

**FAO-534-2014 (O&M) and
FAO-4285-2014 (O&M)**

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

FAO-534-2014 (O&M)

Date of Decision: September 16, 2019

Harbans Singh

..... Appellants(s)

Versus

Paramjit Kaur and others

..... Respondent(s)

with

FAO- 4285-2014 (O&M)

Paramjit Kaur and others

..... Appellants(s)

Versus

Dharminder Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gopal Sharma, Advocate
for the appellant (in FAO No. 534 of 2014 and
for respondent no.3 (in FAO No. 4285 of 2014) .

Mr. B.S. Saini, Advocate
for the appellants (in FAO No.4285 of 2014 and
for respondents no.1 to 3 (in FAO No. 534 of 2014) .

Respondents no.4 and 5 ex parte (in FAO No. 534 of 2014).

None for respondents no.1 and 2 (in FAO No.4285 of 2014).

LISA GILL, J.

This judgment shall dispose of FAO-534-2014 (Harbans Singh Vs. Paramjit Kaur and others) as well as FAO-4285-2014 (Paramjit Kaur and others Vs. Dharminder Singh and others) as both the above noted appeals arise out of award dated 01.10.2013, passed by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as 'the Tribunal).

FAO-534-52014 has been filed by Harbans Singh son of Sampuran Singh reflected as one of the owners of the offending harvester combine before the learned Tribunal, challenging his liability and FAO-4285-2014 has been filed by the claimants seeking enhancement of the compensation awarded by the learned Tribunal, vide order dated 01.10.2013.

Brief facts necessary for adjudication of the cases are that a claim petition under Section 166 of the Motor Vehicles Act, 1988 was preferred by the claimants i.e. the widow and two minor children of the deceased Bahadur Ali @ Bahadur Mohammad Khan, seeking compensation on account of his death. Bahadur Ali was claimed to be 48 years old, earning a sum of Rs.15,000/- per month while working as a helper on a harvester combine and by doing the work of dairy farming as well. It is pleaded that on 05.03.2011 at about 2:00 P.M., Ahmed Baig son of Fareed Baig, resident of Kopperga, P.S. Bodhan Mandalan, Andhra Pradesh lodged a complaint stating therein that he was getting his crop harvested with the help of the offending vehicle i.e. harvester combine bearing registration No. PB-37-C-5302. Harvesting with the combine was stated to be in progress since 9:00 A.M. and at about 11:00 A.M. the helper on the harvester combine namely Bahadur Ali, who was sitting by the side of the driver of the combine was getting down from the said combine. The driver, however, without noticing the helper coming down, reversed the combine in a rash and negligent manner, due to which the rear wheel of the combine ran over the helper Bahadur Ali, who died at the spot. Driver of the combine is stated to have

fled from the spot leaving the offending vehicle behind. FIR No. 126 dated 05.03.2011 under Section 304A IPC was registered at Police Station Bodhan, District Nizamabad (Andhra Pradesh). Claimants, thus, sought compensation on account of death of Bahadur Ali. Dharminder Singh son of Gurdev Singh was arrayed as the driver of the offending harvester combine. Bhal Khan son of Sabarat Khan and Harbans Singh i.e. the appellant in FAO-534-2014 were arrayed as owners of the combine in question. The driver and Bhal Khan filed a joint written statement denying the occurrence of the accident. It is admitted that Bhal Khan is the owner of the combine. All the other facts regarding the accident were denied. Appellant Harbans Singh filed a separate written statement, not only denying the accident but also pleading that he has no concern whatsoever with the offending vehicle i.e. harvester combine bearing registration No. HR-37-C-5302. Dismissal of the claim petition was sought.

Following issues were framed by the learned Tribunal on the basis of the pleadings:-

1. Whether on 5.3.2011 Bahadur Ali @ Bahadur Mohammad son of Mamdeen met with an accident with combine bearing No. PB-37C-5302 driven rashly and negligently by by respondent no.1, which resulted into his death? OPP.
2. Whether the claimant is entitled to receive the compensation, If so, what amount and from whom? OPP
3. Whether the driver of offending vehicle was not holding a valid and effective driving license at the time of alleged accident? OPR-3.
4. Relief.

