

**FAO-3788-2015 (O&M) and
FAO-4209-2015**

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

**FAO-3788-2015 (O&M)
Date of Decision: September 11, 2019**

Reliance General Insurance Company Ltd. Appellants(s)

Versus

Om Parkash and others Respondent(s)

with

FAO- 4209-2015

Om Parkash and others Appellants(s)

Versus

Ram Kumar and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Raj Kumar Bashamboo, Advocate
for the appellant in FAO-3788-2015 and
for respondent no.3 in FAO-4209-2015.

Mr. Chanderhas Yadav, Advocate
for the appellants in FAO-4209-2015 and
for respondents no.1 to 4 in FAO-3788-2015.

Mr. Raman Chawla, Advocate
for respondents no.5 and 6 in FAO-3788-2015.

LISA GILL, J.

This judgment shall dispose of FAO-3788-2015 (Reliance General Insurance Company Ltd. Vs. Om Parkash and others) as well as FAO-4209-2015 (Om Parkash and others Vs. Ram Kumar and others) as both the above noted appeals arise out of award dated 11.03.2015, passed by the learned Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal).

Claimants who are the appellants in FAO-4209-2015, preferred a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of Nasib, aged 23 years. Claim petition was filed by the parents and siblings of the deceased. It is pleaded in the claim petition that on 21.07.2012, at about 9:00/9:30 P.M. Nasib (since deceased) while driving motorcycle bearing registration No. HR-99-KS(T)/7534, reached between village Dalanwas and Barda. Rawat son of Parbhati Lal had taken lift from the deceased and was the pillion rider on the motorcycle. Respondent – Ram Kumar had wrongly parked TATA LPT-2518 dumper bearing registration No. HR-61-B-0604 in a 'no parking zone' on the road, without any indicators and reflectors. The motorcycle driven by Nasib struck against the back side of the dumper, at about 9:00/9:30 p.m, due to which he sustained fatal injuries. He was shifted to General Hospital, Mahendergarh, where he was declared dead. Rawat also died in the said accident. FIR No. 65 dated 22.07.2012 under Sections 283, 304-A of IPC was lodged in Police Station Satnali, District Mahendergarh in this regard. The deceased was claimed to be an agriculturist and running a shop for the sale of seeds at village Satnali and earning Rs.25,000/- per month.

Learned Tribunal on considering the evidence on record concluded that the accident in question took place due to the rash and negligent act of the offending dumper bearing registration No. HR-61-B-0604, by its driver Ram Kumar, in as-much-as the said vehicle was parked on the metalled road at night without any indicators or reflectors as well as negligence on the part of the deceased, who was on his motorcycle and

dashed against the stationary dumper. Negligence to the extent of 50% each was assessed. Learned Tribunal proceeded to assess income of the deceased to be Rs.14,000/- per month by observing that the deceased was a young man and therefore, he would be earning the said amount. Learned Tribunal awarded a sum of Rs.7,86,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	14,000/- per month
2.	Income after deducting 50% as personal and living expenses of the deceased	14,000 – 50% = 7,000/- per month
3.	Dependency after applying multiplier of 18	7,000 x 12 x 18 = 15,12,000/-
4.	Claimants were held entitled to half of the compensation on account of contributory negligence of the deceased.	15,12,000 - 50% = Rs.7,56,000/-
5.	Funeral expenses to claimants no.1 & 2	25,000/-
6.	Loss of estate to claimants no.1 & 2	5,000/-
	Total	Rs.7,86,000/-

Insurance company has filed FAO-3788-2015, challenging the quantum of the compensation awarded by the learned Tribunal while assessing income of the deceased to be Rs.14,000/- per month. It is submitted that there is no evidence on record, which justifies assessment of the income of the deceased as Rs.14,000/- per month. The same be reduced and compensation be awarded accordingly.

Learned counsel for the claimants while refuting the above said argument submits that income of the deceased has been rightly assessed on

the basis of evidence on record and calls for no interference. It is further argued that finding of the learned Tribunal regarding contributory negligence on the part of the deceased is incorrect and opposed to the evidence on record. Therefore, the same be set aside and the entire amount of compensation be released to the claimants.

