FAO No.6275 of 2012 and
for respondents No.7 and 8 in FAO No.6276 of 2012.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This judgment shall dispose of FAO No. 6275 of 2012 (Reliance

General Insurance Co. Ltd. v. Jagwant Singh and others) and FAO No.6276 of 2012 (Reliance General Insurance Co. Ltd. v. Pardeep Kaur and others) as well as cross-objections filed by the claimants as they arise out of a common award dated 18.07.2012 passed by the learned Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as, the 'Tribunal').

Brief facts necessary for adjudication of the case are that, two petitions under Section 166 of Motor Vehicles Act were preferred by the claimants/cross-objectors seeking compensation i.e., Petition No.58 of 2009/2011 by Jagwant Singh on account of injuries suffered by him in a motor vehicle accident, which took place on 24.02.2009 and MACT No.59 of 2009/2011 by the widow, minor children and parents of deceased-Harbans Singh @ Mansa Singh @ Bhagwan Singh, claiming compensation on account of his death in the said motor vehicle accident.

It is averred in the claim petitions that Jagwant Singh and his brother Harbans Singh @ Mansa Singh @ Bhagwan Singh (deceased) were going to Ratia on a motorcycle No.HR-22C-9109 on 24.02.2009. The same was driven by Harbans Singh @ Mansa Singh @ Bhagwan Singh at a moderate speed on the correct side of the road. Janak Singh was following them on a separate motorcycle. When they were at some distance from village Ratta Khera, at about 1.00 p.m., a Scorpio jeep bearing registration No.HR-06S-5471, being driven in a rash and negligent manner, came from behind and struck against the motorcycle of the claimant-Jagwant Singh and his brother. As a result thereof, they suffered multiple injuries. Both the injured were removed to the Community Health Centre, Ratia, where Harbans Singh @ Mansa Singh @ Bhagwan Singh

succumbed to his injuries. FIR No.78 dated 24.02.2009 under Sections 304A/279/337 IPC was registered at Police Station Ratia against respondent-driver. Compensation was, thus, prayed for.

Both the claim petitions were decided by the learned Tribunal vide a common award dated 18.07.2012. Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the Scorpio jeep bearing registration No. HR-6S-5671 by its driver. This finding of the learned Tribunal has attained finality.

In MACT No.58 of 2009/2011 filed by claimant-Jagwant Singh (respondent No.1/cross-objector in FAO No.6275 of 2012) on account of the injuries and disability suffered by him, the learned Tribunal awarded a total sum of ₹55,000/- as compensation to him vide the impugned award. ₹35,000/- was awarded on account of the medical expenses proved on record, besides, ₹20,000/- on account of pain and suffering.

In MACT No.59 of 2009/2011, filed by the claimants (respondents No.1 to 5/cross-objectors in FAO No.6276 of 2012) on account of death of Harbans Singh @ Mansa Singh @ Bhagwan Singh, the learned Tribunal awarded a total sum of ₹8,15,000/- as compensation to the claimants vide the impugned award. Income of the deceased, aged 30 years at the time of his death, was assessed as ₹5,000/- per month. Deduction to the extent of 1/4th on account of personal expenses was effected and multiplier of 17 was applied. A sum of ₹10,000/- each was awarded towards loss of consortium, love & affection and loss of estate/expectancy, besides, ₹20,000/- towards transportation/funeral expenses.

Aggrieved from not being granted the right to recover the compensation from the owner of the offending vehicle, Insurance company has filed the present appeals, whereas cross-objections have been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal.

Learned counsel for the appellant-Insurance argues that the learned Tribunal has concluded that the offending vehicle was being driven by Chander Mohan (arrayed as respondent No.1 in the claim petitions and respondent No.2 in FAO No.6275 of 2012), who was admittedly a minor, aged 16 years at the time of the accident and he was not competent or entitled to drive the vehicle. In this situation, the Insurance company should be afforded the right to recover the amount of compensation after the same was paid to the claimants.

