IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 6062 of 2015(O&M)**

Date of Decision: July *2* , 2019.

National Insurance Company Ltd. ...... APPELLANT(s)

Versus

Rajbala and others ...... RESPONDENT (s)

2. **FAO No. 7150 of 2015(O&M)**.

Prem and another ...... APPELLANT(s)

Versus

Kirpal Singh and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. B.S.Taunque, Advocate
for the appellant in FAO No.6062 of 2015 and
respondent No.3 in FAO No.7150 of 2015.

Mr. A.K.Gahlawat, Advocate
for respondents No.1 to 5 in FAO No.6062 of 2015 and
for the appellants in FAO No.7150 of 2015.

Mr. Liaqat Ali, Advocate
for respondent No.6 in FAO No.6062 of 2015 and
for respondent No.1 in FAO No.7150 of 2015.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This judgment shall dispose of FAO No.6062 of 2015 (National Insurance Company Ltd. v. Rajbala and others) and FAO No.7150 of 2015 (Prem and another v. Kirpal Singh and others), as both the appeals arise out of award dated 26.05.2015 passed by the learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as, the 'Tribunal').

Brief facts necessary for adjudication of the case are that, a petition under Section 166 of the Motor Vehicles Act (in short, 'the Act') was filed by the claimants i.e., parents, widow and two minor children of the deceased, seeking compensation on account of the death of Wazir Singh, who lost his life in a motor vehicle accident which took place on 13.06.2014. FIR No.142 dated 13.06.2014 (Ex.P5) under Sections 279/304A IPC was registered at Police Station Siwani in respect to the incident on the statement of PW2 Rajesh. The deceased-Wazir Singh was claimed to 27 years old and engaged in the work of supplying building material etc. He was also stated to be the owner of two goods vehicles, besides one Jeep, earning a sum of ₹50,000 to ₹60,000/- per month. Compensation was thus prayed for.

Following issues were framed by the learned Tribunal on the basis of pleadings of the parties:-

1. Whether the accident occurred on 13.6.2014 at about 4.00 a.m. on Jhumpa Siwani Road before Lilus turn in the aea of Police Station Siwani, causing death of Wazir Singh son of Sh. Bir Singh, took place due to rash and negligent driving of respondent No.1, while driving the offending vehicle i.e. Truck bearing registration No.PB-11BA/5125? OPP
2. If issue No.1 is proved, whether the petitioners are entitled to the

compensation, if so to what amount and from whom? OPP

3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident? OPR
4. Whether the insured has violated the terms and conditions of the insurance policy? OPR-2
5. Whether the present petition is not maintainable in the present form? OPR2
6. Relief.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of truck bearing registration No.PB-11BA-5125 by its driver, namely, Kirpal Singh and Wazir Singh lost his life in the said accident.

Learned Tribunal while assessing income of the deceased to be ₹8,000/- per month and affording an addition of 50% towards future prospects, awarded a total sum of ₹18,77,400/- to the claimants. Deduction to the extent of 1/4th was effected on account of personal expenses. ₹10,800/- was deducted towards income tax. Multiplier of 17 was applied. ₹1,00,000/- was awarded to claimant-widow on account of loss of consortium and another sum of ₹1,00,000/- was afforded to the claimants on account of loss of love and affection, besides, ₹25,000/- towards funeral expenses and transportation etc.

FAO No.6062 of 2015 has been filed by the Insurance company challenging its liability as well as the quantum of compensation. However, it is noticed that notice of motion was issued in this appeal limited to the extent of contributory negligence. FAO No.7150 of 2015 has been filed by the parents of the deceased-Wazir Singh seeking enhancement of compensation. Widow and two minor children have been arrayed as proforma respondents in this appeal.

