IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 6513 of 2012 (O&M)**

Date of Decision: December 12 , 2019.

National Insurance Company Limited ...... APPELLANT(s)

Versus

Ravinder Singh and another ...... RESPONDENT (s)

2. **FAO No. 6514 of 2012(O&M)**.

National Insurance Company Limited ...... APPELLANT(s)

Versus

Ravinder Singh and another ...... RESPONDENT (s)

3. **FAO No. 6515 of 2012(O&M)**.

National Insurance Company Limited ...... APPELLANT(s)

Versus

Ravinder Singh and another ...... RESPONDENT (s)

4. **FAO No. 6516 of 2012(O&M)**.

National Insurance Company Limited ...... APPELLANT(s)

Versus

Ravinder Singh and another ...... RESPONDENT (s)

5. **FAO No. 1703 of 2013(O&M)**.

Ravinder Singh ...... APPELLANT(s)

Versus

Girraj Singh and another ...... RESPONDENT (s)

6. **FAO No. 1704 of 2013(O&M).**

Ravinder Singh ...... APPELLANT(s)

Versus

Girraj Singh and another ...... RESPONDENT (s)

7. **FAO No. 1705 of 2013(O&M).**

Ravinder Singh ...... APPELLANT(s)

Versus

Girraj Singh and another ...... RESPONDENT (s)

8. **FAO No. 1706 of 2013(O&M).**

Ravinder Singh ...... APPELLANT(s)

Versus

Girraj Singh and another ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ravinder Arora and Neeraj Khanna, Advocates
for the appellant-Insurance company.

Mr. Ram Bilas Gupta, Advocate
for the appellant/claimant.

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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?

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LISA GILL, J.

This order shall dispose of FAO No.6513 of 2012 (National Insurance Company Limited v. Ravinder Singh and another), FAO No.6514 of 2012 (National Insurance Company Limited v. Ravinder Singh and another), FAO No.6515 of 2012 (National Insurance Company Limited v. Ravinder Singh and another), FAO No.6516 of 2012 (National Insurance Company Limited v. Ravinder Singh and another), FAO No.1703 of 2013 (Ravinder Singh v. Girraj Singh and another), FAO No.1704 of 2013 (Ravinder Singh v. Girraj Singh and another), FAO No.1705 of 2013 (Ravinder Singh v. Girraj Singh and another) and FAO No.1706 of 2013 (Ravinder Singh v. Girraj Singh and another).

All the abovenoted appeals arise out of impugned award dated 11.09.2012 whereby four claim petitions were consolidated and decided by a common award dated 11.09.2012 passed by the learned Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as, the 'Tribunal'). Claimant in all the cases is Ravinder Singh.

Brief facts necessary for the adjudication of the case are that, the claimant filed four petitions under Sections 166/140 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of his father, mother and sister, who lost their lives in a motor vehicle accident which took place on 01.07.2010. FIR No.211 dated 01.07.2010 was registered at Police Station Joshi Math (Uttrakhand) in respect to the incident. Claim Petition No.153 of 2012 (subject-matter of FAO No.1706 of 2013) was filed by the claimant in respect to death of his father-Karnail Singh, Claim Petition No.155 of 2012 (subject-matter of FAO No.1704 of 2013) was filed in respect to death of his mother-Rajbir Kaur and Claim Petition No.156 of 2012 (subject-matter of FAO No.1703 of 2013) was filed by the claimant seeking claim in respect to death of his sister-Neelu Kaur. Claim Petition No.154 of 2012 (subject-matter of FAO No.1705 of 2013) was filed by the claimant in respect to the injuries sustained by him in the accident, in question. Compensation was thus prayed for.

Respondent No.2, the owner of the offending vehicle denied that the accident had taken place due to the negligence of Raju (since deceased) while admitting himself to be the owner of the offending vehicle. The vehicle was stated to be duly insured with the respondent-Insurance company. The owner of the offending vehicle in his written statement has taken a specific stand that the offending vehicle was borrowed by the deceased and he alongwith others had gone to Manikaran (HP) and the vehicle was to be returned after a period of 2-3 days. It is categorically stated that no rent or charge was to be received by the deceased-Raju or by him from any other person for use of the vehicle.

