

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) FAO No.8954 of 2014(O&M)

State of Haryana

.....APPELLANT

Vs.

Juber and others

.....RESPONDENTS

(2) FAO No.4186 of 2014(O&M)

Prem Kumar

.....APPELLANT

Vs.

Nafisha and others

.....RESPONDENTS

(3) FAO No.5385 of 2013(O&M)

Juber Singh and others

.....APPELLANT

Vs.

Prem Kumar and others

.....RESPONDENTS

Date of Decision:06.05.2019

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Arjun Singh Yadav, AAG, Haryana.
for the appellants in FAO No.8954 of 2014.
and for respondent No.2 in FAO No.5385 of 2013.
and for respondent No.3 in FAO No.4186 of 2014.

Mr.Virender Rana, Advocate for the appellant
in FAO No.4186 of 2014 and for
respondent No.9 in FAO No.8954 of 2014.

Mr.Barjinder Singh, Advocate for
Mr.Ashish Gupta, Advocate for the appellants
in FAO No.5385 of 2013 and
for respondents No. 1 to 8 in FAO No.8954 of 2014 and for

respondents No. 1 and 4 to 10.

Ms.Manjeet Kaur, Advocate &
Ms.Vandana Malhotra, Advocate for
respondent-Insurance Company.

DR. RAVI RANJAN, J.(Oral Judgment)

CM-24403-CII-2014 in FAO No.8954 of 2014

Heard.

This application has been filed on behalf of the applicant/appellant-
State of Haryana under Section 5 of the Limitation Act seeking condonation of
delay of 325 days which has occurred in preferring the present appeal.

In view of the averments made in the application, same is allowed
and delay of 325 days which has occurred in in preferring the present appeal, is
hereby condoned.

CM-12249-CII-2014 in FAO No.4186 of 2014

Heard.

This application has been filed on behalf of the applicant/appellant-
Prem Kumar (driver of the offending vehicle) under Section 5 of the Limitation
Act seeking condonation of delay of 154 days which has occurred in preferring
the present appeal.

In view of the averments made in the application, same is allowed
and delay of 154 days which has occurred in in preferring the present appeal, is
hereby condoned.

FAO Nos.8954 of 2014, 4186 of 2014 & 5385 of 2013

This order shall dispose of FAO No.8954 of 2014 (State of Haryana
vs. Juber and others), FAO No.4186 of 2014 (Prem Kumar vs. Nafisha and
others) and FAO No.5385 of 2013 (Juber Singh and others vs. Prem Kumar and

others). All the aforesaid three appeals arise out of the common Judgment dated 31.07.2013 passed in Claim Petition No. 38 of 2012 by the Motor Accident Claims Tribunal, Nuh District Mewat (for short, the 'Tribunal').

FAO No.5385 of 2013 has been preferred by the claimants for enhancement of awarded compensation amount whereas FAO No.4186 of 2014 has been preferred by the driver of the offending vehicle whereas FAO No.8954 of 2014 has been preferred by the State of Haryana as the owner of the concerned vehicle, assailing the part of the aforesaid decision of the Tribunal by which it has found that the driver and owner jointly and severally liable for payment of compensation amount. The Insurance Company has been directed to pay the compensation amount to the claimant with liberty to recover the same from the driver and owner.

Short facts which are necessary for consideration of the *lis* stands enumerated as under:-`

On 10.02.2012, the deceased Abid son of Juber and Aslam son of Islamuddin were coming from Naushera to village Hussainpur on motorcycle bearing registration No.HR-52-A-9204 being driven by Aslam in a correct manner following the rules and the said Abid(since deceased) was sitting on the rear seat of the motorcycle. At about 7.00 P.M., when they reached ahead to village Raipuri, the offending vehicle being driven by respondent No.1-Prem Kumar rashly and negligently came in the back side and hit into their motorcycle from rear side, due to which, Abid(deceased) and Aslam fell down alongwith the motorcycle on the road. Aslam fell down on the berm side of the road. The offending vehicle ran over on the body of Abid, due to which Abid received the serious injuries and died on the spot. Aslam also received injuries.

