IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO- 7767-2014 (O&M)
Date of Decision: February 27, 2019

Rajesh and another ...... Appellants(s)

Versus

Kamlesh and others ..... Respondent(s)

with

FAO- 8699-2014 (O&M)

Rajesh and another ...... Appellants(s)

Versus

Laxmi Narayan and another ..... Respondent(s)

with

FAO- 8715-2014 (O&M)

Kamlesh and others ...... Appellants(s)

Versus

Rajesh and others ..... Respondent(s)

with

FAO- 2820-2017 (O&M)

Laxmi Narayan ...... Appellants(s)

Versus

Rajesh and others ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Sushil Sheoran, Advocate for
Mr. R.A. Sheoran, Advocate
for the appellants in FAO Nos. 7767 & 8699 of 2014 and
for respondents no.1 & 2 in FAO No. 2820 of 2017 and
FAO No. 8715 of 2014.

Mr. Ajit Sihag, Advocate
for the appellant in FAO-2820-2017 and
for respondent no.1 in FAO-8699-2014.

Ms. Monika Singh, Advocate for
Mr. Anil Kumar Gahlawat, Advocate for the appellant
in FAO-8715-2014 and for respondents no.1 to 5
in FAO 7767 of 2014.

Mr. Sanjeev Goyal, Advocate
for HDFC ERGO insurance company.

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<u>LISA GILL, J. (oral)</u>

This order shall dispose of FAO No.7767 of 2014 (Rajesh and anr. Vs. Smt. Kamlesh and others), FAO No.8715 of 2014 (Smt. Kamlesh and ors. Vs. Rajesh and ors.), FAO No.8699 of 2014 (Rajesh and anr Vs. Laxmi Narayan and anr.) and FAO No.2820 of 2017 (Laxmi Narayan Vs. Rajesh and ors.) as all the above noted appeals arise out of a common award dated 21.04.2014, passed by the learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal).

FAO Nos.7767 and 8699 of 2014 have been preferred by the driver and owner of the offending vehicle, challenging the right to recover the compensation amount afforded to the insurance company.

FAO No. 2820 of 2017 has been filed by the claimant Laxmi Narayan seeking enhancement of the compensation awarded by the learned

Tribunal on account of injuries received by him in the motor vehicle accident, which took place on 11.09.2011.

FAO No. 8715 of 2014 has been filed by the legal heirs of the deceased Suresh seeking enhancement of compensation awarded on account of death of Suresh in the above said accident.

Brief consolidated facts necessary for the adjudication of all the appeals are that as per the averments in the claim petitions, Laxmi Narayan on 11.09.2011 along with Suresh (since deceased) was going from village Dhigawa Jatan to village Kudal Bass on a motorcycle bearing registration no. HR-18A-9125. Laxmi Narayan was riding the motorcycle and Suresh was the pillion rider. When they reached about one kilometer ahead of petrol pump in the area of village Dhigawa, a pick-up Dall bearing registration no.RJ-18G/2433 being driven by respondent no.1 in a rash and negligent manner, at a high speed, came from Bhiwani side and hit against the motorcycle. Due to the impact both the occupants of motorcycle fell down and suffered multiple grievous injuries on their person. After causing the accident, respondent no.1 fled from the spot, leaving behind the offending vehicle on the spot. Ram Bilas son of Hari Singh an eye-witness of the accident removed both the injuried to General Hospital, Bhiwani for treatment but due to their serious condition, they were referred to PGIMS, Rohtak. Suresh Kumar was firstly taken to Kajal Nursing Home, Bhiwani and then to PGIMS, Rohtak, where he succumbed to his injuries on 15.09.2011. It was pleaded that accident was caused solely due to rash and negligent driving of respondent no.1 and FIR No.151 under Sections

279/337 IPC was registered against him on 11.09.2011 at Police Station Loharu. Upon the death of Suresh, Section 304-A IPC was added subsequently.

