IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. XOBJC No.83-CII of 2013(O&M) in/and FAO No. 1814 of 2013.

Date of Decision: March 13 , 2019.

Oriental Insurance Company Ltd. ...... APPELLANT(s)

Versus

Jasbir Kaur and others ...... RESPONDENT (s)

2. FAO No. 3386 of 2013

Anureet Kaur and others ...... APPELLANT(s)

Versus

Jasbir Singh and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Aakash Sridhar, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant in FAO No.1814 of 2013.

Mr. Upender Prasher, Advocate
for the appellants/claimants in FAO No.3386 of 2013 and
for respondents No.1 & 2/cross-objectors in FAO No.1814 of 2013.

Mr. Ankit Aggarwal, Advocate for
Mr. Anupam Singla, Advocate
for respondents No.1 and 3 in FAO No.3386 of 2013 and
for respondents No.3 and 4 in FAO No.1814 of 2013.

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LISA GILL, J.

This judgment shall dispose of FAO No.1814 of 2013 (Oriental Insurance Company Ltd. v. Jasbir Kaur and others) and Cross Objections No.83-

CII of 2013 raised therein as well as FAO No.3386 of 2013 (Anureet Kaur and others v. Jasbir Singh and others). Both the appeals as well as cross-objections have been filed challenging awards of even date i.e., 30.10.2012 passed by the Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as, the 'Tribunal'). Both claim petitions emanate from the same motor vehicle accident which took place on 11.06.2011.

Brief facts of the case are that, two claim petitions i.e., MACT No.31 of 2011 (subject matter of FAO No.1814 of 2013 and XOBJC No.83-CII of 2013) by the legal representatives of deceased-Robandeep Singh and MACT No.32 of 2011 (subject matter of FAO No.3386 of 2013) by the legal representatives of deceased-Arvinder Singh were filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') seeking compensation on account of death of Robandeep Singh and Arvinder Singh in a motor vehicle accident which took place on 11.06.2011. FIR No.39 dated 11.6.2011 under Sections 304A/279/337/427 IPC was registered at Police Station Khalchain, Amritsar in respect to the accident at the instance of AW4 Balwinder Singh.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the composite negligence of the drivers of Indigo car No.PB-13X-9255 in which the deceased were travelling as well as that of the offending truck No.RJ-31-GA-0290.

In the case of LRs of deceased-Robandeep Singh i.e., MACT No.31 of 2011, learned Tribunal while assessing income of the deceased to be ₹6,000/- per month, awarded a total sum of ₹8,36,000/- to the claimants. He was held to be 23 years old at the time of the accident. Deduction to the extent of 1/3rd on account of personal expenses was effected. Multiplier of 17 was applied. ₹10,000/- each was awarded on account of loss of estate and funeral expenses.

In the case of LRs of deceased-Arvinder Singh i.e., MACT No.32 of 2011, learned Tribunal awarded a total sum of ₹22,74,000/- to the claimants. Deceased-Arvinder Singh was working as a Chowkidar in the Government Senior Secondary School, Dehriwal, drawing a salary of ₹12,525/- per month. He was held to be 30 years old at the time of the accident. Addition in income at the rate of 30% was afforded. Deduction to the extent of 1/4th on account of personal expenses was effected. Multiplier of 17 was applied. ₹10,000/- each was awarded on account of loss of estate, funeral expenses as well as loss of love and affection.

FAO No.1814 of 2013 has been filed by the Insurance company (insurer of the offending truck No.RJ-31-GA-0290) impugning award dated 30.10.2012 passed by the learned Tribunal in MACT No.31 of 2011 qua the LRs of Robandeep Singh challenging its liability to pay the entire compensation to the claimants.

Learned counsel for appellant-Insurance company submits that once the learned Tribunal held that the accident in question took place due to the composite negligence on the part of the drivers of truck bearing No.RJ-31-GA-0290 and Indigo car No.PB-13X-9255, it was incumbent upon the Tribunal to have apportioned the percentage of contributory negligence on the part of each tort-feasor. Accordingly, contribution of the present appellant Insurance company should have been quantified in the petition filed by the claimants and the appellant-Insurance company should be liable to discharge its liability only to the extent quantified. Learned counsel for Insurance company further submits that just and reasonable compensation has been awarded by the learned Tribunal in both the cases which does not call for any enhancement. It is thus prayed that appeal filed by the Insurance company be allowed and the claimants' appeal as well as cross-objections be dismissed.

Learned counsel for the claimants rebuts the said averments while submitting that in case of composite negligence, it is open to the claimants to seek compensation from any of the tort-feasors. Learned counsel for the claimants further submits that inadequate compensation has been awarded by the learned Tribunal. While not raising any objection regarding the assessment of income of the deceased (in both the petitions) as calculated by the Tribunal, it is submitted that increment on account of future prospects should be awarded at the rate of 40% in the case of Robandeep Singh and 50% in Arvinder Singh's case. It is submitted that the learned Tribunal has erred in applying the multiplier. Furthermore, compensation under the conventional heads should be increased. It is thus prayed that the amount of compensation awarded to the claimants be enhanced accordingly.

I have heard learned counsel for the parties in the appeals as well as cross-objections and have gone through the record.

It is not in dispute that the present is a case of composite negligence. Appellant-Insurance company has not raised any challenge to the finding regarding composite negligence on the part of the drivers of the offending truck and the car in which the deceased were travelling. What is sought to be urged by the Insurance company is that, it was incumbent upon the learned Tribunal to have quantified the contribution of the present appellant-Insurance company after due determination to the extent of 50% each between the tort-feasors and accordingly the appellant Insurance company be made liable to pay compensation to that extent only.

