IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 1775 of 2014(O&M)**

Date of Decision: May 07 , 2019.

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

Versus

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

2. **FAO No. 1774 of 2014(O&M)**.

Rajwinder Kaur ...... APPELLANT(s)

Versus

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

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Suveer Sheokand, Advocate
for the appellants.

Mr. Harsh Aggarwal, Advocate
for respondent No.4 – Insurance Company.

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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 judgment shall dispose of FAO No.1775 of 2014 (Rajwinder Kaur and others v. Darshan Singh and others) and FAO No.1774 of 2014 (Rajwinder Kaur v. Darshan Singh and others) as both the appeals emanate from two claim petitions arising out of the same motor vehicle accident which took place on 09.06.2011. Both the petitions were decided by the learned Motor

Accident Claims Tribunal, Ludhiana (hereinafter referred to as, the 'Tribunal') vide separate awards dated 16.11.2013.

FAO No.1775 of 2014 (subject matter of MACT No.18 of 22.9.2011) has been filed by the legal heirs of deceased-Taranjit Singh seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as, the 'Tribunal') vide impugned award dated 16.10.2013 on account of death of Taranjit Singh, who lost his life in a motor vehicle accident, which took place on 09.06.2011.

FAO No.1774 of 2014 (subject matter of MACT No.17 of 22.9.2011) has been filed by the injured/claimant – Rajwinder Kaur seeking enhancement of compensation awarded to her vide a separate award dated 16.10.2013 passed by the learned Tribunal on account of the injuries suffered by her in the said accident.

It is averred in both the claim petitions that Rajwinder Kaur alongwith her husband-Taranjit Singh (deceased) on 09.06.2011 were proceeding from village Ramgarh to DMC Hospital, Ludhiana in their car No.PB-10T-2381, which was being driven by Taranjit Singh. Nephew of Taranjit Singh was also sitting in the car. When they reached near octroi post, Mangli Nichi at 10.00 p.m., a tractor No.PBP-6541 being driven by respondent No.1 in a rash and negligent manner, came from the opposite side without blowing its horn and struck against the car. As a result thereof, all the occupants of the car received multiple injuries. Taranjit Singh succumbed to his injuries on the way to the Civil Hospital, Ludhiana. FIR No.120 dated 10.06.2011 under Sections 304A/279/337/338/427 IPC was registered at Police Station Sahnewal against respondent No.1-driver. Compensation was, thus, prayed for.

Both the claim petitions were decided by the learned Tribunal vide separate impugned awards dated 16.10.2013. 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 tractor bearing registration No. PBP-6541 by respondent No.1-Darshan Singh. This finding of the learned Tribunal has attained finality.

In MACT No.17 of 22.9.2011 filed by claimant-Rajwinder Kaur (appellant in FAO No.1774 of 2014), the learned Tribunal awarded a total sum of ₹1,08,755/- as compensation to her vide impugned award. ₹68,224/- was awarded on account of the medical expenses proved on record, besides, ₹20,000/- each on account of mental agony/physical pain and conveyance charges, respectively.

In MACT No.18 of 22.9.2011, filed by the claimants (appellants in FAO No.1775 of 2014) on account of death of Taranjit Singh, the learned Tribunal awarded a total sum of ₹17,30,000/- as compensation to the claimants vide impugned award dated 16.10.2013. Income of the deceased was assessed as ₹1,20,000/- per annum. Increment at the rate of 50% on account of future prospects was afforded. Deduction to the extent of 1/3rd on account of personal expenses was effected and multiplier of 16 was applied. A sum of ₹1,00,000/- on account loss of consortium was awarded to the claimant-widow. ₹30,000/- was awarded towards funeral expenses.

Learned Tribunal in both the cases, exonerated the Insurance company completely of any liability to pay the compensation on the ground that the driver of the offending vehicle was not having a valid driving license.

Aggrieved therefrom, present appeals have been filed by the claimants who seek enhancement of compensation as well.

In respect to FAO No.1775 of 2014, learned counsel for the appellants argues that income of the deceased has been wrongly assessed to be ₹1,20,000/- per annum, whereas the deceased-Taranjit Singh was earning much more. Reference is made to the various pay-slips and other documents on record. It is further submitted that the Insurance company in this case should be directed to pay the amount of compensation and thereafter, recover the amount from the driver and owner of the offending vehicle. It is further submitted that the appellants have no objection in case compensation under the conventional heads is reworked in terms of the judgments of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680*** and **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.**, ***2018(4) RCR(Civil) 333***.

