

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

1) **FAO No.4570 of 2016**
Date of Decision: 23.01.2019

The Oriental Insurance company Limited

....Appellant

versus

Shibbo and others

....Respondents

2) **FAO No.6053 of 2016**

Shibbo and others

....Appellants

versus

Sandeep and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Rohit Goswami, Advocate, for
Mr. D. P. Gupta, Advocate,
for the appellant in FAO no.4570 of 2016, and
for respondent no.3 in FAO no.6053 of 2016.

Mr. Rohit Chaudhary, Advocate, for
Mr. Munish Mittal, Advocate,
for the appellants in FAO no.6053 of 2016 and
for respondents n.1 to 4 in FAO no.4570 of 2016.

Mr. Nikunj Dhawan, Advocate, for
Mr. M. S. Khullar, Advocate,
for respondents no.5 and 6 in FAO no.4570 of 2016 and
respondents no.1 and 2 in FAO no.6053 of 2016.

AMOL RATTAN SINGH, J.

These two 'cross appeals' both arise out of the Award of the
learned Motor Accident Claims Tribunal, Karnal, dated 12.09.2016, with FAO

no.4570 of 2016 instituted by the insurance company that had insured the vehicle owned by respondent no.2 in the said appeal, and FAO no.6053 of 2016 having been instituted by the claimants before the Tribunal.

2. The facts leading up to the filing of the claim petition are that, as per the claimants, Inder Singh (husband of appellant no.1 and father of appellants no.2 to 4 in FAO no.6053 of 2016), was going on (driving) a three-wheeler bearing registration no.HR-45B-5272, between about 6:30 p.m. and 7:00 p.m. on 29.06.2015. When the three-wheeler reached Meerut Chowk, Karnal, a crane bearing registration no.HR-58A-0307 came from the Delhi side, driven by Sandeep (respondent no.1 in FAO no.6053 of 2016 and respondent no.5 in FAO no.4570 of 2016) in a rash and negligent manner, and struck against the three-wheeler, due to which it over turned, with the crane having also hit a Mahendra 'Pick up' vehicle in which Partap Singh (later PW2) was travelling, with the 'pick up' also having over turned and several persons having received injuries.

Inder Singh, unfortunately died on the spot, with the driver of the crane having run away from there.

3. Inder Singh was stated to be 40 years of age, working as a driver on an auto rickshaw and is also contended to have been running a milk dairy, with his monthly income being Rs.20,000/-.

The claimants further claimed to have spent Rs.50,000/- on his treatment, transportation and last rites.

[It is to be noticed that though in paragraph 2 of the Award of the learned Tribunal, it is stated that the claimants' claimed to have spent the aforesaid sum even on his treatment, subsequently, in paragraph 11, while discussing the testimony of the eye witness, PW2, it has been stated that Inder

Singh had died on the spot.]

Further contending that Inder Singh was in good health prior to his death, with the claimants not only having lost his love and affection but also his earnings, Rs.50,00,000/- was claimed by way of compensation.

4. Upon noticed issued by the learned Tribunal, the driver, owner and insurer of the aforesaid crane bearing registration no.HR-58A-0307, all appeared and filed their written statements, with the driver and owner in their joint written statement, other than taking the usual preliminary objections, contended that a false case had been registered against respondent no.1 as he was not at fault in causing the accident.

The insurance company (presently the appellant in FAO no.4570 of 2016) in its separate written statement also took the same usual preliminary objections of lack of cause of action, *locus standi* etc. and further claimed that the driver of the crane was not carrying a valid and effective driving licence, further denying the other averments made in the claim petition.

5. On the aforesaid pleadings of the parties, the following issues were framed by the Tribunal:-

- “1. Whether the accident in question took place on 29.6.2015 in the area of P.S. City, Karnal, on account of rash and negligent driving of vehicle bearing no.HR-58A-0307 being driven in rash and negligent manner by respondent no.1 resulting into death of Inder Singh? OPP
2. If issue no.1 is proved, whether the claimants are entitled to any compensation, and if so, how much and from whom? OPP
3. Whether the respondent no.1 was not holding valid and effective driving licence at the time of accident? OPP
4. Whether the claimants have got no locus standi to file and maintain the present petition? OPR

5. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR
6. Relief.”

