

203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No.5518 of 2014 (O&M)
Date of Decision: 30.08.2019

Ramandeep Kaur and othersAppellants
Vs
Vikrant Sood and othersRespondents

2. FAO No.10110 of 2014 (O&M)

Vikrant SoodAppellant
Vs
Ramandeep Kaur and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajbir Singh, Advocate
for the appellants in FAO No.5518 of 2014 (O&M) &
for respondents No.1 to 3 in FAO No.10110 of 2014(O&M).

Mr. K.D. Sachdeva, Advocate
for the respondent No.1 in FAO No.5518 of 2014 (O&M) &
for the appellant in FAO No.10110 of 2014(O&M).

Ms. Madhu Sharma, Advocate
for the Insurance Company.

Mr. Chanderhas Yadav, Advocate
for the respondent-Mehar Singh.

RAJ MOHAN SINGH, J. (Oral)

CM No.27886-CII of 2014 in FAO No.10110 of 2014 (O&M)

For the reasons mentioned in the application, the same is
allowed. Delay of 82 days in re-filing the appeal is condoned.

Main case(s)

[1]. Vide this common order FAO No.5518 and 10110 of 2014
(O&M) are being disposed of. Since both the appeals have

arisen out of one accident, therefore, common facts are being recorded.

[2]. The accident took place on 23.02.2011, when Gamdoor Singh and Harjit Singh were going on different motorcycles to Asra College via village Rajpura. Gamdoor Singh (deceased) was going on his motorcycle bearing regn. no.PB-13P-0570, whereas Harjit Singh was following him on a separate motorcycle. A car make Hyundai I-20 bearing regn. no.HR-99-FN(T)-4986 was going ahead of the motorcycles which was being driven by Rohit Bansal (respondent No.4 in FAO No.10110 of 2014) in a rash and negligent manner. When the vehicles reached near Malwa Dhaba, the Hyundai I-20 car rammed against the vehicle make Innova which was coming from opposite direction. The said vehicle was being driven by Vikrant Sood (appellant in FAO No.10110 of 2014). The Innova car turned turtle and the motorcycle of deceased Gamdoor Singh rammed against it, which resulted serious injuries on the person of Gamdoor Singh. He was removed to Civil Hospital, Bhawanigarh, however he succumbed to the injuries on the way to the Hospital. Driver of vehicle make Innova namely Vikrant Sood got injuries on his person.

[3]. A claim petition was filed by injured/claimant namely Vikrant Sood (driver of Innova car) before the Motor Accident

Claims Tribunal, Patiala. The claim petition was decided in his favour vide award dated 23.09.2013, wherein Insurance Company of vehicle make Hyundai I-20 car bearing regn. No.HR-99-FN(T)-4986 was held liable to indemnify the injured. The said award has attained finality. The Insurance Company of Hyundai I-20 car has not challenged the aforesaid award, rather an amount of Rs.3,05,102/- was paid to the claimant i.e. driver of Innova car namely Vikrant Sood.

[4]. Legal heirs of deceased Gamdoor Singh also filed claim petition for grant of compensation on account of death Gamdoor Singh in the vehicular accident before the Motor Accident Claims Tribunal, Sangur (hereinafter to be referred as 'the Tribunal'). The driver of both the vehicles i.e. Hyundai I-20 car bearing regn. no.HR-99-FN(T) 4986 and Innova Car bearing regn. No.PB-11-AL-9783 were impleaded. Owner of innova car Rajinder Pal was also impleaded besides impleading Insurance Company of Hyundai I-20 car. Innova car was not found to be insured with any Insurance Company.

[5]. In the aforesaid second claim petition filed by the legal heirs of Gamdoor Singh, the Tribunal held that the accident in question took place due to rash and negligent driving of driver of the Innova car. A compensation amounting to Rs.21,36,675/- was assessed in favour of the claimants in the death case and

the said amount was apportioned in the manner as suggested in para no.36 of the award dated 03.02.2014 passed by the Tribunal and the same was recoverable along with interest @ 9% per annum after 30 days from the date of death of deceased till final realization of the amount.

[6]. Aggrieved against the award dated 03.02.2014 passed by the Tribunal, both the appeals have been preferred.

[7]. **FAO No.10110 of 2014** has been filed by driver of the Innova car namely Vikrant Sood only to the extent of shifting the liability in view of award dated 23.09.2013 (Ex.R-1) passed by the Tribunal, wherein Insurance Company of Hyundai I-20 car was held liable for the accident in question. Since the aforesaid award has already attained finality and the Insurance Company has not challenged the same in any Forum, therefore, the appeal is directed against the aforesaid limited extent.