In respect to FAO No.1774 of 2014, it is submitted that meagre amount has been awarded to the injured-appellant on account of the injuries suffered by her. No amount has been awarded on account of pain and suffering, loss of amenities as well as charges towards transportation, special diet etc. It is thus prayed that the amount of compensation awarded to the appellants in both the appeals be enhanced accordingly.

Learned counsel for respondent No.3 – Insurance Company however submits that just and reasonable compensation has been awarded by the learned Tribunal as per the facts and evidence on record, which calls for no enhancement.

The Insurance company, it is submitted, has been rightly exonerated of its liability to pay the compensation. Dismissal of the appeals is prayed for.

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

There is no dispute regarding the injuries suffered by appellant – Rajwinder Kaur and death of Taranjit Singh in the motor vehicle accident in question being caused by the rash and negligent driving of tractor bearing registration No.PBP-6541 by respondent No.1 – Darshan Singh. Finding of the learned Tribunal on this issue has attained finality.

There is merit in the argument raised by learned counsel for the appellant that the Insurance company is liable to pay the compensation at the first instance with a liberty to recover the same from the insured. There is no dispute that the vehicle in question was validly insured with the Insurance company. Learned Tribunal has exonerated the Insurance company of its liability to deposit the compensation on the ground that the driver of the offending vehicle did not have a valid driving license at the time of the accident. No driving license of the driver of the offending vehicle was produced on record. At this stage, it is useful to refer to the judgment of the Hon'ble Supreme Court in **S.Iyyapan v. United India Insurance Company Ltd. and another,** ***(2013) 7 SCC 62***, wherein it is held that:

> "16. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered.

> The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.
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> 17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount."

Therefore, keeping in view the facts and circumstances of the case, it is directed that at the first instance, the respondent-Insurance company shall satisfy claim of the claimants in both the appeals. Needless to say, the Insurance company is entitled to recover the amount from the driver/owner of the offending vehicle.

FAO No.1775 of 2014,

Deceased-Taranjit Singh, aged 32 years at the time of the accident, is claimed to be employed as Service Engineer with the DeLaval Private Limited, drawing a salary of ₹25,000/- per month. However, as per the pay-slip (Mark-PL) of the deceased-Taranjit Singh for the month of May 2011, he was drawing a sum of ₹20,450/- per month. His income is thus assessed as ₹20,450/- per month i.e., ₹2,45,400/- per annum. After applying deduction of 10% towards income tax for the assessment year 2011-2012, annual income of the deceased is assessed as ₹2,38,664/- per annum (2,45,400 – 6,736).

Claimants are held 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's case** (supra). Deduction of 1/4th instead of 1/3rd towards personal expenses is to be effected, the number of dependants being four. Multiplier of 16 has been rightly applied. Instead of ₹1,00,000/-, appellant No.1 is entitled to ₹40,000/- towards loss of spousal consortium, minor children i.e., appellants No.2 and 3 are entitled to ₹40,000/- on account of loss of parental consortium and respondent No.5 i.e., mother of the deceased, is held entitled to ₹40,000/- towards loss of filial consortium in view 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). Instead of ₹30,000/- on account of funeral expenses afforded by the learned Tribunal, ₹15,000/- each is awarded on account of funeral expenses and loss of estate.

Appellants-claimants in FAO No.1775 of 2014 are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	20,450 p.m. i.e. 2,45,400/- per annum
2.	Less income tax calculated @ 10% for the assessment year 2011-2012	(2,45,400-6,736) = 2,38,664
3.	Total income after addition at the rate of 40% on account of future prospects	2,38,664 + (2,38,664 **x** 40%) = 3,34,130
4.	Income after 1/4th deduction on account of personal expenses	3,34,130 – (3,34,130 **x** 1/4) = 2,50,597
5.	Total dependancy after applying a multiplier of 16	(2,50,597 **x** 16) = 40,09,552
6.	Loss of estate	15,000
7.	Funeral expenses	15,000
8.	Loss of spousal consortium to appellant No.1/widow	40,000

9.	Loss of parental consortium to appellants No.2 and 3/children	40,000
10.	Loss of filial consortium to respondent No.5/mother	40,000
	Grand Total	₹41,59,552/-

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% per annum, 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.1774 of 2014