6. The claimants examined the first claimant, Shibbo, as PW1 and the aforementioned eye witness, Partap Singh, as PW2, and by way of documentary evidence also produced the report submitted under Section 173 Cr.P.C. in the criminal case registered, a copy of the site plan of the accident and a copy of the charge sheet issued, as Exs. P11 to 13 respectively.

The respondents not having examined any witness, they however had tendered documentary evidence, including a copy of the insurance policy, a copy of a registration certificate, a fitness certificate and the driving licence of Sandeep, as Exs.R1 to R4 respectively.

7. As regards the issue of negligence leading to the accident, the learned Tribunal relied on the testimony of the eye witness, Partap Singh PW2, travelling in the 'pick up' as already noticed, which was also hit by the crane, other than having hit the three-wheeler driven by the deceased; with the said witness having described the occurrence in detail, and his testimony not found to be 'dented' in cross-examination.

It was also found that the FIR was lodged promptly, with the respondents not having examined even the crane driver, Sandeep (respondent no.1 in FAO no.6053 of 2016).

Further, relying upon the fact that a *challan* had also been presented and a charge framed against Sandeep by the trial court, eventually he was held negligent in causing the accident.

8. On the issue of compensation to be paid to the claimants, Inder Singh was held to be 42 years old, with his date of birth given on the Aadhar card being 10.03.1973, though his post mortem report showed to be him 38

years old.

9. As regards his income, no proof having been shown that he was running any dairy farm and even no evidence having been actually led that he was an auto rickshaw driver, he was taken to be a casual labourer, with the income of such labourer in district Karnal held to be Rs.8100/- per month.

30% of that amount was added by the Tribunal by way of loss of prospects of an increased income in the future, thereby bringing his monthly income to Rs.10,530/-, from which 1/3rd was deducted towards his personal expenses, and consequently the monthly loss of dependent income for the claimants (including loss of future prospects thereof), found to be Rs.7020/-, or Rs.84,240/- per annum.

10. The multiplier applied to that amount was 15, with the total loss of income to the claimants found to be Rs.12,63,600/-.

They were held entitled to a sum of Rs.25,000/- for funeral expenses and conveyance charges and Rs.1,00,000/- towards loss of estate and love & affection, with his widow (appellant no.1 in FAO no.6053 of 2016) also awarded Rs.1,00,000/- for loss of consortium.

11. Hence, the total compensation awarded by the Tribunal was Rs.14,88,600/-, upon which interest @ 9% per annum was also awarded, running from the date of filing of the claim petition till its realisation.

12. As regards the liability to pay the compensation, all three respondents, i.e. the driver, owner and insurer of the vehicle were held to be jointly and severally liable to pay it.

The driving licence of Sandeep was found to be valid upto 03.05.2018, with the registration certificate of the crane as also its fitness certificate, all also found to be valid.

It was also held that as no evidence was adduced by the insurance company to prove that any terms and conditions of the policy were violated, or that the driving licence was actually fake and fabricated, it was held liable to indemnify the owner, Manoj Kumar (i.e. respondent no.6 in FAO no.4570 of 2016 and respondent no.2 in FAO no.6053 of 2016), as regards the compensation to be paid to the claimants.

13. On the aforesaid findings, compensation of Rs.14,88,600/- was awarded alongwith the interest @ 9% per annum running thereon from the date of filing of the claim petition till its realisation, as already noticed, with such compensation apportioned amongst the four claimants, i.e. the widow and three minor children of the deceased as shown in paragraph 21 of the Award, such apportionment not having been challenged by the appellants-claimants.

14. It is to be noticed at this stage that though in the grounds of appeal filed by the insurance company in FAO no.4570 of 2016, it has been stated that the claimants “miserably failed to prove that the accident in question had taken place on account of rash and negligent driving of the crane by its driver”, however, Mr. Gupta, learned counsel for the insurance company could not find any argument to disturb the finding on the negligence that caused the accident, with the driver of the crane not having stepped into the witness box, there being thereby no contrary version available as regards the occurrence, with it not proved even before this court in any manner, that the FIR registered against driver Sandeep was in any manner collusive, or that even the charge sheet issued by the competent court seized of criminal case registered against him, is assailable as regards the claim petition, for this court to draw an inference that he actually was not negligent in causing the accident.

