

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

Date of decision: 14.10.2019

FAO No.626 of 2014 (O&M)

Future General India Insurance Co. Ltd. ... Appellant

Versus

Parkash Kaur and others ... Respondents

FAO No.4280 of 2014 (O&M)

Parkash Kaur and others ... Appellants

Versus

Gagandeep Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vishal Aggarwal, Advocate for the insurance company.

Mr. Ashwani Talwar, Advocate for the claimants.

Mr. Deepak Sharma, Advocate for the driver and owner.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.626 and 4280 of 2014 as these have emerged out of the same award dated 04.12.2013 passed by the Motor Accidents Claims Tribunal, Patiala whereby compensation has been assessed on account of death of Amar Nath in a motor vehicular accident that took place on 06.12.2012.

FAO No.626 of 2014 has been filed by Future General India Insurance Co. Ltd. (hereinafter referred to as 'the insurance company')

whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been filed to assail findings of the Tribunal on issue No.1 as well as quantum of compensation.

With regard to findings on issue No.1, it is argued that as per testimony of Surender Pal, brother of the deceased, deceased was travelling on a scooter and the offending three wheeler bearing No.HR-37-B-8593 was ahead of scooter of deceased Amar Nath. It is argued that testimony of Surender Pal that deceased maintained a distance of 15-20 yards from the vehicle going ahead at a high speed and striking that vehicle from behind on account of driver of three wheeler having suddenly applied brakes is not believable. It is further argued that the present is a case of contributory negligence of the deceased.

To assail quantum of compensation, it is argued that the Tribunal has computed loss of dependency by taking into consideration difference of Rs.14,883/- and Rs.5388/- whereas pension drawn by the deceased was Rs.8980/-, proved by PW2 Ram Charan on the basis of documentary evidence, notice whereof has been taken by the Tribunal in para 20 of the award.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1 attributing exclusive negligence to driver of the offending vehicle. He has prayed for allowing additional compensation by ignoring the family pension paid to widow of

the deceased and assessing post retiral income of the deceased.

Surender Pal, alleged eye witness to the occurrence and brother of the deceased was examined to discharge onus of issue No.1 pertaining to accident being the result of rash and negligent driving of offending vehicle by Gagandeep Singh. He tendered into evidence his duly sworn affidavit Ex.PW5/A by way of examination in chief.

A relevant extract therefrom, reads as follows:-

The distance between the vehicles of deponent and his brother was about 25/30 yards. At about 11.00 am while driving their respective vehicles, when the deponent and his brother reached in front of Oboroi Petrol Pump near King Fisher Resort, Ambala city, a loading three wheeler bearing registration No.HR-37-B-8593 was seen by deponent which was going ahead of scooter of brother of deponent Amar Nath and was being driven by its driver rashly, negligently, in zig-zag manner and at very high speed. Three wheeler was being driven by its driver on extreme left side of the road beyond solid white line, which is meant for plying two wheelers and it divides the lane of GT road in two portions, one part for plying four wheelers and other for plying two wheelers from Amritsar side to Delhi side. The brother of deponent Amar Nath was driving his scooter and he was behind the said three wheeler and distance between three wheeler and scooter of brother of deponent was about 15-20 yards. Driver of loading three wheeler suddenly and giving any signal or indicator, without blowing (sic) any horn, without any reason applied sudden breaks of his three wheeler. He stopped his three wheeler on the extreme left hand side of the road near solid white line, rashly and negligently. Due to applying sudden breaks by the driver of loading three wheeler, brother of

deponent applied breaks of his scooter but scooter of brother of deponent struck against the rear portion of loading three wheeler. As a result of this impact brother of deponent fell on the left side near kachcha portion of the Chandigarh to Delhi road. The brother of deponent suffered multiple, simple and grievous including head injury and injuries on the left side of his hand in this accident. Deponent stopped his motor cycle and came to rescue his brother.

Perusal of the aforesaid extract makes it evident that deceased was driving his scooter behind the offending three wheeler. As per testimony of Surender Pal, offending vehicle was driven rashly and negligently in zig-zag manner and at very high speed. He has further stated that there was distance of about 15-20 yards between the offending vehicle and scooter driven by the deceased. It is difficult to accept that had the deceased been maintaining such a distance from the vehicle going ahead and even applied brakes on seeing the offending vehicle having stopped suddenly, there would have been collision between the offending vehicle and scooter driven by the deceased. That being so, it can safely be held that testimony of Surender Pal cannot be taken on its face value. However, the driver of offending vehicle also did not appear in the witness box to explain the circumstances under which the accident in question took place. Keeping in view the aforesaid, it can be concluded that deceased was not maintaining safe distance from the vehicle going ahead and for that reason, it would have struck against back side of the three wheeler when its driver applied sudden brakes. In this view of the matter, I find merit in contention of the insurance company that present is a case of contributory negligence

of the deceased and driver of offending vehicle. As two wheeler is a smaller vehicle and driver of the vehicle going ahead was required to apply the brakes after ensuring that there is no vehicle in close proximity following that vehicle, interest of justice would be served, if negligence to the extent of 30% is attributed to the deceased and 70% to driver of the offending vehicle. Accordingly, findings of the Tribunal on issue No.1 stand modified. As a natural consequence, claimants shall be entitle to 70% of compensation, assessed by the Court.

This brings the Court to compensation payable to the claimants. The deceased was a retired employee of Haryana Roadways, Kurukshetra. He was getting pension @ Rs.8980/-, proved by Ram Charan PW2. The family is getting pension of Rs.5388/-. When examined in the light of judgment of this Court **Charanjit Singh Vs. Harish Kumar Sachdeva and others, FAO No.10228 of 2014 and connected cases, decided on 30.01.2018**, claimants shall be entitle to difference of the two pensions namely Rs.3592/- (8980 – 5388).

The deceased was 61 years old at the time of death. There is nothing on record suggestive of the fact that he has lost his working capacity on account of some disability. Taking a clue from notification issued by the State of Punjab fixing minimum wage coupled with that deceased was a blacksmith retired from Haryana Roadways, Kurukshetra, post retiral income of the deceased is assessed at Rs.4500/- per month. The total loss of monthly income is Rs.8092/-. As the deceased was in the age

bracket of 61 to 65 years, admissible multiplier is 7.

The application for compensation has been filed by the widow, widowed mother, two married daughters and two sons of the deceased. One of the sons is unmarried and stated to be mentally impaired. In the given circumstances, admissible deduction would be 1/4th. Accordingly, loss of dependency is calculated at Rs.5,09,796/- [(8092 x 12 x 7) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.5,79,796/-. Claimants shall be entitle to 70% thereof i.e. 4,05,857/-. Compensation assessed by the Tribunal is reduced to the extent of Rs.5,16,723/- (9,22,580 – 4,05,857). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, appeal filed by the insurance company is partly allowed and appeal filed by the claimants stands dismissed.

14.10.2019

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Whether speaking/reasoned:

Whether reportable:

(REKHA MITTAL)

JUDGE

Yes / No

Yes / No