I do not find any merit in this argument as it is a settled position of law that in case of composite negligence, the claimant is entitled to sue all or any of the tort-feasors and is further entitled to recover the entire compensation from any one of the joint tort-feasors. In the present case, owner and driver of the indigo car are not impleaded as parties. Therefore, the extent of negligence on the part of the two drivers was not required to be determined by the learned Tribunal.

It has been held by the Hon'ble Supreme Court in **Khenyei v. New India Assurance Company Ltd.**, ***2015(2) RCR(Civil) 1019*** that,

> "(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.
> (ii) In the case of composite negligence, apportionment of compensation between two tort feasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.
> (iii) In case all the joint tort feasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasors is only for the purpose of their inter se liability so that one

may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor in independent proceedings after passing of the decree or award."

At this point, it is relevant to note that the Insurance company has chosen to file an appeal challenging award dated 30.10.2012 passed by the learned Tribunal in MACT No.31 of 2011 preferred by the LRs of Robandeep Singh, whereas no such appeal has been filed in the case of MACT No.32 of 2011 preferred by the LRs of deceased-Arvinder Singh. Be that as it may, in view of the discussion as above, no ground whatsoever is made out to interfere in the appeal preferred by the Insurance company. Needless to say, the Insurance company is at liberty to initiate independent proceedings against the other tort-feasor in accordance with law, if so advised.

No other argument has been raised.

XOBJC No.83-CII of 2013(O&M)

MACT No.31 of 2011 was filed by the legal representatives of deceased-Robandeep Singh, who was 23 years old at the time of the accident. There is no dispute regarding income of the deceased as assessed by the learned

Tribunal i.e., ₹6,000/- per month. It is further proved on record that the deceased remained admitted in the Amandeep Hospital, Amritsar from 11.06.2011 till 15.06.2011, when he ultimately succumbed to injuries. Medical bills to the tune of ₹36,750/- were duly proved by AW5 Vikas Arora, Manager, Amandeep Hospital, Amritsar. Therefore, the claimants are entitled to ₹36,750/- as per the said bills for the expenses of medical treatment of Robandeep Singh.

Addition in income at the rate of 40% on account of future prospects has to be afforded 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% towards personal expenses is to be effected. Multiplier of 18 instead of 17 has to be applied in terms of the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil) 77.*** ₹15,000/- each is awarded to the claimants on account of funeral expenses and loss of estate instead of ₹10,000/-. ₹40,000/- is awarded to the claimants on account of loss of filial consortium. Reference in this regard can gainfully be made to 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*** and 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/cross-objectors are, 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/- per annum

2.	Total income after addition at the rate of 40% on account of future prospects	72,000 + (72,000 **x** 40%) = 1,00,800
3.	Net income after 50% deduction on account of personal expenses	1,00,800 – (1,00,800 **x** 1/2) = 67,200
4.	Total dependancy after applying a multiplier of 18	(50,400 **x** 18) = 9,07,200
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium	40,000
8.	Medical expenses	36,750
	Grand Total	₹10,13,950/-

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 entire amount at the rate of 7.5% per annum, instead of 6%, from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

FAO No.1814 of 2013

Learned Tribunal in MACT No.32 of 2011 vide impugned award dated 30.10.2012 held deceased-Arvinder Singh to be 30 years old at the time of the accident on the basis of post-mortem report. However, salary certificate (Ex.A3) of deceased-Arvinder Singh reveals his date of birth to be 10.10.1987. Deceased-Arvinder Singh was admittedly working as a Chowkidar at Government Senior Secondary School, Dehriwal, District Amritsar. His salary certificate (Ex.A3) is duly proved by AW3 Dharam Pal, Clerk from the Government Senior Secondary School, Dehriwal. Therefore, once the said document was available on record, there is no question of depending upon the post-mortem report to assess the age of the deceased-Arvinder Singh. Accordingly, deceased-Arvinder Singh is held to be 23 years old at the time of the accident, instead of 30 years in view of Ex.A3.

Income of the deceased has been correctly assessed as ₹12,525/- per month on the basis of Ex.A3. However, addition in income at the rate of 50% instead of 30%, on account of future prospects has to be afforded in terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi (supra).** Deduction of 1/4th towards personal expenses has been rightly effected. Multiplier of 18 is to be applied as per the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma's** case (supra). ₹15,000/- each (instead of ₹10,000/-) is awarded to the claimants on account of funeral expenses and loss of estate. ₹40,000/- is awarded to the claimant-widow on account of loss of consortium. The other claimants are entitled to a consolidated sum of ₹40,000/- on account of loss of 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*** and 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).

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	12,525 p.m. i.e. 1,50,300/- per annum
2.	Total income after addition at the rate of 50% on account of future prospects	1,50,300 + (1,50,300 **x** 50%) = 2,25,450
3.	Net income after 1/4th deduction on account of personal expenses	2,25,450 – (2,25,450 **x** 1/4) = 1,69,087

4.	Total dependancy after applying a multiplier of 18	(1,69,087 **x** 18) = 30,43,566
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium to appellant No.1	40,000
8.	Loss of filial consortium to appellants No.2 to 5.	40,000
	Grand Total	₹31,53,566/-

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 entire amount at the rate of 7.5% per annum, instead of 6%, from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

Accordingly, FAO No.1814 of 2013 filed by the Insurance company is dismissed. XOBJC No.83-CII of 2013 as well as FAO No.3386 of 2013 filed by the claimants are disposed of with modification in the amount of compensation.

(LISA GILL)
JUDGE

March 13 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No