Learned counsel for the Insurance company argues that as there was a head-on collision between the two vehicles, the element of contributory negligence is per-se proved, therefore, compensation awarded to the claimants should be reduced to the extent of at least 50%. It is further argued that the FIR in question was registered at the instance of Rajesh i.e., brother of the deceased, who is an interested witness. Furthermore, PW2 Rajesh stated that the canter in which the deceased was travelling, was being driven at the speed of 60 kilometer per hour (kmph), which also proves that the driver of the canter was guilty of contributory negligence. In case the canter driver had taken proper care and caution, the accident would never have occurred. It is submitted that the inspection reports which are part of the police record, reveal that there is contributory negligence on the part of the driver of the canter. Further, even if the said reports are ignored, the canter was driven at a high speed of 60 kmph by Rajesh, therefore, contributory negligence on the part of the canter is apparent on the face of it. It is thus prayed that the compensation awarded to the claimants be reduced accordingly.

Learned counsel for the claimants, however, submits that there is no evidence on record to prove contributory negligence on the part of the driver of the canter. It is further argued that the learned Tribunal has wrongly assessed income of the deceased to be ₹8,000/- per month. The deceased was admittedly the owner of three vehicles. He was regularly paying the installments of the loan taken for two of the vehicles. Moreover, it is proved on record that the deceased was in the business of selling building material like sand, crusher stone, cement etc. Reference is made to the statement of PW4 Rakesh son of Azad Singh, who proved the Bill Books, Ex.PW4/B to Ex.PW4/E. It is further submitted that the deceased had five persons working with him i.e., two drivers and two labourers, besides, PW4 Rakesh who was Munim of the firm. It is further submitted that deduction of income tax as effected by the learned Tribunal is not correct. It is however stated that compensation under the conventional heads be reworked in terms of the judgments of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680*** and **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.**, ***2018(4) RCR(Civil) 333***.

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

Learned counsel for the Insurance company vehemently argued that element of contributory negligence is apparent on the face of it and should, in any case, be presumed because there is admittedly a head-on collision between the two vehicles. Propounder of the FIR, PW2 Rajesh who is real brother of the deceased, has stated that the truck in question hit against the canter in which they were travelling (*Seedhi Takkar Maari*). It is thus argued that in case, driver of the canter had been careful, the accident in question could have been averted. A perusal of the record, however, does not lend any support to this argument raised by learned counsel for the Insurance company. There is indeed no positive evidence on record to indicate that the driver of the canter was guilty of contributory negligence. Learned counsel for the appellant-Insurance company is unable to point out any evidence on record to even suggest that in case due care and caution had been taken by the driver of the canter, the accident in question could have been prevented. Reference to the cross-examination of PW2 Rajesh son of Bir Singh to the effect that speed of the canter was 60 kmph or that the collision was head on, is of no avail to the appellant-Insurance company. There is not even a suggestion to the said witness, PW2 Rajesh that there was sufficient space available on its side towards which the canter could have been turned. Needless to say, in case of a head-on collision, the manner of driving of the vehicle in which the deceased was travelling has to be carefully scrutinized, but at the same time, the element of contributory negligence cannot be presumed in each and every case without reference to the evidence on record merely because there is a head on collision. At this stage, it is relevant to note that the driver of the offending vehicle has not even stepped in the witness box to depose about the manner in which the accident took place according to him. Therefore, in the given facts and circumstances, I do not find any ground, whatsoever, to interfere with the finding returned by the learned Tribunal on this issue. The same is accordingly upheld.

It is proved by the evidence on record that Wazir Singh died in a motor vehicle accident which took place on 13.06.2014 due to the rash and negligent driving of the offending truck bearing registration No.PB-11BA-5125 by its driver. Wazir Singh was 27 years old at the time of the accident. Learned Tribunal in a surprising manner observed that there is no proof of income on the file, therefore, his income was assessed as ₹8,000/- per month, whereas there is ample evidence on record to indicate the income of the deceased. A perusal of the record reveals that the claimants have examined PW3 Manish Kumar, Senior Manager, Shriram Transport Finance Company to prove on record, the two loans taken by the deceased for purchase of two vehicles i.e., one in respect to vehicle no. HR47-5436 (i.e., canter in which the deceased was travelling) and the other in respect to vehicle no. HR66-1048 (Pick-up Dala). PW3 Manish Kumar, Senior Manager testified that loan for vehicle no.HR47-5436 was sanctioned on 19.12.2012 for ₹1,30,000/- with the agreement value of ₹1,54,016/-. The said amount was repayable in 13 monthly installments of ₹11,838/-. PW3 Manish Kumar further testified that the deceased was regularly paying the installments from 20.01.2014 to 20.05.2014. The remaining loan amount was waived off in June 2014 after the death of Wazir Singh. Account statement (Ex.PW3/A) in this regard was proved. He further proved the loan amount in respect to vehicle no. HR-66/1048, which was sanctioned in the name of Wazir Singh on 11.01.2012 for ₹1,50,000/- with the agreement value of ₹1,92,166/-. The said amount was repayable in 23 monthly installments of ₹8,310/-. The installments of the said amount were regularly deposited by the deceased from 11.01.2012 to 20.11.2013 and after his death, the future installments were waived off. Account statement in this regard was proved as Ex.PW3/B. It is thus apparent that at the time of his death, the deceased was regularly paying the said two installments of ₹11,838/- and ₹8,310/- per month i.e., a total sum of ₹20,148/-.

