

FAO Nos. 6584 & 6711 of 2015 (O&M)

-1-

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

Date of Decision: 08.11.2019

**1. Cross Objection No. 4-CII of 2016 in
FAO No. 6584 of 2015 (O&M)**

Reliance General Insurance Company Limited

..... Appellant

Versus

Sapna @ Sabita and others

..... Respondents

**2. Cross Objection No. 5-CII of 2016 in
FAO No. 6711 of 2015 (O&M)**

Reliance General Insurance Company Limited

..... Appellant

Versus

Deepak Kumar and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.K. Bashamboo, Advocate,
for the appellant.

Mr.Raj Kumar Rana, Advocate
for the claimants/ Cross-Objectors.

JAISHREE THAKUR, J.

1. By this common order this Court proposes to dispose of

FAO Nos. 6584 & 6711 of 2015 (O&M)

-2-

FAO No. 6584 of 2015 titled “Reliance General Insurance Company Limited Versus Sapna @ Sabita and others” along with its **Cross Objection No. 4-CII of 2016** and **FAO No. 6711 of 2015** titled “Reliance General Insurance Company Limited Versus Deepak Kumar” along with its **Cross Objection No. 5-CII of 2016** since all arise out of the same accident and common award dated 29.05.2015 passed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal').

2. In brief, the facts of the case are that on 21.06.2013 around 6:00 p.m. Deepak Kumar (Cross-Objector in Cross Objection No. 5-CII of 2016) and one Bhupendra Singh (through his legal representatives in Cross Objection No. 4-CII of 2016) started their journey towards Sonam, Punjab in truck bearing registration No. UK-08-CA-3441. In the morning around 4.00 a.m. on 22.06.2013, when they reached on G.T. Road, near Manji Sahib Gurudwara, Ambala-Rajpura road, Ambala City, the driver was blinded by the lights of oncoming truck, with the result he swerved and hit into a truck bearing registration No. HR-55-P-6985. This truck was parked on the right side of the road without any indication light. The impact of the collision was such that the driver Bhupendra Singh suffered grievous injuries on both his legs, abdomen etc. while Deepak Kumar suffered grievous injuries on his right leg. They both were taken to Civil Hospital, Ambala City but Bhupendra Singh, who was serious, was referred to P.G.I., Chandigarh, where he died at about 11.30 p.m. on

FAO Nos. 6584 & 6711 of 2015 (O&M)

-3-

22.06.2013. Deepak Kumar was shifted to N.P. Hospital, Ambala City and remained admitted there from 22.06.2013 to 25.06.2013. He gave a statement to the police on 22.06.2013, on the basis of which an FIR No. 299 dated 22.06.2013 was registered against respondent No.1 under Sections 283, 336, 337 IPC at Police Station Ambala City. In the FIR, it was stated that the accident occurred due to rash and negligent act of respondent No.1 who had wrongly/ negligently parked truck No. HR-55-P-6985 on the right side of the road without any indicators or hazard lights on. A claim petition came to be filed by the legal heirs of Bhupendra Singh claiming compensation on account of his death. It was stated that he was earning more than ₹ 12,000/- per month as a driver and on account of his untimely death, they were on the verge of starvation. It was categorically averred that the accident took place due to the negligent parking of the truck No. HR-55-P-6985 by respondent No.1.

3. A second claim petition was filed by Deepak Kumar, on account of the injuries he suffered in the accident. He claimed compensation on account of his admission in the hospital, where he remained admitted from 22.06.2013 to 25.06.2013, where he was operated upon and thereafter he was shifted to Anand Hospital, Saharanpur, where his second operation was conducted. It was claimed that he had spent more than ₹ 1,50,000/- upon his treatment and remained admitted there for about 10 days. Deepak Kumar claimed compensation on account of the fact that he had

become totally disabled and was unable to do any work. He claimed that he was a transporter having two trucks and was also doing the work of Commission Agent in agriculture and on account of his disability he lost the ability to work. It was stated that he was unable to drive car, motor cycle, scooter and even was unable to stand. Compensation was claimed on account of the negligent parking of truck No. HR-55-P-6985 by respondent No.1 on the right side of the road in total violation of the Traffic Rules as envisaged in the Motor Vehicles Act and that too without any light or indication to inform the others that there was a stationary truck.

4. The Tribunal framed issues after consolidating both the claim petitions. An issue was framed as to whether the accident that took place on 22.06.2013 was due to rash and negligent parking of truck bearing registration No. HR-55-P-6985 by respondent No.1 which resulted into death of Bhupendra Singh and injuries to Deepak Kumar. In order to prove their respective claim petitions, documentary evidence was tendered by the claimants pertaining to the medical bills, hospitalization, disability certificate of Deepak Kumar and death certificate of Bhupendra Singh along with a post mortem report of Bhupendra Singh. The claimants also produced on record the mechanical report of both the vehicles involved in the accident along with attested copy of the report under Section 173 Cr.P.C.