Insurance company, arrayed as respondent No.3 in the claim petitions, took a stand that the offending vehicle was falsely involved, in collusion with the legal representatives of driver of the offending vehicle, Raju, the owner of the vehicle and the police. Deceased, it is stated, were not third party. A highly inflated claim had been set up by the petitioner. Dismissal of the petitions was prayed for.

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

1. Whether Karnail Singh (father of petitioner Ravinder), Ms. Neelu Kaur (sister of petitioner Ravinder), Mrs. Rajbir Kaur (mother of petitioner Ravinder) had died and petitioner Ravinder sustained injuries on account of motor vehicular accident took place on 01.07.2010 at Parmila, near Taiya Bridge, Badri Nath Road, P.S. Joshimath, District Chamolia (Uttranchal) at about 11.30 p.m. in the area of police station Gopeshwar, caused by respondent No.1 (since deceased) by his rash and negligent driving of vehicle Indica Car bearing

no.HR-51-AG-5858? OPP

2. Whether the petitioner is entitled to compensation as claimed in all the petitions, if so, to what amount and from whom? OPP
3. Whether the petitions are not maintainable in the present form? OPP
4. Whether the petitioner has no locus-standi and cause of action to file the present petitions? OPR
5. Whether respondent no.1 was not holding a valid and effective and valid driving licence at the time of accident? OPR3
6. Whether the respondent no.1&2 have contravened, violated, infringed and breached the terms and conditions of the Insurance Policy? OPR3
7. Relief

Learned Tribunal on considering the facts and evidence on record concluded that the accident, in question, took place due to the rash and negligent driving of car bearing registration No.HR-51-AG-5858 by its driver, Raju (since deceased). Contention of the Insurance company that the offending vehicle was used as a taxi, though insured as a private vehicle, was rejected. It is further observed that the Insurance policy (Ex.RZ) was a package policy, therefore, the Insurance company was held liable to indemnify the insured. Compensation of ₹7,53,490/- was awarded in Claim Petition No.153 of 2012 (subject-matter of FAO No.6513 of 2012), ₹15,000/- was awarded in Claim Petition No.154 of 2012 (subject-matter of FAO No.6514 of 2012), ₹3,75,232/- was awarded in Claim Petition No.155 of 2012 (subject-matter of FAO No.6515 of 2012) and ₹13,01,248/- was awarded in Claim Petition No.156 of 2012 (subject-matter of

FAO No.6516 of 2012).

Insurance company being aggrieved of award dated 11.09.2012 has filed the appeal in all the cases challenging its liability to pay the compensation and seeks right to recover the amount from the owner of the offending vehicle. Claimant has preferred appeals seeking enhancement of the compensation awarded to him by the learned Tribunal vide the impugned award.

Learned counsel for the Insurance company argues that the offending vehicle was insured as a private car, but the same was being plied as a taxi. Reference was made to the statements of RW1 Munni Devi, RW2 Komal Parshad and RW3 Anand Kumar as well as RW4 Pijush K.Sen, the investigator, whose services were engaged by the appellant-Insurance company. It is submitted that the mother of the driver of the offending vehicle herself stepped into the witness box as RW1 Munni Devi and stated that her son Raju was engaged as a driver for plying the taxi of Girraj Singh, the owner of the offending vehicle. In this view of the matter, it is submitted that there is a breach of the fundamental conditions of the policy, therefore, the insurance company is entitled to recover the amount, in question, from the owner.

Learned counsel for the Insurance company has further argued that the claimant in Claim Petition No.156 of 2012 (subject matter of FAO No.6516 of 2012) is not entitled to compensation on account of death of Neelu Kaur, who was his sister. The claimant was not dependant upon the deceased-Neelu Kaur. It is thus prayed that the appeals filed by the Insurance company be allowed and that of the claimant be dismissed.

Learned counsel for the claimant submits that the learned Tribunal has recorded a correct finding insofar as the liability of the Insurance company is concerned. It is further submitted that in all the claim petitions meagre compensation has been awarded to the claimant which should be enhanced. It is submitted that increment on account of future prospects be afforded. Compensation under the conventional heads, it is submitted, is meagre. It is thus prayed that the amount of compensation awarded to the claimant be enhanced accordingly.