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

It is evident from the record that the deceased along with one Rawat was travelling on a motorcycle and the accident took place at about 9:00/9:30 P.M. Learned Tribunal has categorically observed that the offending vehicle was parked on the metalled road without any indication of its presence. Therefore, respondent-driver was clearly negligent in this respect as it was his duty to park the vehicle in a proper manner at the proper place. It is relevant to note at this stage that merely because a vehicle strikes another one lying stationary on the road, from behind, does not per se lead to a conclusion of a contributory negligence on its part, in the absence of any positive evidence on record to indicate the same. The Hon'ble Supreme Court in *Archit Saini and another Vs. Oriental Insurance Company Limited and others* 2018(5) RCR (Civil) 80 has held that merely because a vehicle strikes against a vehicle from behind does not, per se, lead to an inference of contributory negligence on the part of the vehicle coming from behind.

In the present case, the offending dumper was admittedly parked without any kind of parking lights or indication regarding its

presence on the road at 9:00/9:30 P.M. There is no evidence on record to indicate that the deceased was driving his motorcycle in a rash and negligent manner or at a very high speed due to which the accident in question took place. Merely because the motorcycle struck the offending truck from behind, cannot *per se* be a ground to presume the element of contributory negligence. It is obvious that the causative factor of the accident in question is the rash and negligent act on the part of the driver of the dumper who had callously parked his vehicle on the road without any indication of its presence. There is no evidence on record that there was any kind of mechanical failure etc., due to which the dumper was lying stationed on the metalled road. Furthermore, even if it is assumed that the dumper was afflicted by mechanical failure, needless to say, it was the duty of the driver to ensure sufficient indication of its presence on the road, which would be visible to the other commuters from a reasonable distance so as to enable them to take necessary precautions. Keeping in view the factual matrix of the case, in my considered opinion, learned Tribunal has erred in concluding that the deceased was negligent in any manner. Therefore, the element of contributory negligence on his part has been wrongly assessed to the extent of 50%. This finding of the learned Tribunal is accordingly set aside. It is held that the accident in question took place due to the sole negligence of the driver of the offending vehicle bearing registration No. HR-61-B-0604.

Learned Tribunal has proceeded to assess income of the deceased as Rs.14,000/- per month with a mere observation that as he was a young man, he must have been earning the said amount. A perusal of the

record reveals that there is not an iota of evidence on record to prove that the deceased was running a shop of sale of seeds in village Satnali and thus earning Rs.25,000/- per month. Therefore, in this situation, income of the deceased has to be assessed with reference to the minimum wages available to a daily wager in the State at the relevant time. Admittedly, the minimum wage in the State of Haryana at the relevant time was Rs.4,967/- per month. Income of the deceased is thus assessed as Rs.5,000/- per month.

In terms of the judgment of Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, 40% increment towards future prospects has to be afforded. Deduction of 50% was correctly effected by learned Tribunal. As the deceased was admittedly 23 years old at the time of the accident, multiplier of 18 was correctly applied by learned Tribunal. The total amount of Rs.30,000/- awarded towards funeral expenses and loss of estate (Rs.25,000/- for funeral expenses and Rs.5,000/- for loss of estate) remains the same as in *Pranay Sethi's* case (supra) Rs.15,000/- each has been awarded under both these heads. Appellants-claimants no.1 & 2 are entitled to a sum of Rs.40,000/- towards loss of filial consortium. Finding of the learned Tribunal regarding entitlement of appellants no.1 & 2 of the compensation is upheld.

Appellants-claimants no.1 & 2 are, thus, entitled to compensation which is re-worked as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income # 5,000 x 12	60,000/- per annum
2.	Income after 50% deduction on account of personal expenses.	60,000 x 50% = 30,000/-

3.	Total income after addition at the rate of 40% on account of future prospects	30,000 + 12,000 (30,000 x 40%) = 42,000/-
4.	Total dependency after applying a multiplier of 18	42,000 x 18 = 7,56,000/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Loss of consortium to appellants-claimants no.1 & 2	40,000/-
	Grand Total	Rs. 8,26,000/-

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 (instead of 6% per annum as awarded by the learned Tribunal) on the entire 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.

In view of the discussion as above, both the appeals are partly allowed.

September 11, 2019.

Sunil

(LISA GILL)
JUDGE

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