

**FAO-7484-2015 (O&M) and
FAO-8328-2015 (O&M)**

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

**FAO- 7484-2015 (O&M)
Date of Decision: August 22, 2019**

Magma HDI General Insurance Company Ltd. Appellants(s)

Versus

Meena and others Respondent(s)

with

FAO- 8328-2015

Meena and others Appellants(s)

Versus

Jai Narian and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Vandana Malhotra, Advocate
for the appellant in FAO-7484-2015 and
for respondent no.3 in FAO-8328-2015.

Mr. J.P. Sharma, Advocate and
Mr. Sharad Chaudhary, Advocate (Amicus Curiae)
for the appellants in FAO-8328-2015 and
for respondents no.1 to 5 in FAO-7484-2015.

Mr. Mohit Nehra, Advocate
for respondents no.6 and 7 in FAO-7484-2015 and
for respondents no.1 and 2 in FAO-8328-2015.

LISA GILL, J.(oral)

This judgment shall dispose of FAO-7484-2015 (Magma HDI
General Insurance Company Ltd.Vs. Meena and others) as well as FAO-
8328-2015 (Meena and others Vs. Jai Narian and others) as both the above
noted appeals arise out of award dated 31.07.2015, passed by the learned

Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal).

Brief facts necessary for the adjudication of the appeals are that claimants who are the widow, three minor children and parents of the deceased Sanjay, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Sanjay due to the injuries suffered by him in the motor vehicle accident, which took place on 10.11.2013. It is pleaded that on 10.11.2013 Sanjay (since deceased) was coming from Mahendergarh to his village Surani on his motorcycle bearing registration No. HR-35G-4965, which was being driven by him at a moderate speed and on the extreme left side of the road. When he crossed bus stop of village Kuksi, at about 9:15 PM, a dumper bearing registration No. HR-61A-7651 came from the opposite side. The dumper was being driven by respondent-Jai Narain in a rash and negligent manner, at a very high speed and it struck against the motorcycle driven by Sanjay. As a result thereof Sanjay fell on the road alongwith the motorcycle and his head was crushed under the tyre of the dumper. Sanjay died on the spot. It is pleaded that Om Narain son of Shri Chand and Satpal son of Ram Singh, residents of village Surani witnessed the accident as they were following the motorcycle driven by the deceased. The driver of the dumper alighted from the vehicle and on seeing them as well as other persons fled away from the spot. It is pleaded that the accident took place due to the rash and negligent driving of the offending vehicle by respondent-Jai Narain. FIR No.495 dated 11.11.2013, P.S. Mahendergarh was lodged in this regard.

Learned Tribunal on considering the evidence on record concluded that Sanjay lost his life due to the injuries received by him in the accident in question, which took place on 10.11.2013 due to the rash and negligent driving of the offending dumper bearing registration No. HR-61A-7651, by its driver Jai Narain. Learned Tribunal while assessing the income of the deceased to be Rs.6,760/- per month with reference to the minimum wages available to an unskilled labourer in the State of Haryana at the time of the accident, awarded a sum of Rs.16,76,420/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	7660/- per month
2.	Total income after addition at the rate of 50% on account of future prospects	10,140/- per month
3.	Income after deducting 1/4 th as personal living expenses of the deceased	10,140 - 1/4 = 7,605/-
4.	Loss of dependency after applying multiplier of 17	7,605 x 12 x 17 = 15,51,420/-
5.	Funeral expenses	25,000/-
6.	Loss of consortium to widow	1,00,000/-
	Total	16,76,420/-

FAO No.7484 of 2015 has been filed by the insurance company challenging the liability of the insurance company to pay the compensation as well as the quantum of the compensation.

FAO No.8328 of 2015 has been filed by the claimants seeking enhancement of the compensation awarded by the learned Tribunal vide award dated 31.07.2015.

Learned counsel for the insurance company vehemently argues that the involvement of the dumper bearing registration No. HR-61A-7651 is not proved on record. It is contended that the presence of the purported eyewitness Satpal, who has deposed as PW-2 in this case, is suspect. The registration number or the details of the offending vehicle are not forthcoming in the FIR. The details emerged at a later stage and it is not indicated as to how the said details came to the fore. The propounder of the FIR namely Om Narain has not been examined in this case. It is further submitted that the driver of the offending vehicle has since been acquitted by the learned Judicial Magistrate Ist Class, Mahendergarh on 17.08.2016. Learned counsel for the insurance company further argues that as per the mechanical report (Ex.RW1/G) of the motorcycle, which is available on record as a part of the challan/report under Section 173 Cr.P.C. produced before the learned Tribunal, does not indicate that the accident took place in the manner as described by PW-2 Satpal. Damage to the motorcycle is minor and does not indicate a head on collision as has been projected by the claimants. It is thus, prayed that the insurance company be absolved of its liability in this case as involvement of the vehicle is not proved.

