

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

(1) FAO No.5158 of 2015 (O&M)

Date of Decision: 2.12.2019

Rakesh Gulati (since deceased) through LRs

....Appellants

Versus

Sanjiv Kumar and others

.....Respondents

(2) FAO No.5161 of 2015 (O&M)

Rakesh Gulati (since deceased) through LRs

....Appellants

Versus

Sanjiv Kumar and others

.....Respondents

(3) FAO No.5162 of 2015 (O&M)

Rakesh Gulati (since deceased) through LRs

....Appellants

Versus

Sanjiv Kumar and others

.....Respondents

(4) FAO No.5163 of 2015 (O&M)

Rakesh Gulati (since deceased) through LRs

....Appellants

Versus

Sanjiv Kumar and others

.....Respondents

(5) FAO No.5164 of 2015 (O&M)

Rakesh Gulati (since deceased) through LRs

....Appellants

Versus

Sanjiv Kumar and others

.....Respondents

(6) FAO No.5165 of 2015 (O&M)

Rakesh Gulati (since deceased) through LRs

FAO-5158-2015 (O&M)

-2-

....Appellant

Versus

Sanjiv Kumar and others

.....Respondents

(7) FAO No.5522 of 2015 (O&M)

Sanjiv Kumar

.... Appellant

Versus

Dinesh Kumar @ Chhotu and others

..... Respondents

(8) FAO No.5526 of 2015 (O&M)

Surinder Kumar Khurana and another

.... Appellants

Versus

Dinesh Kumar @ Chhotu and others

..... Respondents

(9) FAO No.5909 of 2015 (O&M)

Sanjiv Kumar and another

.... Appellants

Versus

Dinesh Kumar @ Chhotu and others

..... Respondents

(10) FAO No.6190 of 2015 (O&M)

Sanjiv Kumar and another

.... Appellants

Versus

Dinesh Kumar @ Chhotu and others

..... Respondents

(11) FAO No.6192 of 2015 (O&M)

Sanjiv Kumar

.... Appellant

Versus

Dinesh Kumar @ Chhotu and others

..... Respondents

(12) FAO No.6197 of 2015 (O&M)

Sanjiv Kumar

.... Appellant

Versus

Dinesh Kumar @ Chhotu and others

..... Respondents

(13) FAO No.5939 of 2015 (O&M)

National Insurance Company

....Appellant

Versus

Sanjiv Kumar and others

.....Respondents

(14) FAO No.5940 of 2015 (O&M)

National Insurance Company

....Appellant

Versus

Surinder Kumar Khurana and others

.....Respondents

(15) FAO No.5941 of 2015 (O&M)

National Insurance Company

....Appellant

Versus

Sanjiv Kumar and others

.....Respondents

(16) FAO No.5942 of 2015 (O&M)

National Insurance Company

....Appellant

Versus

Sanjiv Kumar and others

.....Respondents

(17) FAO No.5943 of 2015 (O&M)

National Insurance Company

....Appellant

Versus

Sanjiv Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Jagjit Singh Chatrath, Advocate, for the appellants in FAO-5158, 5161 to 5165 of 2015.

Mr. Harsh Aggarwal, Advocate, for the National Insurance Company Limited.

Mr. R.S. Rana, Advocate, for the claimants.

Mr. Pardeep Goyal, Advocate, for United India Insurance Company Limited.

Mr. Varun Katyal, Advocate, for Cholamandalam Investment and Finance Company Limited.

NIRMALJIT KAUR, J. (ORAL)

All the above mentioned appeals shall stand decided by this common order and judgment, as the same arise out of a common award.

FAOs No.5158, 5161 to 5165 of 2015 are filed on behalf of the legal heirs of the deceased-Rakesh Gulati, owner-cum driver of the truck No.HR-37C-5318.

FAO Nos.5939 to 5943 of 2015 are filed by the National Insurance Company Limited, which is insurer of the Alto car.

FAO Nos.5522, 5526, 5909, 6190, 6192 and 6197 of 2015 filed by the claimants/appellants for enhancement of compensation awarded to them by the Tribunal vide impugned award dated 08.05.2015.