[8]. The award dated 23.09.2013 passed by the Tribunal was duly exhibited before the Tribunal at Sangur at the time of adjudication of the claim petition filed by the claimants (legal heirs of deceased Gamdoor Singh). The Tribunal has ignored the aforesaid document primarily on the ground that the said award was not passed in the presence of claimants in the death case.

[9]. The aforesaid findings in my considered view is not

sustainable in view of the fact that the award of compensation in favour of the driver of Innova car, involvement of claimants in the death case were not at all necessary because there was no overt act on behalf of the motorcyclists in commission of the accident viz-a-viz. involvement of Innova Car and Hyundai I-20 car. The presence of legal heirs of Gamdoor Singh in the claim petition filed by Vikrant Sood (driver of Innova car) which was decided on 23.09.2013 was not at all necessary. Even otherwise, the controversy can be looked into from a different angle.

[10]. Admittedly, the first impact took place between the Innova car and Hyundai I-20 Car. As a result of that impact, Innova car turned turtle. It is only at that juncture the motorcyclists rammed into the Innova car resulting in death of Gamdoor Singh. Negligence qua the impact between Innova car and motorcyclists, if tested on the aspect of negligence cannot culminate in holding negligence of driver of Innova car by any stretch of imagination. Since Innova car had already turned turtle at the time of impact between Innova car and motorcyclists, therefore, the findings to the contrary recorded by the Tribunal in my considered opinion are not sustainable. Since the Insurance Company of Hyundai I-20 car has already been held liable in the MACT Case No.89-T dated 18.10.2011

decided on 23.09.2013 by the Tribunal at Patiala, therefore, those findings would operate *res judicata* to the extent of holding that the driver of Hyundai I-20 car was rash and negligent while striking the Innova car and the second impact between the Innova car and motorcyclists was the resultant effect of the first impact. In view of aforesaid, there cannot be any escape from holding that the Insurance Company of Hyundai I-20 car is liable to answer the claim arising out of death of Gamdoor Singh as well.

[11]. At an interlocutory stage in FAO No.10110 of 2014 the amount of compensation awarded in favour of the claimant/appellant was offered to be deposited by him in the executing Court in order to save himself from rigor of execution of award against him. This Court comes to the conclusion that the Insurance Company of Hyundai I-20 car is liable to answer the claim arising out of death case, therefore, the driver of the Innova car would be entitled to refund of the amount which was deposited by him at an interlocutory stage.

[12]. **FAO No.5518 of 2014** has been preferred by the claimants in the death case for enhancement of the compensation on three counts firstly, the deceased was 37 years of age and in view of ratio of **National Insurance Co. Limited vs. Pranay Sethi, 2017 SCC 1270** future prospects to

the tune of 40% should have been applied as against 30% which has been applied by the Tribunal while assessing the compensation. Secondly, only an amount of Rs.15,000/- has been awarded towards functional head as against Rs.70,000/- which has been applied in the aforesaid case. Thirdly, deduction towards personal expenses of the deceased ought to have been applied to the extent of 1/4th as the father of the deceased aged 80 years was member of the family and he should not have been excluded from the composition of the family.

[13]. Annual income of the deceased was assessed to be Rs.1,63,205/-. In addition to said amount, 40% of the income i.e. Rs.65,282/- is to be credited towards future prospects of the deceased. Thus, the total annual income of the deceased is assessed to be Rs.2,28,487/-. Keeping in view of the family composition of the deceased and in view of **Sarla Verma vs. Delhi Transportation Corporation, 2009 ACJ 1298 (SC)**, deduction to the extent of 1/4th is applied towards personal expenses. In this way, the total amount of annual dependency comes out to be Rs.1,71,365/-.

[14]. The deceased was aged about 37 years at the time of accident. In view of ratio laid down in **Sarla Verma's** case (supra) on the basis of age of the deceased, multiplier of 15 is

to be applied. In this way assessment towards dependency comes out to be Rs.25,70,475/- (1,71,365, x 15). An Additional amount of Rs.70,000/- can be assessed towards conventional heads in view of **National Insurance Co. Limited vs. Pranay Sethi,'s case (supra).** In this way, total amount of compensation comes out to be Rs.26,40,475/- (25,70,475 + 70,000).

[15]. The enhanced amount i.e. Rs.5,03,800/- (26,40,475 – 21,36,675) would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

[16]. If the amount of Rs.3,05,102/- has already been received by the claimants (respondents No.1 to 3 in FAO No.10110 of 2014), the said amount is liable to be deducted and is required to be paid to the driver of Innova car namely Vikrant Sood (appellant in FAO No.10110 of 2014) as per award passed by the Tribunal in MACT Case No.86-T dated 18.10.2011. In any case, the Insurance Company of Hyundai I-20 car is liable to answer the claim on both counts.

[17]. In view of aforesaid modifications, both the appeals are disposed of.

August 30, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No