Learned Tribunal on considering the evidence on record concluded that the accident in question took place due to the rash and negligent driving of the offending harvester combine bearing registration No. PB-37C-5302, by its driver Dharminder Singh and Bahadur Ali lost his life due to the injuries sustained by him in the said accident. It is further concluded that Bhal Khan and appellant Harbans Singh are the owners of the offending vehicle and they are jointly and severally liable for disbursement of the compensation alongwith Dharminder Singh. The offending vehicle is admittedly not insured. Income of the deceased was assessed as Rs. 5,100/- per month considering him to be a labourer and a sum of Rs.5,55,400/- was awarded as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	5,100/- per month
2.	Income after deducting 1/3 rd as personal and living expenses of the deceased	5,100 – 1/3 rd = 3,400/- per month
3.	Dependency after applying multiplier of 13	3,400 x 12 x 13 = 5,30,400/-
4.	Transportation and last rites	Rs.2,500/-
	Total	Rs.5,55,400/-

Learned counsel for the appellant - Harbans Singh vehemently argues that the evidence on record does not point to the appellant being the owner of the combine in question. It is submitted that the claim petition has been filed by the claimants in collusion with Bhal Khan, who is not only the registered owner of the combine but is also the real maternal uncle of the deceased Bahadur Ali. It is further submitted that as per the registration

certificate of the vehicle in question (Ex.R-1) Harbans Singh is not the owner of the vehicle in question. It is, thus, prayed that the appellant Harbans Singh be absolved of any liability in this matter.

Learned counsel for the claimants while refuting the arguments raised by the appellant - Harbans Singh submits that learned Tribunal has rightly held him to be liable alongwith other respondents. It is contended that the appellant Harbans Singh in his cross-objection has admitted himself to be the owner of the offending vehicle. Moreover, the driver of the vehicle has clearly testified that Harbans Singh is one of the owners of the combine. It is submitted that the villages of Harbans Singh as well as Bhal Singh are near each other. It is further submitted that income of the deceased has been wrongly assessed as Rs.5,100/- per month. Meagre compensation has been afforded by the learned Tribunal, which should be enhanced. It is, thus prayed that the appeal filed by the claimants should be allowed and that of Harbans Singh be dismissed.

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

Learned counsel for the claimants does not deny that Bhal Khan is indeed the real maternal uncle of the deceased Bahadur Ali. It is to be noticed at this stage that Bhal Khan has not appeared before this Court despite service and he was proceeded *ex parte* along with the driver of the offending vehicle. It is a matter of record that FIR No. 126 dated 05.03.2011 under Section 304A IPC was registered at Police Station Bodhan, District Nizamabad (Andhra Pradesh) against the driver of the combine namely Dharminder Singh, who was facing criminal proceedings.

Learned Tribunal has rightly held on the basis of the evidence on record that Bahadur Ali is proved to have died due to the injuries received by him in the motor vehicle accident, which took place on 05.03.2011, due to the rash and negligent driving of the offending harvester combine bearing registration No. PB-37-C-5302, by its driver Dharminder Singh.

The material question which arises for consideration of this case is whether Harbans Singh is jointly and severally liable with Bhal Khan to pay the compensation, being one of the owners of the offending vehicle. Learned counsel for the claimants is unable to deny that as per copy of the registration certificate (Ex. R-1) the offending combine originally belonged to Gurdyal Singh son of Mohinder Singh and the vehicle was then transferred in favour of Bhal Khan son of Sabarat Khan as well as Sarabjit Singh son of Kulwant Singh. There is indeed no evidence on record indicating the appellant Harbans Singh to be the owner of combine. Reliance by the learned Tribunal on the statement of the driver Dharminder Singh RW-1 is clearly misplaced. There is indeed no basis for the averment by the driver in the cross-examination that the offending vehicle belongs to both Bhal Khan and Harbans Singh. At this stage, it is relevant to note that in the affidavit Ex.DW1/A filed by Dharminder Singh (RW-1), he has not made any such averment. In fact in para 2 of the said affidavit it is stated as under:-

“The present false accident case has been got registered with the collusion of the respondent Bhan Khan who is relative of the claimants i.e. real maternal uncle (mamma) of the deceased Bahadur Ali and the deponent has been falsely implicated in this false case in order to get compensation.”

