

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 1905 of 2015 (O&M)  
Date of decision : 24.7.2019

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Reliance General Insurance Company Limited,  
Chandigarh

.....Appellant

VS.

Sukhwinder Kaur and others

.....Respondents

2) FAO No. 5720 of 2015 (O&M)

...

Sukhwinder Kaur and others

.....Appellants

VS.

Jang Bahadar and others

.....Respondents

**Coram: Hon'ble Mr. Justice H. S. Madaan**

Present: Mr. Sanjiv Kodan, Advocate  
for the appellant in FAO 1905-2015 and  
for respondent No. 3 in FAO 5720-2015.

Mr. Kashmira Singh, Advocate for the appellants  
in FAO 5720-2015 and  
for respondents No. 1, 2, 3 and 5 in FAO 1905-2015

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**H. S. Madaan, J.**

By this common judgment, I intend to dispose of two appeals

i.e. bearing FAO-1905-2015 titled as 'Reliance General Insurance

Company Limited, Chandigarh vs. Sukhwinder Kaur and others' and FAO 5720-2015 titled as 'Sukhwinder Kaur and others vs. Jang Bahadar and others', as both these appeals have arisen out of the same award.

Briefly stated, on account of death of Gurmail Singh, aged about 49 years, in a roadside accident, which took place on 25.1.2013, at about 4 p.m. in the area of front of sweet shop of Daljit Singh, within jurisdiction of Police Station Chabbewal, statedly on account of rash and negligent driving of tractor bearing registration No. PB-07R-7634 (hereinafter to be referred as 'the offending tractor'), by Jang Bahadur – respondent No.1, legal heirs of the deceased namely, Sukhwinder Kaur, aged about 45 years – widow, Anita aged about 23 years and Sunita aged about 22 years – both daughters, Ajit Singh – father and Gurmit Kaur – mother, had brought a claim petition under Section 166 of the Motor Vehicle Act, 1988, against respondents i.e. Jang Bahadur – driver, Manvir Singh – owner, Reliance General Insurance Company Limited, Hoshiarpur – insurer of the said tractor, claiming compensation to the tune of Rs.50,00,000/-. In the said claim petition they had impleaded Sandeep Singh aged 24 years, son of Gurmail Singh as respondent No.4, as a proforma respondent.

The claim petition was contested by respondents No. 1 to 3, whereas proforma respondent No.4 prayed for acceptance of the claim petition.

Issues on merits were framed. Parties were afforded

opportunity to lead evidence and then after hearing the arguments, Motor Accident Claims Tribunal (Adhoc), Fast Track Court, Hoshiarpur (hereinafter to be referred as 'the Tribunal'), vide award dated 19.12.2014, granted compensation of Rs.11,05,500/- with interest @ 6% per annum to claimants No. 1, 2,3 and 5 payable by respondents No. 1 to 3, jointly and severally.

The Insurance company was unhappy with such award passed by the Tribunal, as such has filed FAO-1905-2015, seeking setting aside of the award.

Whereas claimants were also dissatisfied with the amount of compensation granted to them by the Tribunal and they have approached this Court for seeking enhancement of the compensation so granted by filing FAO-5720-2015.

Notice of the appeals was given to the respective respondents, who put in appearance.

I have heard learned counsel for the parties, besides going through the record.

Keeping in view the facts and circumstances of the case and on analysis of the evidence produced before it, the Tribunal decided issue No.1 in favour of the claimants and against the respondents, holding that respondent No.1 Jang Bahadur, was author of the accident by his rash and negligent driving of the offending tractor, resulting in death of Gurmail Singh. The finding is correct and does not call for any interference.

Coming to issue No.2, the Tribunal has found that the

claimants were legal representatives of the deceased and claimants No. 1, 2, 3 and 5 being dependent upon deceased were entitled to recover the compensation from driver, owner and Insurance company of the offending tractor, arrayed as respondents No. 1, 2 and 3, respectively. This finding was also correctly recorded and does not call for any interference.