I have heard learned counsel for the parties and have gone through the record.

In this case, learned counsel for the Insurance company has vehemently argued that the offending car was, in fact, being plied as a taxi, though it was admittedly insured as a private vehicle. Reliance has been placed on the statements of RW1 Munni Devi, RW2 Komal Prasad and RW3 Anand Kumar. It is, however, not denied that RW1 Munni Devi in her cross-examination has admitted that she is an illiterate person and did not even know whether her affidavit tendered in evidence, was in Hindi or English. She further could not even furnish proof of her identity. RW2 Komal Prasad has even gone to the extent of saying that his evidence tendered by way of affidavit dated 13.08.2012 was prepared by the counsel representing the Insurance company and the counsel was also duly named by RW2 Komal Prasad. RW3 Anand Kumar stated that he had no knowledge as to for whom the deceased-Raju was working. RW3 Anand Kumar further stated in his cross-examination that he is unaware about the factum of the vehicle, being plied by Raju, being a private vehicle or a taxi, neither he had any knowledge about the employer of Raju. RW3 Anand Kumar categorically stated that he had no knowledge, whatsoever, as to whether the deceased-Raju was plying a private vehicle or taxi.

RW4 Pijush K.Sen, the investigator engaged by the Insurance company has deposed in his affidavit (Ex.RW4/A) that all the witnesses i.e., RW1 Munni Devi, RW3 Anand Kumar, Anil Kumar son of Bhagwat Swarup, Mahesh Kumar son Chander Pal, have stated that Raju was a professional driver under Girraj Singh and Girraj Singh used to ply his vehicle as taxi. Statements of the said witnesses are claimed to be Ex.R2 to 5. Learned counsel for the Insurance company is unable to point out any particular report submitted by RW4 Pijush K.Sen. It is apparent from a bare perusal of the statements of RW1 Munni Devi, RW2 Komal Prasad and RW3 Anand Kumar that the learned Tribunal has rightly concluded that there is no evidence on record to prove that the offending vehicle was indeed plied as a taxi by Girraj Singh and Raju was employed by him as a driver. First and foremost, there is nothing on record to prove that the person deposing as RW1 was indeed the mother of the deceased-Raju. Furthermore, RW3 Anand Kumar stated that he had no knowledge, whatsoever, about Raju plying a taxi or even regarding his employment. RW3 Anand Kumar specifically stated in his cross-examination that he has no idea as to for whom Raju may have been working. He further stated that he had no idea whether Raju was plying a taxi or a private car. RW3 Anand Kumar has not even been confronted with the so-called statement of Anand Kumar purportedly recorded by RW4 Pijush K.Sen.

Keeping in view the facts and circumstances, including the evidence on record, in my considered opinion, the learned Tribunal has correctly concluded that there is no evidence on record to prove that the offending vehicle was being plied as a taxi.

In this view of the matter, I do not find any merit in the appeals filed by the Insurance company.

FAO No.1706 of 2013

In Claim Petition No.153 of 2012 filed by the claimant in respect to death of his father-Karnail Singh, learned Tribunal awarded a total compensation of ₹7,53,490/-, which is detailed as hereunder:-

Income	11,265 p.m.
Deduction	50%
Age at the time of accident	50 years
Multiplier	11
Funeral expenses	10,000

Learned Tribunal accepted the deceased-Karnail Singh, aged 50 years, to be working as an Assistant Manager with M/s Kumar Ashish Project Ltd., earning a sum of ₹11,265/- per month. PW2 Mangat Singh, Personal Manager of M/s Manish Vinyls, Proprietor Kumar Ashish Project Ltd., Sector 6, Faridabad has proved the permanent employment of deceased-Karnail Singh with the said company. It is stated by PW2 Mangat Singh that the income tax component has not been deducted. However, as per the income tax slabs for the relevant assessment year 2011-2012, an individual whose total income is upto ₹1,60,000/- per annum, is exempted from payment of tax. Accordingly, income of the deceased-Karnail Singh as assessed by the learned Tribunal i.e., ₹11,265/- is upheld.