Moreover, RW-1 in his affidavit has denied the occurrence of the accident, whereas in his cross-objection, he has not only admitted that Bahadur Ali died when he tried to reverse the combine on 05.03.2011 but he also goes on to say that Harbans Singh is the owner of the combine along with Bhal Khan. It is further a matter of record that the driver RW-1 as well as the claimants belong to the same village i.e. village Nalina Kalan, Tehsil and District Fatehgarh Sahib.

Appellant Harbans Singh in his separate written statement has taken a specific and categoric stand at the very outset that he is not the owner of the combine harvester and nor he had any concern or connection with the said vehicle at the time of the said accident. Learned Tribunal has wrongly placed reliance on a stray reference in the cross-examination of RW-2 to the extent it is stated that RW-2 along with Bhal Khan is the owner of the combine. A close scrutiny of the cross-examination of RW-2 reveals that it cannot be concluded that there is an admission by Harbans Singh to be an owner of the combine. After recording of the said line, it is immediately recorded that RW-2 stated that he was not the owner of the said vehicle neither he knew anything about the accident in question. He denied that he was giving any salary to Dharminder Singh. There is a specific denial of all these suggestions, therefore, it cannot be said that RW-2 has admitted himself to be the owner of the said combine. In this view of the matter, learned Tribunal has clearly erred in holding appellant Harbans Singh to be a co-owner of the harvester combine along with Bhal Khan. Finding of the learned Tribunal to the effect that Harbans Singh along with

Bhal Khan is the owner of the combine, is not sustainable on the basis of the evidence on record. It is, hence, set aside. Consequently, the appellant Harbans Singh is not jointly and severally liable to pay the compensation along with the respondent Dharminder Singh (driver) and Bhal Khan (registered owner), as the appellant is not the owner of the offending vehicle.

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The deceased Bahadur Ali was admittedly 48 years old at the time of the accident. Learned counsel for the appellants-claimants is unable to deny that there is indeed no cogent evidence on record to prove the vocation or exact income of the deceased. In such a situation, income of the deceased was rightly assessed as Rs.5,100/- per month by the learned Tribunal with reference to the minimum wages available to a labourer in the State at the relevant.

In terms of the judgment of Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, 25% increment towards future prospects has to be afforded. Deduction of 1/3rd was correctly effected by learned Tribunal. As the deceased was admittedly 48 years old at the time of the accident, multiplier of 13 was correctly applied by learned Tribunal. Claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate instead of Rs.2,500/- awarded by the learned Tribunal towards funeral expenses and transportation. Claimant-widow is entitled to a sum of Rs.40,000/- on account of loss of spousal consortium. Both the children of the deceased are also

entitled to a consolidated sum of Rs.40,000/- towards loss of parental consortium. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in *Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.* 2018(4) RCR Civil 333, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, title *Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others.*

Appellants-claimants in FAO No. 4285 of 2014 are, thus, entitled to compensation which is re-worked as under:-

Sr. No.	Heads	Calculations
1.	Income	5,100/- per month
2.	Income after deducting 1/3 rd as personal and living expenses of the deceased	5,100 – 1/3 rd = 3,400/- per month
3.	Income after addition at the rate of 25% on account of future prospects.	3,400 + 850 (3,400 x 25%) =4,250/-
4.	Dependency after applying multiplier of 13	4,250 x 12 x 13 = 6,63,000/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of spousal consortium to widow	40,000/-
8.	Loss of parental consortium to children	40,000/-
	Total	Rs.7,73,000/-

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 at the rate of 7.5% per annum on the enhanced amount, from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same. Keeping in view the fact that the finding regarding Harbans Singh

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being one of the owners of the offending vehicle has been set aside and it is held that he is not owner of the offending vehicle, as a necessary corollary, it is held that the claimants are entitled to recover the amount from the respondent Dharminster and their uncle Bhal Khan. Liability of said Darminster and Bhal Khan is joint and several.

In view of the discussion as above, the appeal filed by the owner (FAO-534-2014) is allowed and the appeal filed by the claimants (FAO-4285-2014) is disposed of.

September 16, 2019.

Sunil

**(LISA GILL)
JUDGE**

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