In the alternate, it is prayed that the quantum of the compensation be reduced as income of the deceased has been wrongly assessed as Rs.6,760/- per month while stating that the same is the minimum wage available at the time of the accident. The minimum wage in the State of Haryana at the relevant time was Rs. 5,341/- per month. Moreover, an increment of 50% instead of 40% has been given towards future prospects.

Sum of Rs.1,00,000/-, it is submitted has also been wrongly afforded as loss of consortium. It is, thus, prayed that the compensation awarded to the appellants in any case be reduced.

Per contra, learned counsel for the claimants while refuting the said arguments submits that PW-2 was an eyewitness of the accident. He is mentioned to be present in the FIR itself, which was recorded on the statement of Om Narain. Statement of Satpal was duly recorded by the police authorities and he duly deposed before the learned JMJC, Mahendergarh in the proceedings arising out of the FIR. It is further contended that the mechanical report by itself cannot in any manner indicate that the accident did not take place as pleaded. Positive evidence has been led to prove the death of Sanjay in the accident, which took place on 10.11.2013 due to the rash and negligent act of the driver of the offending vehicle. Involvement of the vehicle is duly proved on record. It is further submitted that income of the deceased has in fact been assessed at a lower rate. Deceased was involved in the sale and purchase of tractors. Reference is made to documents Ex.P-9 to Ex.P-26. It is thus prayed that the appeal filed by the insurance company be dismissed and that of the claimants be allowed.

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

It is a matter of record that the accident in question took place on 10.11.2013 at 9:15 P.M. Information was received at the police station at 5 minutes passed midnight on the intervening night of 10/11.11.2013. FIR

No.495 was registered on 11.11.2013 on the statement of Om Narain son of Shrichand. It is specifically mentioned in the FIR that on 10.11.2013 Om Narain along with Sandeep son of Jagmal Singh and Satyapal son of Ram Singh were proceeding in their Bolero car towards their village Surani after attending a rally at Gohana. There is a graphic description of the manner in which the accident took place. There is a specific recital of the rash and negligent driving of the offending vehicle in question though the registration number etc. of the vehicle is not mentioned. It is clearly stated that due to night time the number of the vehicle could not be noted. The details in which the accident took place, leading the crushing of the head of Sanjay resulting in his death on the spot are clearly a matter of record. Fracture of the face and skull with brain matter coming out is proved from the postmortem report Ex.P1/B. There is a categoric mention of the presence of PW-2 Satpal at the time of the accident. PW-2 has testified before the learned Tribunal in respect to the accident in question.

There is no merit in the argument raised by the learned counsel for the insurance company that presence of Satpal at the time of the accident is suspect. He is duly mentioned to be present in the FIR itself, which was registered on the statement of Om Narain. Furthermore, a perusal of the final report under Section 173 Cr.P.C. reveals that statement of Satpal was duly recorded on 11.11.2013 by the police authorities. The details of the offending vehicle were revealed by him to the police officials on 15.11.2013. His statement to this effect is available on record. PW-5 Head Constable Rajesh Kumar who partly investigated the matter, categorically

stated that he recorded the statement of Satpal Singh, an eyewitness of this case on 15.11.2013. Argument raised by learned counsel for the insurance company that statement of PW-5 Rajesh Kumar also raises a suspicion in as much as statement of Satpal Singh is mentioned to be recorded on 15.11.2013 is devoid of any merit. Learned counsel for the insurance company is unable to deny that as per the final report under Section 173 Cr.P.C. statement of Satpal Singh was initially recorded on 11.11.2013 and the supplementary statement on 15.11.2013. Therefore, this argument is rejected being meritless. RW-1 Vikash, Ahlmad of the concerned Court has testified that the charge against the accused was framed after presentation of the final report. He proved on record the copy of the statement of Om Narain Ex.RW1/A, copy of the site plan Ex.RW1/B, statement of another eyewitness Sandeep son of Jagmal Ex.RW1/C, statement of Satpal dated 11.11.2013 Ex.RW1/D besides the supplementary statement dated 15.11.2013 of Satpal as Ex.RW1/E. Mechanical report of the motorcycle was Ex.RW1/G. Learned counsel for the insurance company is unable to point out anything on record to create a dent on the creditworthiness of the testimony of this witness.

