

FAO-647-2012(O&M);
FAO-648-2012(O&M);
FAO-2373-2012(O&M); and
FAO-2450-2012(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) **FAO-647-2012(O&M)**

The Oriental Insurance Co.Ltd.

...Appellant

Versus

Smt.Kulwinder Kaur and others

...Respondents

(2) **FAO-648-2012(O&M)**

The Oriental Insurance Co.Ltd.

...Appellant

Versus

Smt.Manjit Kaur and others

...Respondents

(3) **FAO-2373-2012(O&M)**

Smt.Kulwinder Kaur and others

...Appellants

Versus

Karam Singh and others

...Respondents

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FAO-2450-2012(O&M)

Smt.Manjit Kaur and others

...Appellants

Versus

Karam Singh and others

...Respondents

Date of Decision:-24.9.2019

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

Present: Mr.Ashish Yadav, Advocate
for the appellant in FAO-647-2012 and FAO-648-2012
and for respondent No.3 in FAO-2373-2012 and
FAO-2450-2012.

Mr.Jai Bhagwan, Advocate
for the appellants in FAO-2373-2012 and FAO-2450-2012
and for respondents No.1 to 6 in FAO-647-2012 and
respondents No.1 to 5 in FAO-648-2012.

Mr.Gopal Mittal, Advocate
for respondent No.8 in FAO-647-2012;
for respondent No.7 in FAO-648-2012; and
for respondent No.2 in FAO-2373-2012 and
FAO-2450-2012.

H.S. MADAAN, J.

By this order, I shall dispose of four FAOs i.e. FAO-647-
2012 and FAO-648-2012 filed on behalf of insurance company and FAO-
2373-2012 and FAO-2450-2012 filed on behalf of the claimants, which
have arisen out of the same accident.

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Briefly stated, the facts of the case as per version of the claimants are that on 24.4.2009 Sukhvinder Singh and Karamjeet Singh were returning home after attending duty; they were riding motorcycle bearing registration No.CH03R-1222 make Bajaj; Karamjeet Singh was driving the motorcycle on which Sukhvinder Singh was a pillion rider; at about 11:30 p.m., when they reached near Lakhnaur Barrier, a canter bearing registration No.PB08-AG-9551 (hereinafter referred to as the offending vehicle) was standing on the road loaded with iron strips, which were hanging outside the canter without giving any signal installed on the canter; that all of a sudden without giving any indication, respondent No.1 – Karam Singh drove his canter on to the road; though Karamjeet Singh tried to stop the motorcycle but it collided with the canter from the rear side; both the riders of the motorcycle fell down on the road and suffered serious injuries; the accident was witnessed by Joginder Singh, who was following the motorcycle of Karamjeet Singh and Sukhvinder Singh; the injured were shifted to Harkishan Hospital, Sohana, where the doctors declared Karamjeet Singh as dead, whereas Sukhvinder Singh was referred to PGI, Chandigarh and later on he had also succumbed to the injuries suffered by him in the accident; postmortem examination on the dead bodies of the deceased was carried out and FIR was registered regarding the accident.

The legal representatives of Sukhvinder Singh, namely, his widow – Smt.Kulwiner Kaur, aged about 26 years, minor sons – Master Harmandeep Singh, aged about 4 ½ years, Master Jasmeet Singh, aged

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about 2 years and Master Ashmeet Singh, aged about 10 years, father – Sh.Tara Singh aged about 62 years and mother – Smt.Gurmeet Kaur had filed a claim petition bearing MACT No.116 under Section 166 of Motor Vehicles Act against respondents i.e Karam Singh – driver, Tarlochan Singh – owner and Oriental Insurance Co. Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.30 lacs.

The legal representative of Karamjeet Singh, namely, his widow – Smt.Manjit Kaur, aged about 33 years, minor son – Master Karanveer Singh, aged about 7 ½ years, minor daughter – Baby Navjot Kaur, father – Sh.Joginder Singh aged about 65 years and mother – Smt.Karnail Kaur, aged about 62 years had also brought a claim petition bearing MACT No.115 under Section 166 of the Motor Vehicles Act against those very respondents claiming compensation.

In the said claim petitions, the claimants had contended that both the deceased were working as Security Guards with G4S Security Services India Pvt. Ltd and were posted at Dell Mohali from where they were getting allowance of Rs.1,000/- per month besides their salary; they were running business of dairy farming and earning Rs.15,000/- per month as their share from that business; that the claimants were dependent upon their earnings and they craved for grant of Rs.30 lakhs as compensation.

Notice of the claim petitions was given to respondents, who put in appearance and filed separate written statements.

Respondents No.1 and 2 had filed a joint written statement

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whereas respondent No.3 came up with a separate written statement.

In the joint written statements filed on behalf of respondents No.1 and 2, they took various legal objections. On merits they denied the involvement of the offending vehicle in the accident stating that a wrong FIR has been got registered.

In the written statements filed by respondent No.3 – insurance company, it took various legal objections and statutory defences, though denying involvement of canter in the accident contending that a false story has been concocted to seek compensation from the answering respondent and the accident might have taken place due to rash and negligent driving of the deceased, who could not control his motorcycle due to its high speed and might have slipped and received fatal injuries on account of his negligence. The insurance company further claimed that the claimants had filed the claim petitions in collusion with respondents No.1 and 2 and respondent No.1 was not having a legal and valid driving licence at the time of accident.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Motor Accidents Claims Tribunal, Fast Track Court, Patiala (hereinafter referred to as the Tribunal) allowed the claim petitions vide separate awards dated 19.11.2011 and compensation of Rs.7,54,976/- with interest @ 6% per annum from the date of the claim petition till realization was awarded in claim petition bearing MACT No.116 to claimants Smt.Kulwinder Kaur and others and

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compensation of Rs.7,64,192/- with interest @ 6% per annum from the date of the claim petition till realization besides costs of the petition was awarded in claim petition bearing MACT No.115 to claimants/petitioners Smt.Manjit Kaur and others. The manner in which the compensation is to be apportioned between the claimants in both the claim petitions is also given in the awards.