It has also been stated in the grounds of appeal that the eye

witness, PW2 Partap Singh, admitted in his cross-examination that the deceased fell on the road on account of the auto rickshaw over turning; however, it is not explained anywhere as to how it would suddenly over turn on its own, without it having been hit by the crane, which, to repeat again, is also stated to have hit the 'pick up' vehicle that the eye witness was stated to be travelling in.

PW2 was found to have testified that when he was going from Baroli Bridge side to Karnal on a Mahindra pick up vehicle, on 29.06.2015, when he reached the Meerut Chowk at Karnal, a three wheeler bearing registration no.HR-45B-5272 also came there and was in the process of crossing the Meerut road after getting a signal from the traffic police official, but in the meantime, crane no.HR-58A-307 also came there from the Delhi side, being driven by respondent no.1 in a rash and negligent manner, and without a blowing horn it struck against the three wheeler, as a result of which the three-wheeler over turned and the crane hit against his vehicle, Mahendra pick up. He was further found to have testified that his Mahindra pick up vehicle also over turned, and that the passengers in the three wheeler received injuries, with one person whose name was later revealed to be Inder Singh, having died on the spot due to the injuries suffered by him in the accident.

The driver of the crane was stated to have fled away from the spot.

Thus, with the aforesaid testimony of PW2 not having been shown to be false even before this court, I see no ground to interfere with the finding of the learned Tribunal on issue no.1, which finding is therefore upheld.

15. As regards the compensation assessed by the Tribunal, when this case had come up for hearing on 01.11.2018, on the basis of arguments addressed by learned counsel the following order had been recorded by this court:-

“Mr.Gupta, learned counsel for the appellant-insurance company (in FAO-4570-2016), submits that the income of the deceased has been erroneously taken to be Rs.8100/- by the Tribunal, with the accident having taken place on June 29, 2015, on which date the minimum wages notified by the Government of Haryana, for an unskilled worker, were Rs.5,812.75. Though correctly, in the opinion of this Court the notification should actually have been led by way of evidence before the Tribunal, however, those being summary proceedings out of which these appeals have arisen, and the said notification having been perused by this Court, it is seen that w.e.f. 01.07.2015, i.e. two days after the accident in which the deceased unfortunately lost his life, the minimum wages prescribed were Rs.5,886.67 for an unskilled worker, with that amount revised to Rs.7,600.00, w.e.f. 01.11.2015.

Therefore, in my opinion the minimum wages as on 29.06.2015, can be reasonably taken to be Rs.6,000/- because though for the past two years prior thereto the notifications show an increase of about Rs.100 to Rs.200 every six months, the increase between 01.07.2015 to 01.11.2015 is shown to be Rs.1,800/-.

Thus, taking Rs.6000/- per month to be the income of the deceased, learned counsel for the parties would calculate the amount payable to the claimants, i.e. the appellants in FAO-6053-2016, in terms of the ratio of the judgment of the Supreme Court in “**National Insurance Company Ltd. vs. Praney Sethi**”, (2017) 16 SCC 680 read with “**Sarla Verma and others vs. Delhi Transport Corporation and another**” 2009(3) RCR (Civil) 77, to determine the exact compensation payable, it now only being an 'arithmetical formula' to be applied.

Adjourned to 02.11.2018.

To be shown in the urgent list.

A photocopy of this order be placed on the file of the connected case.”