Separate claim petitions were filed by Laxmi Narayan and LRs of Suresh claiming compensation.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that the accident in question took place on 11.09.2011 due to rash and negligent driving of offending vehicle bearing registration no. RJ-18G-2433 by its driver Rajesh son of Bhola Ram – respondent no.1. In respect to the claimant/injured Laxmi Narayan, learned Tribunal awarded a sum of Rs.1,65,488/- , the details of which is as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Medical bills and treatment charges	25,488/-
2.	Costs of transportation, special diet, attendant and loss of income	90,000/-
3.	Pain and sufferings	50,000/-
	Total	**Rs. 1,65,488/-**

In respect to the compensation on account of death of Suresh, learned Tribunal while assessing the income of the deceased to be Rs.5,200/- per month, awarded a sum of Rs. 7,68,800/- as compensation to the appellants-claimants, the detail of which is as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	5,200/- p.m.
2.	1/4th deducted as personal expenses of the deceased	5,200 - 1300 = 3,900/-
3.	Compensation after applying a multiplier of 16	3900 x 12 x 16 = 7,48,800/-
4.	Loss of Consortium, loss of estate and funeral expenses	20,000/-
	Grand Total	**Rs. 7,68,800/-**

It was further observed that the insurance policy stood cancelled as the cheque issued by the owner/insured was dishonoured, therefore, the insurance company was directed to satisfy the award while affording liberty to recover the amount from the insured.

Learned counsel for the appellants/owner-driver of the offending vehicle vehemently argues that the learned Tribunal has wrongly afforded the right of recovery to the insurance company. Intimation of the cancellation or of the dishonour of the cheque was never given to the owner. In this situation right of recovery should not have been afforded. In case intimation had been given, the premium amount would necessarily have been made good by the owner. At best, the insurance company was entitled to initiate proceedings under the Negotiable Instruments Act, 1938. It is submitted that official of the insurance company, PW-1 has admitted in his cross-examination that no separate notice was sent to the owner of the vehicle intimating him about the dishonour of the cheque or the cancellation of the policy except Ex.R-3. It is urged that Ex. R-3 is a fabricated document, which has been prepared subsequently in a fraudulent manner after coming to know of the accident in question. It is only an attempt to save the insurance company from its liability. It is, thus, prayed that the appeals filed by the owner-driver be allowed and right of recovery from the appellants - driver/owner be not afforded to the insurance company. However, no argument has been addressed on the quantum of the compensation awarded.

Learned counsel for the insurance company while refuting the said arguments submits that the *bona fides* of the insured are clearly absent as the cheque in question was issued from a dormant account. Moreover, balance in the said account i.e. Rs.1,263/- was not even sufficient as the premium amount was admittedly Rs.12,932/-. It is, thus, prayed that the appeals filed by owner -driver be dismissed.

FAO-7767-2014 and FAO-8699-2014

Undisputed fact is that the accident in question took place on 11.09.2011 due to the rash and negligent driving of the offending vehicle bearing registration No.RJ-18G-9125. Suresh lost his life in this accident and Laxmi Narayan sustained injuries. It has been held by the learned Tribunal that as the insurance policy was cancelled by the insurance company from its inception due to non-realization of the premium amount, the insurance company was entitled to recover the compensation amount from the owner after payment of the compensation amount to the claimants being the third party. Insurance company examined RW-1 Abhishek

Khushwaha, its own Assistant Manager who deposed that cover note dated 11.09.2011 (Ex. R-1) was issued in respect to the offending vehicle. Cheque No. 3782 dated 11.09.2011 drawn on Union Bank of India for a sum of Rs.12,932/- i.e. the premium amount for ensuring the vehicle from 11.09.2011 to 10.09.2012 was submitted by Rajesh Kumar to the insurance company. The said cheque was dis-honoured. The premium amount was not received, therefore, the policy was ultimately cancelled by the company. Intimation of cancellation of the policy was duly given by the company to Rajesh Kumar vide endorsement/letter Ex. R-3. Intimation regarding dis-honour of the cheque was received by the bank on 22.09.2011. Policy was cancelled on 27.09.2011 from the date of its inception.

RW-2 Anil Kumar, Clerk from the Union Bank of India specifically stated that cheque dated 11.09.2011 Ex.R-4 was dis-honoured due to status of the account being dormant. Letter Ex. R-5 in this regard was issued by the bank. Memo of returning the cheque dated 22.09.2011 is Ex.R6. Anil Kumar PW-2 further stated that when the cheque was presented on 22.09.2011, effective available amount in the account was Rs.1,263/- only. He denied the suggestion that the documents in question had been prepared by the bank at the instance of the insurance company.

RW-2 also proved on record ledger account inquiry report of the account as Ex.R-9, cheque clearing mark letter as Ex.R-10.