The claimants/petitioners in both the petitions being dissatisfied with the compensation awarded to them and insurance company being dissatisfied with the award with respect to quantum of compensation granted in both the claim petitions have filed separate appeals before this Court.

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.

The Tribunal on the basis of evidence adduced by the parties considering the eye-witness account provided by Joginder Singh PW3 and the fact that FIR No.153 under Sections 279 and 304-A IPC has been registered against respondent No.1 Karam Singh and challan has been filed against him and he is facing trial, in absence of any evidence led in rebuttal by the respondents came to the conclusion that respondent No.1 Karam Singh was responsible for the accident. Though the counsel for the insurance company has tried to make out a case of contributory negligence but then from the record, no such contributory negligence on

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the part of deceased Karamjeet Singh, who was driving the motorcycle comes out to be there. If iron strips are protruding out from the canter and no indication like hanging of red cloth or putting on any light or indicator is there, those would not be visible to the driver especially at night time and it is specific case of the claimants that respondent No.1 had suddenly started the canter without giving any indication, resulting in the accident. The respondents had not been able to lead any worthwhile evidence to show that deceased Karamjeet Singh had also contributed to the accident on account of his faulty driving of the motorcycle and for want of care and caution on his part. Therefore, it cannot be taken to be a case of contributory negligence.

As regards the contention of learned counsel for the insurance company that the canter driver has since been acquitted of the charge by the trial Court on conclusion of the trial, again this contention does not help the appellant – insurance company in any way. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt

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compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions.

Though learned counsel for the insurance company has raised an objection that terms and conditions of the insurance policy were violated by the insured and the canter driver was not having a valid driving licence but such aspect has been dealt in detail by the Tribunal rejecting that contention and I do not see any reason to disagree with the Tribunal on that point.

The allegations of collusion between the claimants and respondents No.1 and 2 are also not established on record.

Now coming to the FAO-2373 of 2012 filed on behalf of claimants Smt.Kulwinder Kaur and others seeking enhancement of compensation. The Tribunal has taken the monthly income of the deceased Sukhvinder Singh to be Rs.3,190/- on the basis of pay slip Ex.P5 and other documents proved by PW2 Sh.Ankit Viz, Assistant Manager HR of G4S Security Services Pvt. Ltd. The case of the claimants that the deceased was engaged in dairy farming and earning Rs.15,000/- per month as share of income and he was receiving Rs.1,000/- as allowance from his employer was rejected. I do not find anything wrong with such rejection.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4)**

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RCR(Civil)1009, keeping in view the age of deceased to be 31 years, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.3,190 + 1,276 = Rs.4,466/-.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3)** **RCR(Civil)77** the Tribunal has rightly deducted 1/5th of the amount towards self-expenses. Doing that the dependency of claimants comes out to Rs.3,573/- per month, annual dependency comes out to Rs.3,573 x 12 = Rs.42,876/-.

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.42,876 x 16 = 6,86,016/-.

The Tribunal has further awarded compensation of Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral/transportation expenses and Rs.10,000/- for loss of consortium. However, in view of the ratio of authority **National Insurance 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. 6,86,016 + 70,000 = 7,56,016/-.

The Tribunal has awarded compensation of Rs.7,54,976/-.

In this way, the enhanced amount comes out to Rs.1,040/-

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(7,56,016 - 7,54,976). The interest granted by the Tribunal on compensation amount @ 6% per annum is on lower side. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of claim petition till actual realization on the amount of compensation i.e. Rs.7,56,016/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

Coming to the FAO-2450 of 2012 filed on behalf of claimants Smt.Manjit Kaur and others seeking enhancement of compensation. The Tribunal has taken the monthly income of the deceased Karamjeet Singh to be Rs.3,230/- on the basis of pay slip and other documents proved by PW2 Sh.Ankit Viz, Assistant Manager HR of G4S Security Services Pvt. Ltd. The case of the claimants that the deceased was engaged in dairy farming and earning Rs.15,000/- per month as share of income and he was receiving Rs.1,000/- as allowance from his employer was rejected. I do not find anything wrong with such rejection.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, keeping in view the age of deceased to be 34 years, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.3,230 + 1,292 = Rs.4,522/-.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3)**

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RCR(Civil)77 the Tribunal has rightly deduction $1/5^{\text{th}}$ of the amount towards self-expenses. Doing that the dependency of claimants comes out to Rs.3,618/- per month, annual dependency comes out to Rs.3,618 x 12 = Rs.43,416/-.

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.43,416 x 16 = 6,94,656/-.

The Tribunal has further awarded compensation of Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral/transportation expenses and Rs.10,000/- for loss of consortium. However, in view of the ratio of authority **National Insurance 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. 6,94,656 + 70,000 = 7,64,656/-.

The Tribunal has awarded compensation of Rs.7,64,192/-.

In this way, the enhanced amount comes out to Rs.464/- (7,64,656 - 7,64,192). The interest granted by the Tribunal @6% per annum is somewhat on lower side. The claimants would be entitled to get interest @ 7.5% per annum on compensation amount of Rs.7,64,656/- from the date of filing of the claim petition till actual realization. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

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With these modifications, FAO-2373-2012 and FAO-2450-2012 filed on behalf of the claimants stand allowed partly.

Consequently, FAO-647-2012 and FAO-648-2012 filed on behalf of the insurance company stand dismissed.

24.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No