Pursuant to the above order passed, on the next day, i.e. on 02.11.2018, Mr. Gupta, learned counsel for the appellant in FAO no.4570 of 2016, had submitted the following calculations:-

“Calculations

Amount of income as assessed	:Rs. 6,000/- per month
40% Future prospects	:Rs. 2,400/-
Total	:Rs. 8,400/-
Self Expenses $\frac{1}{4}$	:Rs. 2,100/-
Dependency	:Rs. 8400/- (-) 2100/- = Rs. 6300/- per month, i.e. Rs. 6,300/- x 12 = 75,600/- per annum
Multiplier	: 15
Compensation for dependency	: Rs. 75,600/- x 15 = Rs. 11,34,000/-
Consortium	: Rs. 40,000/-
Loss of Estate	: Rs. 15,000/-
Funeral Expenses	: Rs. 15,000/-
Total	: Rs. 11,34,000/- + Rs. 40,000/- +Rs. 15,000/- + Rs. 15,000/- = Rs. 12,04,000/-”

17. Mr. Munish Mittal, learned counsel for the claimants (appellants in FAO no.6053 of 2016, had however submitted at that stage that higher compensation having been awarded by the Supreme Court under the head of loss of love and affection/“filial”, even 'beyond the ratio' of the judgment of the Constitution Bench in National Insurance Company Ltd. v. Pranay Sethi (2017) 16 SCC 680, claimants no.2 to 4, i.e. the minor children of the deceased would be entitled to such compensation, other than the compensation awarded by the Tribunal to the first claimant, i.e. the widow of the deceased, under the head of loss of consortium.

However, he could not deny that as regards the sum of Rs.1,00,000/- also awarded to her by way of loss of love and affection, that was not sustainable in terms of the ratio of *Pranay Sethis'* case (supra).

18. In fact, it was to consider the aforesaid argument only, that judgment had been reserved in these two appeals, which had been clubbed for that purpose alongwith FAO no.3830 of 2017 (Renu and others v. Kuldeep @ Babloo and others), in which also judgment was reserved on the same date. Judgment in FAO no.3830 of 2017 has also been pronounced today, in which, on that issue, it has been held as follows, (with the entire consideration on the issue given in that case, being reproduced here also):-

“26. On the question of compensation under the head “loss of filial (love)”, it is to be noticed by this court that the judgment in Pranay Sethis' is one delivered by a Constitution Bench consisting of 5 hon'ble Judges, the matter having been referred to that Bench in view of diversity of opinions expressed by different Benches, specifically in Reshma Kumari v. Madan Mohan 2013 (2) RCR (Civil) 660 and Rajesh and others v. Rajbir Singh and others, 2013 (3) RCR (Civil) 170.

27. Their Lordships having gone through the entire history of litigation on the subject, finally held in Pranay Sethis' case as follows:-

“(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future

prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

Thus, other than compensation to be awarded for loss of actual income + loss of future prospects of an increased income (depending upon the age of the deceased), the Supreme Court has held that under the “conventional heads”, a total amount of Rs.70,000/- only is to be awarded as compensation to the legal heirs of the deceased, with that amount to be increased @ 10% every 3 years.

The three heads under which the total amount of

Rs.70,000/- is to be awarded is as follows:-

- | | | |
|------|--------------------|-------------|
| i) | Loss of estate | Rs.15,000/- |
| ii) | Loss of consortium | Rs.40,000/- |
| iii) | Funeral expenses | Rs.15,000/- |

Hence, other than for loss of consortium, no other amount has been ordered to be paid for loss of love and affection.

Loss of consortium literally would mean compensation to be paid only to the remaining spouse, that word being derived from the word 'consort', which, as per its dictionary meaning, is a wife or a husband.

In *Magma General Insurances'* case (supra), however, the Supreme Court recorded as follows on what is meant by consortium:-

“In legal parlance, “consortium” is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.”

Their Lordships further went on to explain in detail, what is meant by 'spousal consortium', 'parental consortium' and 'filial consortium', and eventually held as follows:-

“The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).”

(Emphasis applied in the present judgment only)

Thereafter, it was further held as follows:-

“In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of Filial Consortium.”

28. That being so, it is obvious that the amount of Rs.40,000/- each awarded to the father and sister of the deceased in that case, was in the specific circumstances of that case, and therefore would be deemed to be an exercise of jurisdiction by the Supreme Court in terms of the Article 142 of the Constitution.

