

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO NO. 4488 of 2014 (O&M)

JUDGMENT RESERVED ON: OCTOBER 01, 2018

DATE OF DECISION: APRIL 8, 2019

National Insurance Company LimitedAppellant

Versus

Ram Pal and othersRespondents

FAO No. 5599 of 2015 (O&M)

Ram Pal and anotherAppellants

Versus

Narender Kumar and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Paul S.Saini, Advocate for the Appellant
in FAO No.4488 of 2014 and for respondent No.2 in
FAO No.5599 of 2015.

Mr.Tanmoy Gupta, Advocate for the appellants in
FAO No.5599 of 2015 and for respondents No.1 and 2
in FAO No.4488 of 2014.

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TEJINDER SINGH DHINDSA, J.

CM No.12658-CII of 2014 in FAO No.4488 of 2014

Instant application has been filed under Section 5 of
the Limitation Act seeking condonation of delay of 15 days that
has occurred in filing the accompanying appeal.

2. Notice in the application was issued.
3. Respondents have chosen not to file any reply to the
application.

4. In view of the averments made in the application and submissions advanced by learned counsel for the applicant/appellant, prayer is allowed.

5. Delay condoned.

6. Application disposed of.

CM No.17710-CII of 2015 in FAO No.5599 of 2015

7. Instant application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 480 days that has occurred in filing the accompanying appeal.

8. Keeping in view the fact that the appeal has been preferred at the hands of the claimants seeking enhancement and coupled with the fact that connected FAO No.4488 of 2014 filed by the Insurance Company against the same very award is pending consideration before this Court, prayer is allowed.

9. Delay condoned.

10. Application disposed of.

Main Appeals

11. FAO No.4488 of 2014 (**National Insurance Company Limited v. Ram Pal and others**) and FAO No.5599 of 2015 (**Ram Pal and another v. Narender Kumar and another**) are being disposed of vide common order as both these appeals arise out of award dated 4.1.2014 passed by the Motor Accident Claims Tribunal, Palwal.

12. Brief facts that may be noticed are that on 19.4.2012 at about 12.30 p.m., Indraj (since deceased) and his wife Smt. Vidya were proceeding to their village in a three-wheeler bearing registration No.HR-55N-4017. Eight more passengers were

travelling in such three-wheeler. On the Palwal-Sohna road, a Maruti Swift Car bearing registration No.HR72A/2727 being driven by Narender struck against the three-wheeler and as a result of which, it turned turtle. Both, Indraj as also his wife Smt.Vidya sustained a number of injuries. The couple was taken to General Hospital, Palwal and where Indraj succumbed to the injuries suffered in the accident. His post mortem was got conducted in General Hospital, Palwal on 19.4.2012 itself. Accident is stated to have been witnessed by Raghbir son of Ram Dayal and FIR No.120 dated 19.4.2012 was got registered on his statement.

13. Two claim petitions came to be filed before the Motor Accident Claims Tribunal, Palwal under Sections 166/140 of the Motor Vehicles Act, 1988. Petition No.167 was filed by the son and wife respectively of Indraj (deceased) for grant of compensation of Rs.8 lakhs. Petition No.168 was filed by Smt.Vidya claiming a compensation amount of Rs.3 lakhs on account of the injuries suffered in the accident that occurred on 19.4.2012. Both the afore-noticed claim petitions were consolidated by the Motor Accident Claims Tribunal, Palwal vide order dated 13.9.2012 and have been dealt with together vide award dated 4.1.2014.

14. Insofar as the two connected FAOs that are being disposed of vide instant order are concerned, this Court would be dealing with the award dated 4.1.2014 while granting compensation on account of death of Indraj.

15. In the claim petition, the son as also the widow had asserted that Indraj was 60 years of age as on the date of death

and was earning Rs.15,000/- per month while doing agricultural work and by selling milk. The compensation amount claimed was Rs.8 lakhs.