As per the brief facts, one Alto car carrying seven passengers including the driver, were returning home after attending a wedding in the night at about 12:20 am. In front of the said car, a truck bearing No.HR-37C-5318 was also moving ahead. When the said car reached at Toll Plaza at Pehowa Road, one Alto car hit the truck from behind and dashed into rear side of the truck. As a result of this collision, one of the occupants of the car

suffered injuries, whereas, other passengers, namely, Baldev Raj driver of the car, Himanshu, Bhomik Khurana, Bimla Devi, and Shalini etc. died on account of fatal injuries suffered by them.

FIR No.37 was lodged by one Sanjiv Kumar on the next day on 9.2.2012 with the Police Station Pehowa under Sections 279/337/304-A/427 IPC. One of the issues framed is as under:-

“1) Whether the accident in question took place due to rash and negligent driving of truck No.HR-37C-5318 by respondent No.1 or there was contributory negligence while driving the car bearing HR-41B-3553 or truck No.HR-37C-5318 by their drivers namely Baldev Raj, father of Sanjiv Kumar, and Dinesh Kumar, respectively resulting into injuries to Sanjiv Kumar and deaths of Himanshu, Baldev Raj, Smt. Shalini, Smt. Bimla and Bhomik?OPP”

The Tribunal while deciding the said issue held that the driver of the offending vehicle i.e. the truck was negligent but went on to say that the responsibility of negligent driving cannot be attributed to the driver of the offending vehicle i.e. truck No.HR-37C-5318, namely, Dinesh Kumar alias Chhotu, who was respondent No.1 in the claim petition and fastened the contributory negligence upon the driver of the Alto car as well. With regard to payment of compensation, the Tribunal held in Para Nos.66 and 67 as under:-

“66. In view of the principles laid down above, by the Hon'ble Apex Court, it is apparent that qua the claim petition with regard to death of Baldev Raj Khurana, the principle of contributory negligence is to be adopted and therefore, in the claim petition No.291 of 2013 the liability to pay compensation, after severing the share of liability of deceased Baldev Raj, is upon the driver and owner of the offending vehicle.

67. As far as, the claim petitions with regard to injury of Sanjiv and deaths of Himanshu Khurana, Smt. Shalini, Master Bhomik, and Smt. Bimla Devi are concerned, they were travelling in the ill fated Alto car. They had not contributed in any act which caused the accident. The driver and owner of the Alto car Baldev Raj Khurana has expired and therefore, qua these claim petitions, the principles of composite negligence is to be adopted and therefore, in the remaining claim petitions, the liability to pay compensation is placed upon the driver and owner of the offending vehicle and insurer of the Alto car jointly and severally.”

Hence, the legal heirs (respondent No.2 (i) to (iv)) of Rakesh Gulati-deceased, who was the owner of truck No.HR-37C-5318 along with the driver, and owner of the alto car were held responsible. The insurer of the alto car made liable to pay the compensation jointly and severally alongwith the driver and owner of the offending vehicle.

While praying for setting aside the award of the Tribunal, learned counsel for the appellant-Insurance Company submitted that the Tribunal has erred in holding that the driver-cum-owner of the alto car was negligent. It was contended that the sole eye witness Sanjiv Kumar deposed as PW-1 and has proved the rash and negligence of the driver and offending vehicle of respondent No.1, namely, Dinesh Kumar alias Chhotu and who has stated that the car was moving at a normal speed. The truck driver, who was driving the truck in rash and negligent manner with high speed did not take any precaution and gave no signals before braking abruptly. Had the driving of the truck been cautious, the accident would not have taken place. It has been held in para 35 of the award that no cogent evidence whatsoever has been adduced by the respondents (owner and driver of the truck).

Therefore, the negligence of the truck driver has been proved beyond

reasonable doubt. While dealing with the issue of the contributory negligence there is no evidence that the car driver was also negligent. He has decided on the conjectures and on supposition that the car driver must be driving at very high speed, who was at a distance of about 25 feet (8-9 yards). There cannot be an exact measure of the distance by any means there cannot be an exact measures of the distance between the offending truck and car that too at night hours by the passenger. Therefore, this conjectural measure could not be the basis for holding the car driver as negligent.

Heard.