PW4 Rakesh son of Azad Singh, claimed himself to be a Munim of the firm of Wazir Singh i.e., Lather Building Material and Shattering Store. He claimed to have been working with the said Store since 2-1/2 years. PW4 Rakesh deposed regarding deceased-Wazir Singh, dealing in sale of building material like sand, crusher stone, cement etc., besides, letting out shattering material on hire basis. At the same time, in the absence of any specific documentary evidence, it cannot be held that the deceased-Wazir Singh was earning a sum of ₹50,000 to ₹60,000/- per month. However, the very fact that the deceased was repaying two loan installments as mentioned above i.e., ₹20,148/-, it is reasonable to assume that the deceased would have been earning at least a sum of ₹35,000/- per month. The claimants in this case are parents, two minor children and widow of the deceased. Therefore, income of the deceased is assessed as ₹35,000/- month, instead of ₹8,000/- per month. After applying the necessary deduction as applicable (10%) towards income tax for the financial year 2014-2015, income of the deceased is assessed as ₹4,04,550/- per annum (4,20,000 – 15,450).

As the deceased was 27 years old at the time of the accident, increment of 40% instead of 50% is afforded in terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Deduction of 1/4th towards personal expenses has been correctly effected by the learned Tribunal and is so applied. Multiplier of 17 has been rightly applied as well. Instead of ₹1,00,000/-, widow of the deceased is held entitled to ₹40,000/- towards loss of spousal consortium, both the minor children are entitled to ₹40,000/- on account of loss of parental consortium and parents of the deceased are entitled to ₹40,000/- towards loss of filial consortium in view of the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. (supra) as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others). Instead of ₹25,000/- on account of funeral expenses and transportation afforded by the learned Tribunal, ₹15,000/- each is awarded on account of funeral expenses and loss of estate.

Claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	4,20,000/- per annum
2.	Less income tax calculated @ 10% for the financial year 2014-2015	(4,20,000-15,450) = 4,04,550
3.	Total income after addition at the rate of 40% on account of future prospects	4,04,550 + (4,04,550 **x** 40%) = 5,66,370
4.	Dependancy after 1/4th deduction on account of personal expenses	5,66,370 – (5,66,370 **x** 1/4) = 4,24,777
5.	Total dependancy after applying a multiplier of 17	(4,24,777 **x** 17) = 72,21,209
6.	Loss of estate	15,000
7.	Funeral expenses	15,000
8.	Loss of spousal consortium to widow	40,000
9.	Loss of parental consortium to minor children	40,000
10.	Loss of filial consortium to parents	40,000
	Grand Total	₹73,71,209/-

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 on the entire amount at the rate of 7.5% per annum, instead of 6% per annum, from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the appellants and respondents No.3 to 5 (widow and two minor children) in FAO No.7150 of 2015 as determined by the learned Tribunal shall remain the same.

Copy of the judgment be conveyed to respondents No.3 to 5 in FAO No.7150 of 2015.

Valuable assistance rendered by Mr. Liaqat Ali, Advocate after inspection of the records, is appreciated.

Accordingly, FAO No.6062 of 2015 is dismissed and FAO No.7150 of 2015 is disposed of with the modification as above in the amount of compensation.

(LISA GILL)
JUDGE

July *2* , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No