

FAO-1113-2016(O&M);
FAO-3960-2016(O&M); and
FAO-1870-2017(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) FAO-1113-2016(O&M)

Kavita and another

...Appellants

Versus

Manphool and others

...Respondents

(2) FAO-3960-2016(O&M)

Manphool and another

...Appellants

Versus

Kavita and others

...Respondents

(3) FAO-1870-2017(O&M)

Kitab Singh

...Appellant

Versus

Manphool and others

...Respondents

Date of Decision:-16.9.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.S. Shekhawat, Advocate
for the appellants in FAO-1113-2016 and
for respondents No.1 and 2 in FAO-3960-2016 and
for respondents No.4 and 5 in FAO-1870-2017.

Mr.Ravinder Hooda, Advocate
for the appellant in FAO-1870-2017 and
for respondent No.4 in FAO-1113-2016 and
for respondent No.3 in FAO-3960-2016.

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Mr.Munish Kumar Garg, Advocate
for the appellants in FAO-3960-2016 and
for respondents No.1 and 2 in FAO No.1113-2016 and
FAO-1870-2017.

Mr.M.K. Garg, Advocate
for respondent No.3 in FAO No.1113-2016 and
FAO-1870-2017 and for respondent No.4 in FAO-3960-
2016.

H.S. MADAAN, J.

CM-6231-CII-2017 in
FAO-1870-2017

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 346 days in filing of the appeal stands condoned.

CM-13462-CII-2016 in
FAO-3960-2016

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 179 days in filing of the appeal stands condoned.

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By this order, I shall dispose of three FAOs i.e. FAO-1113-
2016 filed on behalf of appellants/claimants Kavita and others, FAO-
3960-2016 filed on behalf of appellants/driver Manphool and owner
Gurdiyal Singh and FAO-1870-2017 filed on behalf of appellant/claimant
Kitab Singh, which have arisen out of the same accident.

Briefly stated, facts of the case as per the version of the

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claimants are that on 8.5.2014, Mahender alias Tinku son of Sh.Kitab Singh along with Mukesh son of Sh.Rajender, Neeraj son of Sh.Sumer, Sunil son of Sh.Ramphal and Anil son of Sh.Ramesh was going to village Gondar in District Karnal from village Indergarh in a car bearing registration No.HR-19G/5178; the said car was being driven by Sunil son of Ramphal; at about 12:30 p.m. when they reached on Bandrala road within the jurisdiction of Police Station Assandh, then a tractor-trolley loaded with bricks having registration No.HR-40B/8277 (hereinafter referred to as the offending vehicle) being driven at a very high speed and in a rash and negligent manner by respondent No.1 – Manphool was going ahead of them; Manphool (respondent No.1) without giving any signal suddenly applied brakes, resultantly the car rammed into the offending vehicle from behind and all the occupants of the car suffered multiple injuries; Mahender @ Tinku had suffered serious type of injuries; he was taken to Government Hospital, Assandh from where keeping in view his serious condition, he was taken to Kalpana Chawla, Government Hospital, Karnal, then to Oxygen Hospital, Rohtak, thereafter to Sunflag Superspeciality Hospital and Trauma Centre, Rohtak on 17.5.2014; he remained admitted there up to 7.6.2014 and then from 20.6.2014 to 22.6.2014 when he died there; at the time of his death, he was aged about 25 years and was earning Rs.15,000/- per month by selling milk; his father Kitab Singh, wife – Kavita and minor daughter – Baby Kiran were dependent upon him. All three of them had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Manphool

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– driver, Gurdiyal Singh – owner and Oriental Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lacs.

On being put to notice, all the three respondents had appeared and filed written statements. Respondents No.1 and 2 came up with a joint written statement in which they admitted the factum of accident though pleading that it had taken place on account of fault of the car driver, whereas respondent No.3 in the written statement brought by it denied the factum of accident; in the alternative coming up with a plea that if the factum of accident was proved then it was not liable to indemnify the insured since respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident resulting in violation of the terms and conditions of the insurance policy. It had taken up various other statutory defences.

In the end, all the respondents prayed for dismissal of the claim petition.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

On conclusion of the trial, the claim petition was partly allowed by Motor Accidents Claims Tribunal, Rohtak (hereinafter referred to as the Tribunal) vide award dated 5.10.2015 and compensation of Rs.14,92,505/- with interest @ 7.5% per annum from the date of the filing of claim petition till final realization besides costs of the petition was awarded to the claimants. Respondent No.3 was directed to pay the

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compensation to the claimants at the first instance and then to recover the same from respondents No.1 and 2 being driver and owner of the offending vehicle. The amount was ordered to be apportioned as per details below:

1.	Claimant No.1 – Smt.Kavita-(widow)	Rs.8,92,505/-.
2.	Claimant No.2-Kiran(minor daughter)	Rs.4,00,000/-.
3.	Claimant No.3-Kitab Singh(father)	Rs.2,00,000/-.