Claimant-appellant, Rajwinder Kaur claims to be working with the Pre-Nursery Anganwari before the accident, drawing a sum of ₹4,000/- per month as salary, besides, doing her household works. It is stated that after the accident, Rajwinder Kaur was admitted to CMC Hospital, Ludhiana on 09.06.2011 with a history of road side motor vehicle traffic. As per evidence of Dr. Saravpreet Singh Grewal, Professor and Head of Neurosurgery, CMC Hospital, Ludhiana, the appellant was found to be suffering from a head injury and facial injuries with a nose bleed. A CT-Scan was done and the following injuries were found:

1. Hemorrhagic contusion left frontal region
2. Minimal frontal subarachnoid hemorrhage
3. Mild Generalised cerebral Odema
4. Fractures (multiple)

As per the CT-Scan report (Ex.PW2/A), fractures of the following bones were noted:-

1. Lamina papyracea on the right side
2. Bilateral nasal bones
3. Comminuted depressed fracture of frontal bone involving the frontal sinus with fracture fragment lying at a maximum depth of 8 mm.
4. Anterior wall of bilateral maxillary sinuses, postero-lateral wall of left maxillary sinus and medial wall of right maxillary sinuses
5. Palatine bone on the right side
6. Bilateral zygomatic bone
7. Nasal septum.

As per the certificate issued dated 13.06.2011 (Ex.PW2/B) issued by CMC Ludhiana, the details regarding the injuries etc., found present on the person of the claimant and the treatment, which was afforded to her, is reproduced as under:-

> "This is to certify that Rajwinder Kaur, 35 year old female, our hospital unit No.C-7320938 came to casualty on 09.06.2011 with alleged history of road side accident at 9.45 p.m. on 09.06.11. There was history of nasal bleed after accident. There was no history of seizures/loss of consciousness and vomiting.
> On examination her GCS was E4 M6 V5, pupils bilateral equal and reacting to light. Patient was moving all four limbs at the time of admission. Her vitals were stable. There was 8cm sutured lacerated wound over forehead. OFMS consult was taken for depressed nasal bridge with tenderness over left angle of mandible & deviation of mandible to right side. CT head was done which showed compound comminuted depressed fracture frontal bone involving frontal sinus with fracture right lamina papyracea with blood in frontal ethemoid sinus with hemorrhagic contusion left frontal lobe. Patient was managed conservatively with anticonvulsants, antibiotics, analgesics, antiedema drugs. Laceration over forehead was sutured & patient will be planned for surgery (open reduction & fixation) by OFMS department. The total estimate cost of

treatment from Neurosurgery side will be around approx. 50,000/- in the absence of any untoward complication."

Keeping in view the facts and circumstances of the case and the nature of the injuries suffered by the claimant, she is entitled to a sum of ₹50,000/- instead of ₹20,000/- on account of pain and suffering. Though the claimant is not proved to be working as an Anganwari worker drawing a salary of ₹4,000/- per month, it is not denied that she was definitely carrying out her household chores as a housewife. This Court in FAO No.3395 of 2015 has assessed notional income of a housewife as ₹7,000/- per month in relation to the accident taken place in 2011. Keeping in view the facts and circumstances of the case, notional income of the appellant is assessed as ₹7,000/- per month. In the present factual matrix, it is reasonable to assume that the appellant would not have been carrying out her routine chores for a period of at least three months. Accordingly, she is allowed loss of income for three months.

There is admittedly no evidence on record to prove that the claimant has suffered any permanent disability due to the accident in question, which manifested itself in a functional disability. Accordingly, the appellant is not entitled to any compensation on this count.

Compensation on account of medical expenses as awarded by the learned tribunal i.e., ₹68,224/- is maintained. Claimant-appellant is entitled to a sum of ₹10,000/- each for special diet and attendant charges. ₹20,000/- awarded on account of conveyance charges is maintained.

Appellant-Rajwinder Kaur is, thus, entitled to compensation detailed as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Pain and sufferings	₹50,000
2.	Medical expenses	₹68,224
3.	Attendant charges	₹10,000
4.	Special diet	₹10,000
5.	Loss of income for 3 months	7,000 x 3 = ₹21,000
6.	Conveyance charges	₹20,000
	Grand Total	₹1,79,224/-

Amount already awarded by the Tribunal to the appellant/claimant 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 entire amount, instead of 6% as awarded by the learned Tribunal, from the date of filing of petition till realization.

Both the appeals are accordingly disposed of.

(LISA GILL)
JUDGE

May 07 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No