Learned counsel for the owner of the offending vehicle however, refutes the said arguments, while submitting that that the owner of the offending vehicle had duly appointed respondent-Vinod Kumar as the driver of the offending vehicle. As per the evidence on record, it is borne out that respondent-Vinod Kumar, was driving the said offending vehicle at the time of the accident. Vinod Kumar admittedly had a valid driving license. Reference is made to the statements of RW1 Vinod Kumar as well as PW4 Janak Singh. Moreover, even if it is presumed that it was the minor, who was driving the offending vehicle, it was incumbent upon the appellant-Insurance company to have proved that the said vehicle was handed over by the owner knowingly and intentionally to the minor. It is contended that once it is not proved on record that the minor was driving the offending vehicle with the express or implied consent of the owner, the Insurance

company cannot be absolved of its liability to pay the compensation to the claimants. No right to recover the amount of compensation paid to the claimants should thus be afforded to the appellant-Insurance company. Dismissal of the appeals is thus prayed for.

Heard learned counsel for the parties and have gone through the record.

FIR No.78 dated 24.02.2009 was registered under Sections 279/337/304A IPC in respect of the accident in question and respondent-Vinod Kumar was arrested in the case. During investigation and on the statement of the claimant-Jagwant Singh, it came to light that the offending jeep was being driven by Chander Mohan, a minor. It is in this situation that the Insurance company seeks the right to recover the compensation amount from the owner. However, I do not find any reason to differ with the finding returned by the learned Tribunal in this regard. It is duly proved on record that the owner of the offending vehicle had employed respondent-Vinod Kumar as a driver of the offending vehicle. PW4 Janak Singh, the eye-witness of the accident, had named respondent-Vinod Kumar as the person who was driving the offending vehicle. In his cross-examination, it is stated that he had named respondent-Vinod Kumar as a driver of the offending jeep as the people, who had gathered on the spot had revealed his name. Respondent-Vinod Kumar testified as RW1 before the learned Tribunal. He accepted that on 24.02.2009 i.e., the date of accident, he was employed as a driver on the offending jeep by the owner. RW1 Vinod Kumar testified that he alongwith Chander Mohan was going to Ratia while driving the jeep at a moderate speed. The accident in question, it is stated, took place due to

the negligence of the driver of the motorcycle. The jeep had turned turtle. Negligence on his part was denied, though he categorically admitted that he was driving the offending vehicle. At the same time, it is also not in dispute that though Vinod Kumar was initially proceeded against in the criminal case, but it was found on investigation by the investigating agency that it was Chander Mohan who was driving the offending vehicle and he was proceeded against thereafter.

Be that as it may, even if it is accepted that respondent-Chander Mohan was driving the offending vehicle at the relevant time, it is apparent that control of the vehicle was handed over by respondent-Vinod Kumar to Chander Mohan, without the express or implied consent of the owner of the vehicle. It is rightly held by the learned Tribunal that employment of Vinod Kumar is duly proved on record and merely because there is no documentary evidence in this regard, it cannot be said that respondent-Vinod Kumar was not engaged as a driver of the vehicle by its owner. Reliance is rightly placed by the learned Tribunal on the judgment of the Hon'ble Supreme Court in **Sohan Lal Passi v. P.Sesh Reddy and others, 1996(5) SCC 21**. The Hon'ble Supreme Court in this case after referring to its earlier decision in **Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, 1987(91) PLR 664 (SC)** observed that;

“To examine the correctness of the aforesaid view this appeal was referred to a three Judges’ Bench, because on behalf of the insurance company, a stand was taken that when Section 96(2)(b)(ii) has provided that the insurer shall be entitled to defend the action on the ground that there has been breach of a specified condition to the policy i.e. the vehicle should not be driven by a person who is 'not' duly licensed, then the

insurance company cannot be held to be liable to indemnify the owner of the vehicle. In other words, once there has been a contravention of the condition prescribed in sub-section (2)(b)(ii) of Section 96, the person insured shall not be entitled to the benefit of subsection (1) of Section 96. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has not insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression "breach" occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was willful, If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that It was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurubachan Singh and had placed the

vehicle in his charge. While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had willfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the Vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realization of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known.”