16. The claim petition having been contested, the following issues were framed by the Tribunal:

- 1. Whether the Indraj son of Budh Singh in Petition No.167/5.6.2012 titled as Ram Lal etc. Vs. Narender Kumar died and Smt.Vidhya wife of late Sh.Indraj in petition No.168/5.6.2012 titled as Ram Lal etc. Vs. Narender Kumar and others sustained injuries in a Motor Vehicular Accident on account of rash and negligent driving by respondent No.1/Narender Kumar of vehicle No.HR-72A/2727 owned by respondent No.1 and insured by respondent No.2?OPP*
- 2. If issue No.1 is proved, whether the petitioners are entitled to compensation, if so to what amount and from whom?OPP*
- 3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident and was being driven in violation of conditions of insurance policy?OPR3*
- 4. Whether the petitioners have no locus standi and cause of action to file the claim petition?OPR*
- 5. Relief."*

17. On Issue No.1, findings were returned by the Tribunal in favour of the claimants and it was held that death of Indraj took

place on account of the injuries suffered in the accident that had occurred on 19.4.2012 on account of the rash and negligent driving of Maruti Swift Car. With regard to quantum of compensation and while computing the same, the Tribunal assessed the income of the deceased as Rs.5,000/- per month and by accepting the age of the deceased to be 60 years applied the multiplier of 9. A sum of Rs.10,000/- was granted towards loss of consortium and identical amount of Rs.10,000/- each was awarded for loss of estate and towards funeral expenses. The total compensation amount awarded was Rs.5,70,000/-. The Tribunal further took a view that it is only the widow Smt.Vidya who is entitled to the compensation as the son, namely, Ram Pal was not dependent upon his father. Accordingly, the claim petition qua Ram Pal was dismissed. The widow Smt.Vidya was held entitled to the compensation amount of Rs.5,70,000/- along with interest @ 7% per annum from the date of filing of the claim petition till realization.

18. The liability to pay the compensation amount was held to be joint and several upon the owner/driver of the offending Maruti Swift Car and the Insurance Company.

19. Learned counsel representing the appellant- Insurance Company in FAO No.4488 of 2014 has argued that the Tribunal fell in error in fastening the entire liability of compensation upon the Insurance Company despite the fact that the driver of the three-wheeler and the driver of Maruti Swift Car were equally responsible for causing the accident. Learned counsel submits that it was the claimants' own version that the accident had

occurred on account of a head on collision between the three-wheeler and the car and under such circumstances, both the drivers ought to have been held equally responsible. It is argued that it would be a case of composite negligence, whereas the Tribunal has completely exonerated the driver of the three-wheeler. Learned counsel has even raised submissions with regard to quantum of compensation by submitting that excess amount has been awarded. It is argued that no evidence had been adduced on record to prove the monthly income of the deceased, namely, Indraj and the notional income assessed by the Tribunal at Rs.5,000/- per month is on the higher side. As per counsel, the Tribunal ought to have assessed the income of the deceased as Rs.15,000/- per annum on notional basis. Yet another submission raised is that the Tribunal has erred in not making any deduction from the assessed income of the deceased towards personal expenses. Further argued that the age of the deceased was more than 61 years at the time of his death and, accordingly, the multiplier of 9 could not have been applied.

20. Learned counsel for the claimants in FAO No.5599 of 2015 seeks modification and enhancement of the compensation amount from Rs.5,70,000/- to Rs.8 lakhs. It has been argued that the Tribunal has erroneously held appellant No.1, namely, Ram Pal i.e. son of the deceased to be not dependent and, as such, dismissed the claim petition qua him. Further argued that the amount of Rs.10,000/- each on the conventional heads i.e. loss of consortium, loss of estate and funeral rites also requires to be enhanced.

21. Learned counsel for the parties have been heard at length and even the records of the case that were requisitioned, have been perused.

22. As regards the issue of contributory negligence raised by the learned counsel for the Insurance Company is concerned, the testimony of PW1 Smt.Vidya, widow of Indraj would be crucial. The relevant excerpt of her cross-examination reads as follows:

“There was a speed breaker near the place of accident. Again said, there was no speed breaker there. It is wrong to suggest that the three-wheeler turned turtle on the road while crossing the breaker or that in the process, all the passengers sustained injuries. Volunteered, that the three-wheeler did not turn turtle while crossing the speed breaker but the accident was caused by the offending vehicle. The width of the road at the spot is 50'. The offending vehicle came from the front side i.e. from Sohna side. We were on our own left side but the offending vehicle hit our three-wheeler by coming on our side. It was a head on collision. Due to the impact, the three-wheeler fell into the nearby ditches.”