This court would consequently be bound by the ratio of the Constitution Bench in *Pranay Sethis'* case, (even as held in *Magmas'* case) by which loss of consortium has been restricted to Rs.40,000/- (initially for a period of 3 years from the date of that judgment, after which it is to be increased every 3 years by 10%).
”

(All words in italics hereinabove are reproduced from the Supreme Courts' judgment in *Magma* (supra)).

19. Thereafter, in *Renus'* case (supra), this court had specifically also rejected the contention of counsel for the claimants in that case, that the children of the deceased are to be awarded compensation for loss of love and affection separately, by holding as follows:-

“30. That being so, the contention of Mr. Kodan, learned counsel for the appellants, to the effect that this court would follow the ratio of the judgment in *Magma General Insurance Limited*, is absolutely correct, because even in that case, their Lordships have held that the law laid down in *Sethis'* case has to be followed.

However, Mr. Kodans' contention that therefore compensation for “loss of filial” is to be separately awarded to the children and mother of the deceased in the present case, i.e. to appellants no.2 to 4 in FAO no.3830 of 2017, is rejected, even in terms of what is held in *Magma General Insurance Limited*, to the effect that compensation under the head of loss of consortium would be paid as laid down in *Pranay Sethis'* case. To repeat, in fact Rs.40,000/- each awarded to the father and sister of the deceased in *Magmas'* case, for loss of 'filial consortium', in the circumstances of that case, where the spouse of the deceased was not a claimant at all, he having been a bachelor aged 24 years, the higher amount of Rs.10,000/- (i.e. Rs.80,000/- instead of Rs.70,000/-), was obviously awarded by their Lordships exercising jurisdiction under Article 142 of the Constitution, and therefore, that is not *ratio decidendi* to be followed by this court,

it being a power conferred upon the Supreme Court alone, to do complete justice in any matter.

31. Consequently, as regards the issue of quantum of compensation to be paid to the claimants in the present case, it is directed that compensation for loss of consortium shall be restricted to Rs.40,000/-, with the ratio of apportionment made by the Tribunal in paragraph 21 of the impugned Award to be maintained, and with the additional amount of Rs.8,39,221/- as was already found to be payable by this court vide its order dated 02.11.2018, to be equally distributed amongst the 4 claimants, i.e. the widow, the minor children and the mother of the deceased.”

20. Hence, in view of what has been held in the judgment in *Renus'* case, on the issue of loss of compensation for love and affection being paid to the claimants only as a lump-sum not individually (except to the extent of any apportionment of Rs.40,000/- amongst the claimants), the calculations submitted by Mr. Gupta, in the present case, as reproduced in paragraph 16 hereinabove, are accepted.

21. As regards the liability to pay compensation, though in the grounds of appeal filed by the insurance company, it has also been stated that respondent Sandeep was not holding a valid driving licence, no arguments were actually addressed on that issue, because very obviously with the Tribunal having found that the licence was valid till 03.05.2018, the date of accident being 29.06.2015, it could not be held to be an invalid licence, it having been issued enabling the holder thereof to drive light and heavy transport vehicles, including an “HRV”.

Consequently, no arguments having been addressed that it was not a license to drive a crane, that finding of the Tribunal (on liability to pay compensation) is also upheld.

22. In view of what has been held above, the appeal of the appellants (claimants before the Tribunal), seeking enhancement of the compensation awarded, is to be dismissed, whereas the appeal filed by the insurance company (FAO no.4570 of 2016) is accepted to the extent that instead of Rs.14,88,600/-, the claimants (respondents no.1 to 4 in the said appeal), are held entitled to compensation of Rs.12,04,000/-.

Though normally this court would not award interest more than 6 to 7.5% per annum, however the Tribunal having awarded interest @ 9% per annum, running from the date of filing of the claim petition till realisation, that rate is maintained, because as correctly submitted by learned counsel for the appellant-claimants, the compensation has been reduced by this court.

23. In the light of the aforesaid discussion, FAO no.6053 of 2016, instituted by the claimants, is dismissed, whereas FAO no.4570 of 2016 instituted by the insurance company, is allowed to the extent aforesaid, the compensation having been reduced as held hereinabove.

No order as to costs.

January 23, 2019

dinesh

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

Yes