As the deceased was admittedly 50 years old at the time of the accident and the nature of his job was permanent, the claimant is entitled to increment at the rate of 15% on account of future prospects 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***. Deduction to the extent of 50% has been correctly effected. Multiplier of 13 instead of 11, is to be applied as the deceased was 50 years old at the time of his death. Instead of ₹10,000/- on account of funeral expenses, the claimant is entitled to ₹15,000/-, besides, another sum of ₹15,000/- on account of loss of estate. The claimant is held entitled to ₹40,000/- towards loss of parental consortium in terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.,** ***2018(4) RCR(Civil) 333*** 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).

Appellant/claimant is, thus, entitled to compensation which is re-worked as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	11,265 p.m. i.e., 1,35,180 p.a.
2.	Total income after addition at the rate of 15% on account of future prospects	1,35,180 + (1,35,180 **x** 15%) = 1,55,457
3.	Deduction of 50% on account of personal expenses	1,55,457 – (1,55,457 **x** 1/2) = 77,728
4.	Total dependancy after applying a multiplier of 13	(77,728 **x** 13) = 10,10,464
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of parental consortium	40,000
	Grand Total	**₹10,80,464/-**

FAO No.1704 of 2013

In Claim Petition No.155 of 2012 filed by the claimant in respect to death of his mother-Rajveer Kaur, learned Tribunal awarded a total compensation of ₹3,75,232/-, which is detailed as hereunder:-

Income	4,348 p.m.
Deduction	50%
Age at the time of accident	40 years
Multiplier	14
Funeral expenses	10,000

Learned Tribunal assessed income of the deceased-Rajveer Kaur, aged 40 years, as ₹4,348/- per month with reference to the minimum wage available to an unskilled labourer in the State of Haryana at the relevant time. The deceased-Rajveer Kaur was admittedly a housewife. Income of a housewife cannot be equated with that of an unskilled labourer. Services rendered by a housewife are multifarious. She renders invaluable services in her various facets/roles in a home. This Court in FAO No.3395 of 2015 has assessed income of a housewife to be ₹7,000/- per month in respect to an accident which took place in the year 2011. In the present case, the accident had taken place on 01.07.2010. Keeping in view the facts and circumstances of the present case, including the age of the deceased, it is considered just and expedient to assess notional income of the deceased as ₹6,000/- per month.

The deceased in this case was admittedly 40 years old, thus, the claimant is held entitled to increase in income at the rate of 25% towards future prospects in terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi (supra)**. In view of the Division Bench judgment of this Court in **Paramjit Singh and another v. Dilbagh Singh @ Bagga and others**, ***2014(4) RCR (Civil) 895***, no deduction is to be effected in the compensation to be awarded in the case of death of a housewife. Multiplier of 15, instead of 14, has to be applied as the deceased was 40 years old at the relevant time. Instead of ₹10,000/- on account of funeral expenses, the claimant is entitled to ₹15,000/-, besides, another sum of ₹15,000/- on account of loss of estate. The claimant is held entitled to ₹40,000/- towards loss of parental 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).

Appellant/claimant is, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	6,000 p.m. i.e., 72,000 p.a.
2.	Total income after addition at the rate of 25% on account of future prospects	72,000 + (72,000 **x** 25%) = 90,000
4.	Total dependancy after applying a multiplier of 15	(90,000 **x** 15) = 13,50,000
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of parental consortium	40,000
	Grand Total	₹14,20,000/-

FAO No.1703 of 2013

In Claim Petition No.156 of 2012 filed by the claimant in respect to death of his sister-Neelu Kaur, learned Tribunal awarded a total compensation of ₹13,01,248/-, which is detailed as hereunder:-

Income	11,956 p.m.
Deduction	50%
Age at the time of accident	22 years
Multiplier	18
Funeral expenses	10,000

Learned counsel for the Insurance company, however, submitted that the claimant being the brother of the deceased is not entitled to compensation in this case as he was not dependant upon his sister. However, I do not find any merit in the argument as the claimant is admittedly a legal heir of the deceased.