The claimants being dissatisfied with the amount of compensation and driver and owner being dissatisfied with the said Award have filed separate appeals before this Court.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

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

With regard to the appeals filed by the claimants seeking enhancement of compensation, I find that the Tribunal on appreciation of the evidence produced before it by the parties and keeping in view the facts and circumstances of the case came up with a conclusion that driver of the car and respondent No.1 were equally at fault for the accident but since the driver of the car was a third party, it would be a case of composite negligence qua the claimants and they have got a right to claim compensation from the driver, owner and insurer of both the vehicles or any of the vehicle. This finding recorded by the Tribunal is appropriate and does not have any element of error in it.

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As regards the quantum of compensation, the Tribunal had observed that from the evidence on file, it was proved that deceased at the time of death was aged about 24 years. For lack of evidence, the plea of claimants that the deceased was earning Rs.15,000/- per month from business of selling milk was not accepted, therefore, his income was assessed to be Rs.6,000/- per month being minimum wages of an unskilled worker fixed by the State Government.

However, the Tribunal has not made any addition towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.6,000 + 2,400 = Rs.8,400/-.

The deduction of 1/3th of the amount is to be made towards personal expenses in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** . Doing that the dependency of claimants comes out to Rs.5,600/- per month, annual dependency comes out to Rs.5,600 x 12 = Rs.67,200/-.

Keeping in view the age of the deceased, the Tribunal has correctly used multiplier of 18 in terms of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.**(supra). Doing that the compensation payable comes out to Rs. 67,200 x 18 = 12,09,600/-.

The Tribunal has awarded a sum of Rs.1 lakh on account of

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loss of consortium and Rs.25,000/- as funeral expenses. However, in view of the ratio of authority National Insurance Company Limited Versus Pranay Sethi and Ors.(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 12,09,600 + 70,000 = 12,79,600/-.

The Tribunal has awarded a sum of Rs.5,03,505/-, which was spent on the treatment of the deceased before he succumbed to the injuries. Of course, the claimants are entitled to get that amount. Thus the total compensation comes out to Rs.17,83,105(12,79,600 + 5,03,505).

The Tribunal has awarded compensation of Rs.14,92,505/-.

In this way, the enhanced amount comes out to Rs.2,90,600/- (17,83,105 - 14,92,505). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.2,90,600 /-. The amount shall be apportioned as follows:

1.	Claimant No.1 – Smt.Kavita-(widow)	50%
2.	Claimant No.2-Kiran(minor daughter)	40%.
3.	Claimant No.3-Kitab Singh(father)	10%.

It is directed that the share of minor petitioner/claimant shall be kept deposited in the form of fixed deposit with some nationalized bank for the period till she attained majority.

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Hence, **FAO-1113-2016 and FAO-1870-2017** filed on behalf of the appellants/claimants stand allowed partly with costs.

With regard to the liability, the Tribunal has returned a finding that the special endorsement under Section 3 of the Motor Vehicles Act authorizing him to drive transport vehicle on was not there on driving license of Manphool, in that way he was not authorized to drive the offending vehicle. Learned Tribunal has referred to various judgments in support of that contention.

However, learned counsel for the driver and owner of the tractor trolley has referred to **Sant Lal Versus Rajesh & Ors. etc., 2017(3) RCR (Civil) 757** wherein the Apex Court had observed that a tractor attached with trolley does not become transport vehicle and when the driver was having licence to drive light motor vehicle but was driving tractor attached with a trolley, it is to be taken as transport vehicle of category of light motor vehicle. It was further observed that the driver having licence to drive light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement. Hence there was no breach of the conditions of the policy. He has further referred to authorities i.e. **Mukund Dewangan Versus Oriental Insurance Company Ltd., 2017(7) Scale 731, Maha Singh and another Versus Meena and others, 2018(2) Law Herald 1316, Jaidev and others Versus M/s Bajaj Allianz General Insurance Company and another, 2016(2) PLR 43, Oriental Insurance Company Ltd. Versus Surinder and others, 2016(2) PLR 78** and **Kulwant Singh and others**

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Versus Oriental Insurance Company Ltd., 2014(4) RCR(Civil)977 in support of that contention.

Under the circumstances, the insurance company cannot escape liability to pay compensation for the said reason. In view of the judgments referred to by learned counsel for the driver and owner, the finding given by the Tribunal that without endorsement respondent No.1 was not authorized to drive tractor-trolley cannot be sustained and is set aside and no violation of the terms and conditions of the insurance policy comes out to be there, which might have absolved the insurance company of its liability. The finding recorded by the Tribunal on issue No.3 is modified accordingly. Resultantly, the insurance company would not be able to recover the amount from respondents No.1 and 2.

Thus **FAO-3960-2016** filed on behalf of the driver and owner stands allowed.

16.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No