However, on the point of quantum of compensation, the Tribunal has committed certain errors. On the basis of evidence available, the Tribunal correctly took age of the deceased to be 49 years at the time of his death in the accident. However, the version of the claimants that he was working as a Mason and earning Rs.40,000/- per month from that avocation as well as by cultivating land of one Madan Lal (AW-3), was rejected. The Tribunal has given valid reasons for rejection of such version and disbelieving the evidence adduced by the claimants in that regard, clearly observing that AW-3 Madan Lal was owner of land measuring 9 kanal 2 marlas only and remaining land which was alleged to be cultivated by the deceased is not owned by this witness and in the revenue record Gurmail Singh is not shown to be in possession over the land of this witness and further claimants have not filed any document with regard to the sale proceeds of the agricultural produce. The Tribunal treated him as a daily wager taking his income to be Rs.5,000/- per month. Under the circumstances, the Tribunal was justified in doing so.

However, the Tribunal had added 50% of this amount

towards future prospects, which considering age of the deceased was on higher side. In judgment by a Constitutional Bench of Hon'ble Apex Court *National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009*, dealing with this aspect, it has been observed that when age of the deceased was between 40-50 years, then addition of 25% would be reasonable. Thus, doing that, monthly income of deceased comes out to Rs.5,000 + Rs.1,250 = Rs.6,250/-.

Considering number of dependents upon income of the deceased, 1/4<sup>th</sup> of the amount is to be deducted towards personal and living expenses of the deceased. By doing that, the dependency of the claimants comes out to Rs. 6,250 – Rs.1,562/- = Rs.4,688/-. Accordingly the annual dependency of the claimants comes out to Rs.4,688 x 12 = Rs.56,256/-.

Considering age of the deceased, multiplier of 13 is required to be applied. Doing that, the compensation amount comes out to Rs.56,256 x 13 = Rs.7,31,328/-.

The Tribunal has awarded a sum of Rs.25,000/- as funeral expenses and Rs. 1,00,000/- on account of loss of consortium to claimant No.1 Sukhwinder Kaur. However, in view of authority in *Pranay Sethi's case (Supra)*, under the conventional Heads, the claimants are found entitled to get a sum of Rs.15,000/- under the Head loss of estate, Rs.40,000/- under the Head loss of consortium and Rs.15,000/- towards funeral expenses, totaling (Rs.15,000 + Rs.40,000 + Rs.15,000) = Rs.70,000/-.

The total compensation amount as such comes out to Rs.7,31,328 + Rs.70,000/- = Rs. 8,01,328/-.

The Tribunal has awarded compensation of Rs.11,05,500/- to the claimants, which is on higher side and the same gets reduced to Rs.8,01,328/-. Thus the finding of the Tribunal on issue No.3 is modified accordingly.

The Tribunal has decided issues No. 4 and 5 against respondent No.3 and issue No.6 against respondents. That has been done properly and no interference with finding on such issues is called for.

However, the interest granted to the claimants @ 6% per annum is found to be somewhat on lower side and it is enhanced to 7.5% per annum.

Therefore, appeal filed by the Insurance company i.e. FAO-1905-2015 is partly allowed, in as much as, instead of Rs.11,05,500/- with interest @ 6% per annum, compensation of Rs.8,01,328/- with interest @ 7.5% per annum, from the date of filing of claim petition till actual realization, is awarded to claimants No. 1,2, 3 and 5, payable by respondents No. 1 to 3 jointly and severally. The amount of compensation shall be apportioned among the claimants as follows:-

|                  |       |
|------------------|-------|
| A. Claimant No.1 | : 40% |
| B. Claimant No.2 | : 20% |
| C. Claimant No.3 | : 20% |
| D. Claimant No.5 | : 20% |

Whereas appeal filed by the claimants i.e. FAO 5720-2015 is also allowed partly, in as much as, though amount of compensation has been reduced but rate of interest has been increased from 6% to 7.5% per annum, as detailed above.

24.7.2019  
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( H.S. Madaan )  
Judge

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|-----------------------------|----------|
| Whether speaking / reasoned | Yes / No |
| Whether reportable          | Yes / No |