The arguments raised by learned counsel for the appellant-Insurance Company deserve to be rejected. As per the evidence on record, when the accident took place at the Toll Plaza, Pehowa Road, a truck which was being driven by its driver stopped on being signalled. The car coming from behind and being driven by Baldev Raj, since deceased dashed into the rear side of the truck. As a result of impact of this collision, the front portion of the car got badly damaged. Baldev Raj, Himanshu and Bhomik Khurana succumbed to the injuries at the spot and Bimla Devi and Shalini took their last breath in the hospital.

Para No.37 of the award of the Tribunal deserves to be reproduced here:-

“In this regard, the testimony of PW-1, the eyewitness account of the accident is the only relevant evidence available on record. The perusal of contents of testimony of PW-1 show that in examination-in-chief, the entire thrust of PW-1 had been to establish that the driver of the offending vehicle was solely responsible for the accident in question but in the cross-examination, when PW-1 admitted that just before the accident the distance between their car and the offending vehicle was

25-30 feet and the brakes were applied by the driver of the offending vehicle abruptly, in my considered opinion, it is apparent that unless the Alto car being driven by deceased Baldev Raj Khurana was at a very high speed, there was no possibility that the driver of the car would not have been able to stop it within a distance of 25-30 feet. The above mentioned part of the statement of PW-1 in itself is an admission of the fact that the driver of the Alto car was driving either the car either at a very fast speed because of which he could not stop it within the gap of 25-30 feet or he could not notice, for whatever reason, that the driver of the offending vehicle was applying brakes. Unless any of the above mentioned two factors was in existence, there would not have been any accident. Therefore, in my considered opinion in the present case, the sole responsibility of negligent driving cannot be attributed to the respondent No.1 only.”

On the other hand, while observing that the driver of the offending vehicle i.e. truck No.HR-37C-5318 was being driven in rash and negligent manner, the Tribunal held as under:

“At Toll Plaza the employees of Toll Plaza gave a signal, with the help of torch to stop the truck and the truck driver without giving any signal or indication applied sudden brakes. That due to sudden stoppage of truck, Baldev Raj Khurana could not control the Alto car and the car dashed into the rear side of offending vehicle.”

From the above, it is evident that the accident took place at Toll Plaza. Every driver of the vehicle knows that he is about to approach the Toll Plaza. All vehicles normally slow down at the Toll Plaza. In the present case, it was not only the Toll Plaza, where every vehicle slows down, but the vehicle too was a truck which was heavily loaded. Thus the question of driving at fast speed cannot be believed. Every vehicle is required to stop a

Toll Plaza. Thus, the question that there was no indication of the truck suddenly coming to a stop cannot be accepted. Coupled with the above facts, the Alto car has hit the truck from behind. Thus, the fault if at all, lies with the Alto car. The possibilities of the fault at the end of the Alto car is furthered strengthen from the fact that the said car was not only over loaded but was also coming from a wedding in the late hours. It was, therefore, either at the high speed or was not keeping a safe distance. The Tribunal has rightly observed that in case, they were keeping a distance 25-30 feet, there is no question as to why they would not have noticed the truck coming to a halt. Hence, the driver of the offending vehicle was either at high speed or not keeping safe distance.

In these circumstances, it is not understood as to how the driver of the truck can be held negligent. The judgment rendered by Hon'ble the Apex Court in the case of Nishan Singh and others vs. Oriental Insurance Company Ltd. Through Regional Manager and others, 2018(2) RCR (Civil) 891 in almost similar set of circumstances held that Rules of Road Regulations, 1989 requires distance to be maintained from vehicle in front. It should be a safe distance of two to three seconds gap and in a case where a car was following a truck, no fault was attributed to truck driver and the entire blame was fastened upon the driver of the car for having hit the truck from behind. While deciding the question of contributory negligence, the Hon'ble Apex Court held in para No.10 of the aforesaid judgment as under:-

“10. The moot question is whether the Tribunal committed any error in answering issue No.1 against the appellants and in favour of the respondents. The Tribunal, while answering said issue No.1, analysed the evidence, both oral and documentary, including the charge-sheet filed by the appellants and observed thus:-

20.