5. On the other hand, to rebut the case of the claimants, the Insurance Company did not lead any oral evidence, but produced

documentary evidence i.e. driving licence of Avtar Singh-respondent No.1, copy of RC and copy of the mechanical report of the canter and of the offending truck along with the site plan. The Tribunal, on appreciation of the evidence came to hold that the claim petition could not be accepted completely. It was held that if the deceased driver had taken caution after seeing the lights of the oncoming vehicle, the accident could have been avoided. It was held: *“It is true that truck parked on the road in dangerous position is rash and negligent act but at the same time it was also the duty of the other driver plying vehicle on the road to drive especially in the circumstances when another vehicle was coming from the other side and influence of the light was oncoming vehicle, he should have taken greater care and in such like cases the negligent act has to be considered of both the drivers and in such like circumstances the negligent act has to be contributory act in the ratio of 75% of the parked truck and 25% of the truck being driven by the deceased having registration No. UK-08-CA-3441.”* In this regard reliance was placed on the case ***Mukhtiar Singh and others vs. Krishna Gulati and others, 1987 ACJ 961 (P&H).***

6. Thereafter, the Tribunal concluded that the driver of the offending vehicle having registration No. HR-55-P-6985 was negligent to the extent of 75% ,while the deceased / driver of the truck having registration No. UK-08-CA-3441 was negligent to the extent of 25%. After having established the contributory negligence

of both the drivers of the offending vehicle and the deceased Bhupendra Singh, the Tribunal proceeded to assess the compensation payable to the claimants. An award of ₹12,92,000/- was passed on account of the death of Bhupendra Singh in favour of the claimants/ legal heirs of Bhupendra Singh, whereas in the case of claimant - Deepak Kumar an award of ₹ 66,500 was allowed in his favour.

7. Aggrieved against the said award dated 29.05.2015, the Insurance Company as well as the claimants have approached this court.

8. Mr. R.K. Bashamboo, learned counsel for the Insurance Company argues that Bhupendra Singh driver of the offending vehicle having registration No. UK-08-CA-3441 ought to have been more vigilant in observing that there was a vehicle parked on the side of the road. It is argued that in a similar case where driver of the vehicle hit into a stationary vehicle from the rear side, the liability has been apportioned equally between both the vehicles. In support of his argument, he relies upon a judgment rendered by this Court in ***The New India Assurance Company Limited vs. Gurmail Singh and others, FAO No. 1149 of 2009*** decided on 28.07.2010. It is also argued that the Tribunal has erred in awarding exaggerated compensation to both the claimants.

9. Per contra, learned counsel appearing on behalf of the claimants/ Cross-Objectors argues that the Tribunal has erred in apportioning the liability by holding it to be a case of contributory

negligence and apportioning the negligence in the ratio of 75% and 25%. It is argued that as per the Traffic Rules, when the vehicle is parked there has to be enough indicators to show the oncoming traffic/ traffic following/ coming from behind, from the rear side, that the vehicle is a stationary one. In this regard, counsel places reliance upon the judgment rendered by this Court in ***Manjit Kaur and others vs. Jagtar Singh and others, 2018 ACJ 275*** wherein in similar circumstances the findings of the Tribunal were set aside and it was held that the accident was caused due to the sole negligence of the truck driver of the vehicle parked on the side of the road without any indicators.

10. I have heard learned counsel for the parties and have perused the pleadings of the case as well as perused the site plan.

11. Admittedly, the accident that took place on 22.06.2013 at 4:00 a.m. Therefore, the only issue that needs to be decided is as to whether it is a case of contributory negligence as has been held by the Tribunal. Avtar Singh- Driver of truck No. HR-55-P-6985 and the owner either did not choose to file their written statement or step into the witness box. The FIR was registered on the statement of the injured Deepak Kumar, wherein he had categorically stated that the offending truck was parked on the right side of the road and the same was without any lights or indicators; that it was a stationary vehicle. Neither the driver nor the owner of the offending vehicle stepped into the witness box to rebut the evidence that the stationary vehicle

was having indicators to that effect. The accident took place at 4:00 a.m. when it was a pitch dark and it would be impossible for a driver who is blinded by lights of oncoming vehicle to realise that there was another vehicle parked on the other side. In this regard, support can be taken from the judgments rendered in ***Oriental Insurance Co. Ltd. vs. Sandeep Madan, FAO No. 1667 of 1997, Ginni Devi vs. Union of India, 2008 ACJ 1572 (P&H)*** and ***Amarjit Kaur vs. State of Punjab, 2001 ACJ 211 (P&H)*** wherein the Courts have held that if a person is driving a vehicle during night, he cannot notice a stationary vehicle or any other substance lying on the middle of the road, if there are no indicators to that effect. In the opinion of the Court, the Tribunal has erred while observing that driver of the moving vehicle was negligent and ought to have been more careful, having lost of the fact that it was dark when the accident took place and there were no indicators that there was a stationary vehicle parked on the roadside. Therefore, the question of contributory negligence to the extent of 25% fastened on the deceased driver Bhupendra Singh is hereby set aside.