There is no merit in the arguments raised by the learned counsel for the appellant/owner of the offending vehicle. The accident in this case took place on 11.09.2011 i.e. the date on which cover note of the insurance policy was issued by the insurance company and the cheque of Rs.12,932/- towards the premium was submitted by the owner. It is a matter of record that the cheque in question has been issued qua an account which was admittedly dormant and the effective available amount in the said account was merely Rs.1,263/-. There is indeed no evidence on record to indicate much less prove that document Ex.R-3 i.e. intimation by the insurance company to the owner is a forged or a fabricated document. It is relevant to note at this stage that the owner of the offending vehicle i.e. the insured did not even step in the witness box. In the facts and circumstances of the case, there is no infirmity in the finding of the learned Tribunal that the insurance company is liable to pay the compensation amount to the claimants being the third party with a liberty to recover the same from the owner of the offending vehicle. It has been held by the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Laxmamma and others*** ***AIR 2012 SC 2817*** that

'under Section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void and person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get the money back'.

It is further observed that

In our view, the legal position is this : where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1)of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.'

Keeping in view the facts and circumstances of the case where the cheque of Rs.12,932/- has been issued from a dormant account with a balance of Rs.1,263/- and intimation Ex.R-3 by the bank being duly proved on record, there is no merit in both the appeals filed by the owner/driver of the offending vehicle.

FAO-2820-2017

Learned Tribunal while holding that no disability was suffered on account of the injuries received by the claimant Laxmi Narayan, awarded a sum of Rs.1,65,488/- to the claimant, which is detailed as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Medical bills and treatment charges	25,488/-
2.	Costs of transportation, special diet, attendant and loss of income	90,000/-
3.	Pain and suffering	50,000/-
	Total	**1,65,488/-**

Learned counsel for the appellant Laxmi Narayan submits that even if the claimant is taken to be a casual labourer earning minimum wages, loss of income for the period the appellant was unable to carry out his vocation should be afforded. All the bills in respect to medical expenses could not be produced as some of them were not available, thus the learned Tribunal should have afforded adequate compensation on this count. Moreover, meagre compensation has been awarded under the various heads by the learned Tribunal.

Learned counsel for the insurance company, however, submits that just and reasonable compensation has been awarded by the learned Tribunal which calls for no enhancement. Dismissal of this appeal is prayed for.

Perusal of the record reveals that PW-4 Pardeep Kamboj, Associate Professor, Department of Orthopedic, PGIMS Rohtak proved the medical record pertaining to claimant Laxmi Narayan. PW-4 stated that Laxmi Narayan was admitted with an alleged history of road side accident on

11.09.2011. Laxmi Narayan had 'sustained dislocation of right hip with fracture acetabulum right side with compound fracture both bones for arm right side with communion of distal and radius right side for which close reduction and traction was applied to right hip joint. Fracture distal and radius was managed by jess-fixature, radial head was excised and nailing of ulna was done under general anesthesia on 16.9.2011. Post operatively patient was managed by I.V., antibiotics, analgesic and daily dressings.' PW-4 further stated that Laxmi Narayan was discharged on 20.09.2011 with advice to follow up in the Out Patient Department (OPD). Claimant was again admitted for 'implant removal and soquetrectomy with wrist arthrodesis' on 9.6.2012. Operation was conducted on 9.6.2012 and the claimant discharged on 12.06.2012. A certificate 'Mark – H' i.e. 'Handicapped certificate for the persons with disabilities' issued by the President Handicapped Board, District Medical Office, Bhiwani is on record stating that the appellant Laxmi Narayan suffered disability of 70%. However, a perusal of this document reveals that it does not specifically indicate nature of the disability to be permanent. It is not mentioned whether the condition of the person is likely to improve or not. None has been examined to indicate that the claimant suffered any permanent disability due to the injuries suffered by him in the accident in question, however, at the same time it cannot be ignored that in view of the nature of injuries, the appellant could not have attended to his vocation for at least one year.

