
**FAO Nos. 1836 and 1837 of 2014 (O&M) and
FAO Nos. 3647 and 3648 of 2013 (O&M)**

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CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tarun Sharma Advocate for Mr. P.S. Jammu, Advocate
for the appellants/claimants in FAO Nos. 1836 & 1837 of 2014,
for respondents no.1 to 3 in FAO No.3647 of 2013 and
for respondents no.1 and 2 in FAO No.3648 of 2013.

Mr. V. Ramswaroop, Advocate
for the appellant-insurance company
in FAO Nos. 3647 & 3648 of 2013 and
for respondent no.3-insurance company
in FAO Nos. 1836 and 1837 of 2014.

LISA GILL, J. (oral)

This judgment shall dispose of FAO-1836-2014 (Jasmail Kaur and others Vs. Dalbir Singh and others), FAO-1837-2014 (Surjit Kaur Vs. Dalbir Singh and others), FAO-3647-2013 (United India Insurance CO. Ltd. Vs. Jasmail Kaur and others) as well as FAO-3648-2013 (United India Insurance CO. Ltd. Vs. Parkash Singh and others) as all the above noted appeals arise out of a common award dated 18.04.2013, passed by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal'). Insurance company has preferred FAO Nos. 3647 and 3648 of 2013, challenging its liability to pay the compensation whereas FAO Nos. 1836 and 1837 of 2014 have been filed by the claimants seeking enhancement of the compensation.

Brief facts necessary for adjudication of the case are that two claim petitions under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') were filed, one by claimant Jasmail Kaur alongwith her daughter Mahinderpal Kaur and mother-in-law Dalip Kaur on account of death of her son Beant Singh and second claim petition was filed by Parkash Singh alongwith his wife Surjit Kaur on account of death of his

son Soni @ Jagbir Singh, in a motor vehicle accident, which took place on 26.04.2011. It is pleaded that deceased Beant Singh was employed as driver and deceased Soni @ Jasbir Singh was employed as helper on Combine Harvester, bearing registration No. PB-11-A-8133. On 26.04.2011 Beant Singh, Soni @ Jasbir Singh and one Kala were going from village Abub Shahar to Lohgarh on the said combine harvester being driven by Beant Singh. Dalbir Singh, owner of the combine harvester was on his motorcycle, being followed by the said combine harvester. At about 4:00 AM, when they were passing the Lohgarh Head, the lock of steering of the combine harvester struck and the combine alongwith Beant Singh, Kala and Soni @ Jasbir Singh fell into the link Raj Canal. Kala was saved by Dalbir Singh and one Sukhdev Singh but both Beant Singh and Soni @ Jasbir Singh drowned in the canal. DDR No.9 dated 26.04.2011 in this regard was registered at Police Post Chautala. It is pleaded that the accident in question occurred due to use of the combine harvester. Hence, both the claim petitions were filed seeking compensation from respondent no.1 - Dalbir Singh being owner and employer as also respondent no.2 being insurer of the combine harvester. Both the claim petitions were accepted by the learned Tribunal.

Learned Tribunal while holding the deceased Beant Singh to be 22 years old and earning a sum of Rs.3,300/- per month, awarded a sum of Rs.3,46,600/-, which is detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income # 3,300 – 1/2 = 1650/-	19,800/- per annum

2.	Total dependency after applying a multiplier of 17	19,800 x 17 = 3,36,600/-
3.	Funeral expenses	10,000/-
	Grand Total	Rs.3,46,600/-

In the other claim petition, the deceased Soni @ Jasbir Singh was accepted to be 22 years old, earning a sum of Rs.3,300/- per month. Learned Tribunal awarded a sum of Rs.3,46,600/- to the claimants, which is detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income # 3,300 – 1/2 = 1650/-	19,800/- per annum
2.	Total dependency after applying a multiplier of 17	19,800 x 17 = 3,36,600/-
3.	Funeral expenses	10,000/-
	Grand Total	Rs.3,46,600/-

Learned counsel for the insurance company submits that Beant Singh who was driving the combine harvester, was holding an invalid driving licence, in as-much-as, he was not even 18 years of age at the time of the issuance of the said driving licence, which was produced on record by the claimants. Learned counsel refers to the ration card Ex. R-1 of the claimants Jasmail Kaur and Darshan Singh wherein Beant Singh is mentioned to be 18 years old. It is submitted that in view of the said ration card, the driving licence has been wrongly issued and is thus invalid. In this view of the matter, it is urged, the insurance company is not liable to pay the awarded amount. In respect to the deceased Soni @ Jasbir Singh, it is submitted that there is no provision of a helper to be seated on a combine harvester. It is only the sole driver who has to be on the vehicle, therefore, the said claim petition should also be dismissed.

Learned counsel for the claimants while refuting the said averments prays for enhancement of the compensation awarded to the

claimants.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of record that as per the driving licence issued to the deceased Beant Singh, his date of birth is mentioned as 01.07.1987. There is no evidence on record to indicate that the said driving licence is a forged or a fraudulent document. A mere entry in the ration card cannot suffice to hold that the date of birth mentioned in the driving license is incorrect, thus rendering it invalid/fake. Moreover, the Hon'ble Supreme Court in *Shivaji Vs. Divisional Manager, United India Insurance Co. Ltd.* **2018 SCC OnLine SC 877**, while dealing with the question whether the insurer could raise the question of the rash and negligent act of a driver, held that defence of negligence of the claimant is not available to the insurer. While referring to its earlier judgment in *United India Insurance Company Ltd. Vs. Sunil Kumar*, it is observed that “to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is “final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time”. The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would “bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only

be self- contradictory but also defeat the very legislative intention”.
Consequently, it was held that in a proceeding under Section 163A of the
Act, the insurer cannot raise any defence of negligence on the part of the
victim to counter a claim for compensation.”

In this view of the matter, the plea raised by the appellant-
insurance company is devoid of any merit. Similarly, the plea that the legal
heirs of the deceased Soni are not entitled to compensation on the ground
raised, as mentioned in the foregoing paras, is not tenable, hence, rejected.
Learned Tribunal has rightly concluded that both Beant Singh and Soni @
Jasbir Singh lost their life in the motor vehicle accident in question, by the
use of combine harvester bearing registration No. PB-11-A-8133. The
claimants being the LRs are entitled to compensation as provided under
Section 163-A of the Act.

At the same time, learned counsel for the claimants is unable to
point out any ground what-so-ever for enhancement of the compensation
afforded by the learned Tribunal in both the cases. Argument that a
multiplier of 18 should be applied in terms of the judgment of Hon'ble
Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport
Corporation and another, 2009(3) RCR (Civil) 77**, is untenable for the
reason that in a claim petition under Section 163-A of the Act, multiplier has
to be applied strictly in terms of the Second Schedule of the Act. Learned
Tribunal has thus correctly applied the multiplier of 17 in this case.

No other argument has been raised.

In view of the discussion as above, all the four appeals are

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dismissed with no order as to cost.

July 18, 2019.

Sunil

**(LISA GILL)
JUDGE**

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