23. The statement of widow of Indraj (deceased) who was herself travelling in the three-wheeler and had also sustained injuries in the accident is clear and categorical. She has indicated the road at the spot to be wide enough. The deposition is that the offending Maruti Swift car came from the opposite side, while the

three-wheeler was on the correct/left side, and dashed into the three-wheeler. Under such circumstances, the plea of contributory negligence raised by learned counsel is without merit.

24. This Court does not find any infirmity in the view taken by the Tribunal in dismissing the claim petition that had been filed qua Ram Pal son of the deceased. Even in this regard, the deposition of Smt.Vidya widow of Indraj and mother of Ram Pal as PW1 would be relevant. She has clearly stated that the name of Ram Pal did not find mention in the ration card, Exhibit P2, as he has his separate ration card and has been living separately for the last about 15 years. She further deposed that Ram Pal used to work as a mason and earned Rs.4,000-5,000/- per month. In view of the above, Ram Pal, claimant-appellant No.1 has rightfully been treated as not dependent on his father. He is, as such, not entitled to any compensation amount.

25. Be that as it may, this Court finds that the compensation amount determined by the Tribunal would have to be re-assessed in the light of the parameters/guidelines laid down by the Apex Court in *Sarla Verma & others v. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77 & National Insurance Company Limited v. Pranay Sethi and others, 2017(4) RCR (Civil) 1009.*

26. Even though claimants had asserted that deceased Indraj was earning Rs.15,000/- per month by indulging in agricultural work and by selling milk but no evidence in support of such claim had been led. The Tribunal has assessed the notional

income of the deceased at Rs.5,000/- per month. The accident had occurred on 19.4.2012. Rs.5,000/- approximately would be the minimum wages admissible to an unskilled worker in the year 2012. No interference in the same, as such, is warranted.

27. The Tribunal has clearly erred in not making any deduction towards personal and living expenses of the deceased. Since deceased Indraj was married and by following the guidelines laid down in **Sarla Verma's** case (supra), a 1/3rd deduction from the notional monthly income assessed ought to have been made. It is so directed.

28. Even the multiplier of 9 that has been applied by the Tribunal to the multiplicand is on the higher side. Even though the claimants had stated that the deceased was aged 60 years at the time of death but in the ration card, Exhibit P2, adduced on record by the claimants reflected the age of Indraj as 61 years. The widow Smt.Vidya in her deposition as PW1 had stated that the ration card, Exhibit P2, had been prepared about 10 years prior to the date of accident/date of death. This would clearly show the age of the deceased as on date of death to be in excess of 60 years. As per guidelines furnished in **Sarla Verma's** case (supra), this Court would direct the multiplier to be applied as 7 instead of 9.

29. The Tribunal has awarded a meager amount of Rs.10,000/- each under the heads of loss of consortium, loss of estate and funeral rites. Such amount of Rs.30,000/-, in all, would stand enhanced to Rs.70,000/- by following the judgment in **Pranay Sethi's** case (supra) i.e. Rs.15,000/- towards loss of estate,

Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses.

30. In view of the discussion hereinabove, the compensation amount is re-assessed and calculated as follows:

Sr.No.	Head	Amount
1	Monthly income of deceased Indraj as assessed by the Tribunal	Rs.5,000/-
2	1/3 rd deduction towards personal and living expenses	5000-1666=3334
3	Annual income for purposes of compensation	3334x12=40008
4	After applying multiplier of 7	40008x7=2,80,056
5	Loss of consortium Rs.40,000/-, loss of estate Rs.15,000/-, funeral expenses Rs.15,000/-	Rs.70,000/-
6	Total	Rs.3,50,056/-

31. At this stage, it would be apposite to take note that while issuing notice of motion in FAO No.4488 of 2014 on 15.9.2014, it had been directed that recovery of more than Rs.4 lakhs would remain stayed. As such, it is directed that if the amount of Rs.4 lakhs already stands disbursed to the claimant i.e. Smt.Vidya widow of Indraj (deceased), no recovery shall be effected from her in the light of the re-assessed compensation arrived at by this Court.

32. Both the appeals are, accordingly, disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

APRIL 08, 2019
SRM

Note: *Whether speaking/reasoned:* *Yes/No*
 Whether Reportable: *Yes/No*