Keeping in view the facts and circumstances of the case as above, there is no scope for any interference in the finding returned by the learned Tribunal in this respect and the same is upheld.

XOBJC No.100-CII of 2014(O&M)

Prayer in the cross-objections is for enhancement of compensation awarded to the injured-claimant, Jagwant Singh in Petition No.58 of 2009/2011. It is submitted that meagre compensation has been awarded and even though admittedly no permanent disability was suffered by the claimant, he had undergone surgery.

Learned counsel for the Insurance company submits that there being no merit in the cross-objections, the same be dismissed.

Heard learned counsel for the claimant/cross-objector as well as the

Insurance company and have gone through the record.

Perusal of the record reveals that as per the Discharge Summary, Ex.P1 and Ex.P2, the injured/claimant was admitted at Chawla Nursing Home, Hisar on 24.02.2009 and discharged on 28.02.2009. He suffered fracture of both the bones of the left forearm. Claimant was operated upon on 24.02.2009 under general anesthesia. 'Ulna bone grafting and ORIF of forearm' was carried out. PW3 Dr. Parveen Kumar of the Chawla Nursing Home has proved admission of the patient and his discharge after operation as noticed above. Medical expenses were also proved by him.

In this view of the matter, the claimant is held entitled to sum of ₹25,000/- on account of pain and suffering, instead of ₹20,000/-. Medical expenses as per the bills proved on record to the tune of ₹35,000/- are maintained. Claimant is held entitled to ₹8,000/- for special diet, ₹ 2,500/- for transportation and ₹5,000/- as attendant charges.

Claimant-Jagwant Singh is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Pain and sufferings	₹25,000
2.	Medical bills	₹35,000
3.	Attendant expenses	₹5,000
4.	Transportation	₹2,500
6.	Special diet	₹8,000
Grand Total		₹75,500/-

Amount already awarded by the Tribunal to the claimant/injured under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per

annum on the enhanced amount from the date of filing of petition till realization.

XOBJC No.99-CII of 2014

Legal representatives of deceased- Harbans Singh @ Mansa Singh @ Bhagwan Singh seek enhancement of compensation awarded to them. Learned counsel for the claimants/cross-objectors does not challenge the income of the deceased as assessed by the learned Tribunal. However, it is submitted that compensation awarded to the claimants be enhanced 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** and under the conventional heads, the compensation be reworked 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.**

Heard learned counsel for the claimants/cross-objectors as well as the Insurance company and have gone through the record.

Learned Tribunal accepted the deceased to be 30 years old at the time of the accident. Income of the deceased is accepted to be ₹5,000/- per month. Claimants are entitled to addition in income at the rate of 40% on account of future prospects in terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra) One fourth (1/4th) deduction towards personal expenses has been correctly effected by the learned Tribunal. Multiplier of 17 has been rightly applied as well. Total amount on account of funeral expenses and loss of estate to which the claimants are entitled is the same i.e., ₹30,000/- (at the rate of ₹15,000/- each). The learned Tribunal has awarded i.e., ₹20,000/-

towards funeral expenses and ₹10,000/- towards loss of estate. Claimant-widow is entitled to ₹40,000/- on account of loss of spousal consortium, both the children are entitled to ₹40,000/- towards loss of parental consortium and parents of the deceased are entitled to ₹40,000/- towards loss of filial consortium in terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd.** (supra) 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**).

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	5,000 p.m. i.e. ₹60,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	60,000 + (60,000 x 40%) = 84,000
3.	Income after deduction of 1/4 th on account of personal expenses	84,000 – (84,000 x 1/4) = 63,000
4.	Total dependancy after applying a multiplier of 17	(63,000 x 17) = 10,71,000
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium to claimant/widow	40,000
8.	Loss of parental consortium to the children	40,000
9.	Loss of filial consortium to the parents	40,000
Grand Total		₹12,21,000/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall

be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal.

Both the appeals preferred by the Insurance company, being devoid of merit, are dismissed. Cross-objections filed by the claimants are disposed of, with modification in the amount of compensation.

May 16 , 2019.
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(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No