The driver of offending vehicle fled away from the spot taking the advantage of

mob. Thereafter, the body of the deceased was taken to CHC, Nuh where the postmortem examination of his body was conducted. Deceased-Abid was 19 years old and was a student of 11th standard and was earning Rs.8,000/- by doing agricultural work. FIR No.108 dated 01.03.2012 under Section 279, 337 and 304-IPC was registered at Police Station Nuh.

In the aforesaid background of factual matrix, all the aforesaid three appeals have been heard and are being considered analogous.

At the time of hearing of all the three appeals, it has been stated by learned counsel for the the appellant-Prem Kumar (driver of the offending vehicle) in FAO No.4186 of 2014 and appellant-State of Haryana(as owner of the concerned vehicle) in FAO No.8954 of 2014 that they are not challenging the finding recorded by the Tribunal that the accident was result of rash and negligent driving of the offending vehicle rather they are only challenging that part of the impugned Judgment by which the Tribunal has directed the Insurance Company to compensate the claimant by paying the awarded amount to the claimant and, thereafter, recover the same from both, i.e., the driver and owner.

In the aforesaid background of the matter, this Court would not go into the detail as to how the accident took place and under what facts and circumstances, the Tribunal has held that the accident was a result of rash and negligent driving by the driver of the offending vehicle, as there is no challenge to the findings of the Tribunal regarding that.

Firstly, I would take up FAO No.5385 of 2013 for consideration.

The sole issue which has been raised on behalf of the claimants-appellants in FAO No.5385 of 2013 is that the compensation amount is at lower side. It is contended that though they have claimed that the deceased was aged about 19 years and was a student of 11th standard and was also earning

Rs.8,000/- per month by doing agricultural work, the Tribunal has only considered his income as Rs.3,000/- per month on the ground that there is no proof regarding his income available on the file. From perusal of the records, it is apparent that nothing could be brought to establish that the deceased was earning Rs.8,000/- per month.

In such a situation, in my considered view, there were two course open to the Tribunal; first was to consider him as a student and fix notional income and the second one to consider him as a agricultural worker and fix his income in accordance with law but in the absence of any document establishing the aforesaid fact, it would be very difficult to take any of the above line exclusively. Now, the only other option available to the Tribunal was to fix his income as per the minimum wage fixed by the State of Haryana by any notification or resolution.

Learned counsel for the appellant has submitted that as per the decision of State of Haryana made effective from January 01, 2012, the minimum wage fixed for the unskilled labourer was Rs.4847.17/-.

In my opinion, in the absence of the any other material, that should have been taken to be the income of the deceased at the time of his death in the accident which took place on 10.03.2012. However, the Tribunal has perhaps taken the income notionally as Rs.3,000/- per month but no reason has been assigned by it as to how such income was assessed by it.

Learned counsel appearing for the respondent-Insurance Company as well as driver and the owner are also not in position to controvert the aforesaid view that the minimum wage available to unskilled laboured on the date of accident should have been taken as the income of the deceased.

Accordingly, after taking into account the aforesaid notification of the State of Haryana, a copy of which has been produced by learned counsel for the appellant at the time of the hearing of this case and after making it a round figure, the income of the deceased is assessed at Rs.5,000/-.

The second ground which has been raised by learned counsel for the appellants-claimants in FAO No.5385 of 2013 is that nothing has been given towards loss of future prospects.

In my view, the Tribunal should have awarded under the aforesaid head 40% of the monthly income as assessed in terms of the decision of the Hon'ble Supreme Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009**, in particular in view of its observation made in paragraph No.61 (iv).

For better appreciation, the aforesaid passage from **Pranay Sethi (Supra)** is extracted and reproduced as under:-

“61(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.”

It is further contended that only Rs.5,000/-has been awarded under the head of 'Funeral Expenses' and under other conventional heads, i.e., for Loss of Estate and Loss of Consortium, nothing has been awarded.