21.By the facts mentioned in the petition and by the evidence of PW-1 and PW-2 it does not appear reliable that rash and negligent driving in the accident in question was on the part of the driver of the truck in question and for this purpose only by registering of FIR of said accident and submitted of charge-sheet against the driver of the truck in question, the driver of the truck in question cannot be held guilty for the said accident, whereas by the evidence of the petitioner on record this fact comes forward that the accident occurred as the driver of the car in question was not driving the car in question in accordance with traffic rules i.e. the accident occurred as the vehicle was not being driven maintaining proper distance from the truck and it appears clearly that the speed of the car would have been fast whereby the car in question collided with the rear part of the truck in question being uncontrolled and said accident took place. Under such circumstance there was no rash and negligence on the part of the driver of truck bearing No.U.P.-32 Z-2397 regarding the accident in question but the same is determined on the part of Manjeet Singh driver of Maruti Car bearing No.U.P.-02D-5292.

22..... The finding so recorded by the Tribunal has been affirmed by the High Court, by observing that the evidence was clearly indicative of the fact that the maruti car was being driven in a rash and negligent manner, which was the cause for accident of this nature and resulting in death of one of the passengers in the maruti car. The maruti car was driven by none other than PW-2 Manjeet Singh. In his evidence, he has admitted that the subject truck was running ahead of the maruti car for quite some time about one kilometre and at the time of accident, the distance between the truck and maruti car was only 10.15 feet. He has also admitted that the law mandates maintaining sufficient distance between two vehicles running in the same direction.

It is also not in dispute that the road on which the two vehicles were moving was only about 14 feet wide. It is unfathomable that on such a narrow road, the subject truck would move at a high speed as alleged. In any case, the maruti car which was following the truck was expected to maintain a safe distance, as envisaged in Regulation 23 of the Rules of the Road Regulations, 1989, which reads thus:

“23 Distance from vehicles in front:- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.”

The expression 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10-15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessarily follow the finding on the issue under consideration ought to be against the claimants.”

The present case is even better. The place was Toll Plaza, where every vehicle in any case is required to stop. The truck accordingly did stop. Hence, the vehicle behind should have known that the truck in front is likely to stop being a Toll Plaza. The failure to assess the same and dashing into the vehicle from behind can only be on account of fast, rash and negligent driving. Accordingly, the only conclusion, which can be drawn is as under:-

1. It was the driver of the Alto car that was negligent.
2. There was no contributory negligence or negligence on behalf of the driver of the truck.

Hence, the owner/driver of the truck is absolved of its liability.

The liability, therefore, is of the Insurance company of the Alto car alone.

In view of the above, FAO Nos. 5939 to 5943 of 2015 filed by the National Insurance Company Limited are dismissed being devoid of merit.

FAOs No.5158, 5161 to 5165 of 2015 filed on behalf of the LRs of the owner of the truck are allowed and the award dated 8.5.2015 is set aside to the extent, vide which the driver and owner of the truck were held liable for contributory negligence. The insurance company of the Alto car is held liable to pay compensation.

The amount of ₹ 25,000/- deposited by the appellant in FAOs No.5158, 5161 to 5165 of 2015 be refunded accordingly.

FAO-5522-2015

The appellant-claimant herein seeking enhancement on account of the injury suffered by him. The claimant herein spent almost ₹ 2 lakhs on his medical bills and surgery etc. whereas only an amount of ₹ 2,43,000/- has been granted. Only ₹10,000/- for pain and suffering, ₹ 15,000/- for transportation and ₹ 18,000/- for loss of income has been granted.

Learned counsel for the parties agreed that the said amount can be enhanced by another amount of ₹ 50,000/-.

In view of the agreed position, the enhanced amount of ₹ 50,000/- as well as over and above the amount already awarded shall be paid to the claimants towards the injury suffered by him. The said amount shall be paid to appellant within two months from the receipt of certified copy of this order along with interest as granted by the Tribunal.

The appeal is disposed of accordingly.

FAO-5526-2015

In this case, the deceased was 22 years of age.

Learned counsel for the appellants while praying for enhancement submitted that the income has been assessed on the lower side. The deceased was a student of B.Tech.

However, the said argument has no merit.

Admittedly, the deceased was still a student, ₹ 10,000/- has been assessed as income which was as per the settled proposition of law.