Minimum wages of a casual labour in the State of Haryana at the time of the accident were Rs. 4,967/- per month, therefore, taking the income of the claimant to be Rs.5,000/- per month, he is held entitled to loss of income for one year. Instead of the consolidated amount of Rs.90,000/- awarded by the learned Tribunal towards special diet, transportation, attendant charges and loss of income, the claimant is entitled to Rs.60,000/- (Rs.5000 x 12) towards loss of income. He is also held entitled to sum of Rs.10,000/- towards special diet, Rs.20,000/- towards attendant charges, Rs.8,000/- for transportation. It is relevant to note that at times it is indeed not possible for the claimant to produce all the bills qua the expenses on medical treatment, therefore, it is considered just and expedient in the facts and circumstances of this case to award a sum of Rs.30,000/- instead of Rs.25,480/- for medical treatment. The claimant is thus entitled to compensation detailed as hereunder:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Loss of income	60,000/- (5000 x 12)
2.	Expenses on medical treatment	30,000/-
3.	Pain and suffering	50,000/-
4.	Special diet	10,000/-
5.	Attendant charges	20,000/-
6.	Transportation	8,000/-
	Total	**Rs. 1,78,000/-**

Needless to say, the amount already received by the appellant shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest on the entire compensation amount at the rate of 7.5% per annum instead of 6%, from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

FAO-8715-2014

The LRs of Suresh claimed compensation while claiming the deceased to be engaged in agricultural work and dairy farming, earning a sum of Rs.12,000/- per month. Suresh was stated to be 31 years old. Learned Tribunal while concluding that there was no definite evidence regarding income of the deceased, assessed the same to be Rs.5,200/- per month while including future prospects and after deducing 1/4th towards personal expenses awarded a sum of Rs.7,38,800/-, the detail of which is as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	5,200/- p.m.
2.	1/4th deducted as personal expenses of the deceased	5,200 - 1300 = 3,900/-
3.	Compensation after applying a multiplier of 16	3,900 x 12 x 16 = 7,48,800/-
4.	Loss of consortium, loss of estate and funeral expenses	20,000/-
	Grand Total	**Rs. 7,68,800/-**

Having heard learned counsel for the parties and going through the record, it emerges that there is no dispute regarding deceased Suresh being 31 years old at the time of the accident. Though an effort has been made by learned counsel for the claimants to urge that Suresh (deceased) was earning substantial amount by sale of milk with the Milk Cooperative Society in village Dudal Ka Bass by referring to the statement of PW-7 Sombir. Learned Tribunal has however rightly discredited the evidence in the shape of testimony of PW-7 Sombir as he was admittedly not the office bearer of the said Society. Wife of PW-7 was stated to be the Secretary of the Milk Cooperative Society, therefore, PW-7 in any case was not competent to depose on her behalf in the absence of any such disability being suffered by her. Moreover, the documents sought to be relied on do not indicate income of the deceased. At the same time it is to be noted that the minimum wages of an unskilled labourer in the State of Haryana at the relevant time were Rs.4,967/- per month. Therefore, income of the deceased is assessed as Rs.5,000/- per month. Keeping in view the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680,*** 40% increment has to be afforded on account of future prospects. Deduction of $1/4^{th}$ was correctly effected by learned Tribunal. As the deceased was admittedly 31 years old at the time of the accident, multiplier of 16 was correctly applied by learned Tribunal. Claimants are entitled to sum of Rs.15,000/- each on account of loss of estate and funeral expenses. Appellant no.1 Kamlesh widow of Suresh is entitled to Rs.40,000/- for loss of consortium. As there are more than two children, all the three minor children and widowed mother of the deceased are entitled to a consolidated sum of Rs.1,00,000/- on account of loss of consortium (parental and filial), keeping in view the judgment of the Hon'ble Supreme Court in ***Vimla Devi and others Vs. National Insurance Company Ltd. and another, 2019(1) RCR (Civil) 86***.

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

Sr.No.	***Heads of Claim***	***Amount***
1.	Income # 5000 – 1/4th = 3,750/-	45,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	45,000+18,000 (45,000 **x** 40%) = 63,000/-
3.	Total dependency after applying a multiplier of 16	(63,000 **x** 16) = 10,08,000/-
4.	Funeral expenses and loss of estate 15,000 x 2	30,000/-
5.	Loss of consortium to appellant no.1	40,000/-
6.	Loss of parental/filial consortium to appellant nos.2 to 5	1,00,000/-
	Grand Total	**Rs.11,78,000/-**

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 awarded amount at the rate of 7.5% per annum (instead of 6% awarded by the learned Tribunal) from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

FAO Nos.7767 and 8699 of 2014 are dismissed. FAO Nos.8715 of 2014 and 2820 of 2017 are disposed of.

February 27, 2019.
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No