12. Further keeping in view the fact that income of a skilled labourer/ driver in the State of Haryana in the year 2013 was ₹ 5,991.51 (rounded of ₹ 6,000/-) per month, thus, the income of the deceased Bhupendra Singh, who was working as a driver, is taken as ₹ 6,000/- per month. There is no evidence available on the record to substantiate the claim that the deceased was earning ₹ 12,000/- per

FAO Nos. 6584 & 6711 of 2015 (O&M)

-9-

month. The quantum of compensation to which the claimants would be entitled to in terms of the judgment rendered by Hon'ble Apex Court of India in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*** is re-assessed as under :-

Sr. No	Heads	Calculation
(i)	Name of the deceased	Bhupendra Singh
(ii)	Date of accident	22.06.2013
(iii)	Age of the deceased	31 years
(iv)	Monthly income of the deceased	₹ 6,000/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 6,000 + ₹ 2,400) = ₹ 8,400/- per month
(vi)	1/3 rd of (v) above deducted towards personal expenses	(₹ 8,400 - ₹ 2,800) = ₹ 5,600/- per month
(vii)	Compensation calculated after applying the multiplier of 16	₹ 5,600 x 12 x 16 = ₹10,75,200/-
(viii)	Conventional heads i.e. loss of consortium and funeral expenses etc.	₹ 70,000/-
	Total	₹11,45,200 /-

13. As regards the claimant-Deepak Kumar in FAO No. 6711 of 2015 is concerned, the question to be decided is whether the claimant is entitled to further enhancement of compensation.

14. In the judgment rendered in ***Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343***, the Supreme Court has held that before compensation can be awarded the Tribunal must decide whether there is any permanent disability and if so the extent of such permanent disability. Meaning thereby, evidence has to be considered (i) whether the disablement is permanent or temporary; (ii)

if the disability is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) If the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. It was also held that the Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability. In the instant case, the claimant was working as a mason. If the claimant had been a Typist working in a firm, such disability may not have affected his capacity of working, but in a case when a leg of a driver or a Gardner or a daily-wager like a mason, a carpenter is amputated, his capacity of doing normal work would be hampered. In the instant case, the claimant herein is a transporter having two trucks and was also doing the work of Commission Agent in agriculture and fracture would not affect his capacity of working after a short duration.

15. Claimant-Deepak Kumar has placed on record two bills Ex. P-1 and Ex.P-6 for an amount of ₹ 17,100/- and ₹ 26,000/- respectively, total of the above said bills comes to ₹ 43,100/-In view of the above and as per the dictum that has been stipulated in ***Raj Kumar*** case (supra), the claimant is allowed a sum of ₹ 43,100/- towards medical expenses. Though, all bills are not readily available but is a well known fact that in times of a medical emergency the injured does not have the presence of mind to retain all bills. Deepak

FAO Nos. 6584 & 6711 of 2015 (O&M)

-11-

Kumar remained admitted in hospital for 12 days i.e. from 22.06.2013 to 04.07.2013, therefore, he remained out of job for 12 days. Keeping in view the fact that income of a skilled labourer/ driver in the State of Haryana in the year 2013 was ₹ 5,991.51 (rounded of ₹ 6,000/-) per month His income is assessed at ₹ 6,000/- per month, as per the Minimum Wages prevailing in the State of Haryana in the year 2013. He also placed on record his disability certificate Ex. P-7 showing his disability to be 17%. However as pointed out, the claimant has not been allowed any compensation towards transportation, attendant charges, special diet etc., therefore, the compensation on account of the injuries suffered along with payment towards the medical bills/expenses needs to be re-assessed, as under in consonance with the judgment rendered in ***Raj Kumar*** case (supra):-

	Compensation Heads	Compensation amount
1	Loss of Income @ ₹ 6000/- per month for 12 days	₹ 2,400/-
2	Medical expenses	₹ 43,100
3	Pain and suffering	₹ 20,000/-
4	Attendant charges	₹ 10,000/-
5	Special diet	₹ 5,000/-
6	Loss of income during laid up period	₹ 18,000/-
7	Permanent disability of 17%	₹ 34,000/-
8	Transportation	₹ 5,000/-
	Total	₹ 1,37,500/-

14. In view of the above, the appeal (FAO No. 6584 of 2015) of the Insurance company is allowed and the compensation

FAO Nos. 6584 & 6711 of 2015 (O&M)

-12-

awarded to the claimants is reduced from ₹ 12,92,000/- to ₹11,45,200/-, consequently, the Cross Objections bearing No. 4-CII of 2016 seeking enhancement of compensation are dismissed. The appeal (FAO No. 6711 of 2015) qua Deepak Kumar is dismissed and the Cross Objections bearing No. 5-CII of 2016 seeking enhancement of compensation are allowed and the compensation awarded to the claimant-Deepak Kumar is enhanced from ₹ 88,600/- to ₹1,37,500/-. It is specified that there would be no deductions towards contributory negligence since that finding is set aside.

15. The Insurance Company is held liable to pay the entire amount and is directed to release the compensation in favour of the claimants with interest @ 7.5% per annum from the date of filing of the petition till realization in terms of the judgment rendered by the Supreme Court in *Dara Singh @ Dhara Banjara vs. Shyam Singh Varma & Ors., Civil Appeal No. 4528 of 2019 [SLP(C) No. 5720 of 2019]* decided on 01.05.2019.

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

08.11.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.