The Hon'ble Supreme Court in **Montford Brothers of St. Gabriel and another v. United India Insurance and another** ***2014 (3) SCC 398***, rejected the plea that the right of filing a claim should be controlled by the provisions of Fatal Accident Act. The term legal representative was stated to have the same meaning as assigned to it in clause (11) of Section 2 of CPC, which reads as under :-

> "Section 2(11)`Legal representative' means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves On the death of the party so suing or sued".

It is further observed that unless and until there is evidence in support of such pleading that the claimant is not a legal representative, the claim petition cannot be dismissed as not maintainable. In the case of **Mortford Brothers** (supra), the Hon'ble Supreme Court held that the term legal representatives included the charitable society registered under the Societies Registration Act, 1960 to be the LR of the deceased therein who had renounced the world and had joined the said society. The Hon'ble Supreme Court in **Smt. Manjuri Bera v. The Oriental Insurance Company Ltd. And another,** ***2007 (10) SCC 643*** has observed that a legal representative is the one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child. The statutory compensation to be received under the Act, it is observed, could constitute part of the estate of the deceased.

The claimant, in the instant case, has been accepted to be the legal representative of the deceased – Neelu Kaur who died unmarried and issueless. Therefore, the learned Tribunal has rightly held the claimant entitled for compensation on account of death of Neelu Kaur, his sister.

Learned Tribunal accepted the deceased-Neelu Kaur to be working as Executive/Receptionist with M/s Salora International Limited, Okhla, earning a sum of ₹11,956/- per month as per salary slip (Ex.P6) proved by PW4 Mukesh Chand Aggarwal, Senior Assistant from the said company. Income of the deceased is accordingly upheld as ₹11,956/- per month.

As the deceased was admittedly 22 years old at the time of the accident, the claimant is entitled to increment at the rate of 40% on account of future prospects in terms of the judgment of the Hon'ble Supreme in **Pranay Sethi (supra)**. Deduction to the extent of 50% has been correctly effected. Multiplier of 18 has been rightly applied as well. Instead of ₹10,000/- on account of funeral expenses, the claimant is entitled to ₹15,000/-, besides, another sum of ₹15,000/- on account of loss of estate.

Claimant is, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	11,956 p.m. i.e., 1,43,472 p.a.

2.	Total income after addition at the rate of 40% on account of future prospects	1,43,472 + (1,43,472 **x** 40%) = 2,00,861
3.	Deduction of 50% on account of personal expenses	2,00,861 – (2,00,861 **x** 1/2) = 1,00,430
4.	Total dependancy after applying a multiplier of 18	(1,00,430 **x** 18) = 18,07,740
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
	Grand Total	₹18,37,740/-

FAO No.1705 of 2013

In Claim Petition No.154 of 2012 filed by the claimant in respect to injuries suffered by him, learned Tribunal awarded a sum of ₹15,000/-. Learned Tribunal on considering the evidence on record concluded that no medical evidence etc. has been produced on record by the claimant to show either the extent of injuries suffered by him or the expense incurred by him on medical treatment, if any. However, a sum of ₹15,000/- was awarded towards expenses on medical treatment which he may have incurred.

Keeping in view the fact that the claimant was one of the occupants in the vehicle involved in the accident in question, the impact of the accident it is obvious would necessarily have been severe as four persons have lost their lives therein. Thus, applying the rule of thumb, the abovesaid amount has been awarded by the learned Tribunal.

Learned counsel for the claimant has not raised any serious arguments in this respect and, neither is he able to point out any evidence on record to indicate the specific injuries which may have been sustained by the claimant in the accident in question and the expenses incurred by him on his medical treatment. Therefore, I do not find any ground, whatsoever, to enhance the compensation so awarded by the learned Tribunal.

No other argument has been raised.

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above in all the appeals. Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petitions till realization.

Accordingly, appeals filed by the Insurance company i.e., FAO Nos.6513, 6514, 6515 and 6516 of 2012 are dismissed and FAO Nos.1703, 1704 and 1706 of 2013 filed by the claimant are disposed of with modification in the amount of compensation. FAO No.1705 of 2013 filed by the claimant is dismissed.

(LISA GILL)
JUDGE

December 12 , 2019.
'om'

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