In my view, Rs.15,000/- could easily have been awarded under the head of funeral expenses and also for loss of estate. So far as loss of consortium is concerned, in view of the decision of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Churu Ram and others, 2018 (4)**

R.C.R. (Civil) 333, Appellants No. 1 and 2, both father and mother would be entitled for Filial Consortium to the extent of Rs. 40,000/-. Though, the father as well as the brother and sisters have not been considered to be the dependents upon the income of the deceased but so far as the Filial Consortium is concerned, both the parents, i.e., father and mother of the deceased would have to be considered and entitled for the same.

As such, the Award of the Tribunal stands modified and re-calculated as under:-

Sr. No.	Heads of Compensation	Amount
1.	Income	Rs.5,000/- per month
2.	Addition of Future Prospects (@ of 40% of income)	(Rs.5,000+Rs.2,000)=Rs.7,000/-
3.	Deduction(1/2 nd being bachelor) for personal expenses	Rs.7,000-Rs.3,500=Rs.3,500/-
4.	Multiplier (aged 19 years)	18
5.	Total loss of dependency	Rs.3,500x12x18=Rs.7,56,000/-
6.	Other heads:-	
	(i) Funeral Expenses	Rs.15,000/-
	(ii) Loss of Estate	Rs.15,000/-
7.	Parental consortium to appellants No.1 and 2 (father & mother)	Rs.40,000/- payable to each, i.e., comes to Rs.80,000/-
	Total compensation	Rs.8,66,000/-
	Enhanced compensation amount	Rs.8,66,000-Rs.3,29,000- =Rs.5,37,000/-

Further, in the facts and circumstances of the case, in my considered opinion, the interest rate is also required to be increased from 6% per annum to 7.5 % per annum and the same be calculated from the date of filing of the claim petition till the date of payment of the awarded amount.

In the result, FAO No.5385 of 2013 (Juber Singh and others vs. Prem Kumar and others) stands allowed and impugned Judgment and Award of

the Tribunal is modified and the awarded amount and interest therefore is enhanced to the extent as indicated above.

Other two appeals bearing FAO No.4186 of 2014 (Prem Kumar vs. Nafisha and others) and FAO No.8954 of 2014 (State of Haryana vs. Juber and others) have been filed by the driver and the owner of the vehicle respectively.

At the time of hearing, both the counsel for the appellant, in their respective appeals, have confined their prayer only to the part of the impugned Judgment by which the respondent-Insurance Company has been given liberty to recover the compensation amount jointly from the driver and the owner after payment of the same to the claimants.

It appears from the impugned Judgment of the Tribunal that, in view of the fact that the driver was having a licence for Light Motor Vehicle (LMV) but he was driving a Sumo vehicle which was capable of carrying of 9+1 passenger, the Tribunal has held that the driver was not having a valid licence on the date of accident.

However, in my considered opinion, aforesaid finding recorded by the Tribunal is erroneous as the offending vehicle is a registered one and in its Registration Certificate(RC) has been brought on record as Ex.R-2. It stands clearly indicated therein that the class of the vehicle is 'Light Motor Vehicle (LMV)'.

In such a situation, in my considered opinion, it was not proper to hold that the driver was not having a valid driving licence as admittedly, he was having a valid licence on the date of the accident for plying Light Motor Vehicle (LMV) .

In the result, both these appeals, i.e., FAO No.4186 of 2014 and FAO No.8954 of 2014 are also allowed and the finding recorded in that

connection is quashed and set aside.

Accordingly, the respondent-Insurance Company would be liable to indemnify the owner of the vehicle as the same was insured with it.

However, the parties would bear their own costs.

Let a copy of this order be placed on the files of other connected appeals.

**(DR. RAVI RANJAN)
JUDGE**

06.05.2019

Anjal

**Whether speaking/reasoned?
Whether reportable?**

**Yes/No
Yes/No**