Learned counsel for the Insurance Company on the other hand submitted that the same too is on the higher side and the future prospects should have been 40% instead of 50%.

Accordingly, this Court finds that there is no reason to interfere in the income assessed as ₹10,000/-. However, the amount of compensation towards future prospects have to be reduced to 40% in view of the judgment rendered in the case of **National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157.**

The amount of compensation shall now stand modified as per the calculation provided under :-

Sr. No.	Head	Amount Assessed
1	Income	Rs.10,000/-p.m.
2	Future prospects @ 40%	Rs.10,000 @ 40%=4000 10000+4000=14,000
3	Total annual income	Rs.14000x12=Rs.1,68,000
4	50% deduction	1,68,000@ 50%=84,000
5	Multiplier	84,000x18=15,12,000
6	Conventional heads	70000
7	Total	Rs.15,82,000/-
8	Compensation awarded by the Tribunal	Rs.16,45,000/-

Thus, the total amount of Rs.15,82,000/- is awarded to the claimants. The said amount be now deposited, if already not deposited within two months from today alongwith interest as per the award passed by the Tribunal. However, in case excess amount beyond Rs.15,82,000/- has been deposited by the insurance company, the same shall be recovered. The award of the Tribunal accordingly stands modified as above. Disposed of.

FAO-5909-2015

In the present case, the deceased was 28 years old.

Learned counsel for the claimants, in the present case, does not press his appeal as the compensation has been granted is adequate.

No such argument has been raised by learned counsel for the claimants to show that the said amount can be reduced in any manner.

Accordingly, this appeal is dismissed.

FAO-6190-2015

The deceased in this case was 56 years old. He was owner of the vehicle and was also driving the said vehicle. He has been granted compensation to the tune of Rs.11,05,450/-. Although, 50% were deducted due to contributory negligence.

Learned counsel for the Insurance Company, however, while disputing the prayer for enhancement submitted that the amount rather requires to be reduced. In view of the finding recording by the Tribunal as well as by this Court as is evident from above, he alone was responsible and negligent, if it is so, he is entitled to a maximum of only Rs.2 lacs under the policy.

Learned counsel for the claimants does not dispute the settled proposition of law and the policy applicable.

Accordingly, the claimants are held entitled to only an amount of Rs.2 lacs. The said amount be paid to appellants within two months from the receipt of certified copy of this order alongwith interest as granted by the Tribunal.

The appeal is disposed of accordingly.

FAO-6192-2015

In this case, the deceased was only 4 years old boy. Only Rs.3,50,000/- has been granted as per the schedule under Section 163-A of the Motor Vehicles Act.

Learned counsel for the parties agree that the same can be enhanced to a total Rs.5 lakhs in view of the Schedule applicable for claim under Section 163-A of the Act and also relied for while granting claim under Section 166 of the Act as per the judgment rendered in the case of **Kishan Gopal and another Vs. Lala and others, 2013(5) Law Herald (SC) 4346.**

Accordingly, the enhanced amount of Rs.1,50,000/- along with the amount as per the award be paid to appellant within two months from the receipt of certified copy of this order alongwith interest as granted by the Tribunal.

The appeal is disposed of accordingly.

FAO-6197-2015

In this case, the deceased was 57 years old. The income was assessed as Rs.9,000/- taking her as housewife.

Learned counsel for the claimant while praying for enhancement submitted that she was an income tax-payee and as per income tax return, her income was Rs.15,000/- per month. Therefore, it should be

accordingly enhanced. Admittedly, the said income was on account of her having partnership of a firm. There is nothing on record to show that the legal heirs shall lose the benefits being recovered from the person after her death. Hence, the said argument does not help.

However, there is merit in the argument that the compensation towards conventional heads should be enhanced to Rs.70,000/- in view of the judgment rendered in the case of *National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157* whereas only Rs.25,000/-total were granted. Accordingly, the amount already awarded is enhanced by additional amount of Rs.45,000/- to be paid to the appellant within two months from the receipt of certified copy of order alongwith interest as granted by the Tribunal.

The appeal is disposed of accordingly.

The award dated 8.5.2015 is modified in the above terms.

(NIRMALJIT KAUR)
JUDGE

2.12.2019

sharmila/anju

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No