Learned counsel for the insurance company has vehemently argued that the driver of the offending vehicle has since been acquitted by the learned JMIC, Mahendergarh vide judgment dated 17.08.2016. Though the said judgment is not a part of the record, the same was furnished in Court today. After a perusal of the same it is apparent that the accused therein has been acquitted while affording him the benefit of doubt. PW-2

Satpal as well as the propounder of the FIR Om Narain have supported the prosecution version to the hilt. There is no variation in their stand before the learned JMIC, Mahendergarh. In this view of the matter, acquittal of the driver of the offending vehicle is *per se* not sufficient to non-suit the claimants nor does it in any manner prove the non-involvement of the offending vehicle in this case. Similarly, the argument raised by learned counsel for the insurance company, that non-examination of Om Narain, the propounder of the FIR casts a cloud on the case set up by the claimants is devoid of any merit. Satpal is proved to be an eyewitness of the accident in question and he has given a graphic description of the accident as it took place. Mere non-examination of the propounder of the FIR does not affect the credibility of the claimants' case.

Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Company Ltd. and others, 2018(5) SCC 656** and **Sunita v. RSTRC, CA No.1665 of 2019 (arising out of SLP (civil) No.33757 of 2018, decided on 14.02.2019**, reiterated that the claimants in proceedings under this Act are required to prove their case on the touchstone of preponderance of probabilities and court is not to be swayed by technicalities, niceties or mystic maybes. In Sunita's case (*supra*), it was held that where even one of the eye-witnesses was not examined, it cannot be a ground to reject the claimants version in the light of cogent evidence available on record. It is a settled position that claimants in the proceedings under this Act are to prove their case on the touch stone of preponderance of probabilities and not beyond reasonable doubt. In the present case, the claimants have led

sufficient positive evidence to prove the involvement of the vehicle. Finding of the learned Tribunal that the accident in which Sanjay lost his life was caused due to the rash and negligent driving of the offending dumper bearing registration No. HR-61A-7651, by its driver Jai Narain is accordingly upheld.

In respect to the assessment of income of the deceased, learned counsel for the claimants is unable to deny that there is no evidence on record to indicate the nature of work done by the deceased or the exact income earned by him. There is only a bald statement of the claimants to the effect that he was engaged in sale and purchase of old tractors etc. Reference to the documents attached as Ex.P-9 to Ex.P-26, which are the alleged certificates of sale in respect to some tractors, is of no avail to the claimants for the simple reason that there is no evidence on record to prove the said documents. The veracity thereof has not been proved on record.

Learned Tribunal has referred to some notification/circulars issued by the State Government in respect to minimum wages and assessed income of the deceased to be Rs.6,760/- per month. Learned counsel for the claimants is unable to deny that the minimum wage of an unskilled labourer in the State of Haryana at the time of the accident was Rs.5,341/- per month. Therefore, in the given factual matrix of this case, it is considered just and appropriate to assess income of the deceased to be Rs.6,000/- per month instead of Rs.6,760/- 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 (instead of 50% awarded by the learned Tribunal) has to be afforded on account of future prospects. Deduction of 1/4th was correctly effected by learned Tribunal. As the deceased was admittedly 28 years old at the time of the accident, multiplier of 17 was correctly applied by learned Tribunal. Claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate instead of Rs.25,000/- awarded by the learned Tribunal on account of funeral expenses. Instead of Rs.1,00,000/- awarded by the learned Tribunal to the widow of the deceased on account of loss of consortium, she is held entitled to Rs.40,000/-. Children of the deceased are entitled to a sum of Rs.40,000/- on account of parental consortium. Parents of the deceased are also entitled to a sum of Rs. 40,000/- towards loss of filial consortium. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** 2018(4) RCR Civil 333, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, title ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others.***

Appellants-claimants are, thus, entitled to compensation of Rs.14,35,200/- instead of Rs. 16,76,420/- which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	6,000 x 12 = 72,000/- per annum
2.	Income after deducting 1/4 th as personal living expenses of the deceased	72,000 - 18,000/- (72,000 x 1/4 th) = 54,000/-

3.	Total income after addition at the rate of 40% on account of future prospects	54,000 + 21,600 (54,000 x 40%) = 75,600/-
4.	Dependency after applying multiplier of 17	75,600 x 17 = 12,85,200/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to the widow of the deceased	40,000/-
8.	Loss of parental consortium to children of the deceased	40,000/-
9.	Loss of filial consortium to parents of the deceased	40,000/-
	Total	14,35,200/-

Rate of interest and ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same. Recovery of the entire amount of compensation had been stayed vide order dated 04.11.2015 in FAO-7484-2015, therefore, there is no question of any recovery to be effected from the claimants.

Thus, appeal filed by the claimants (FAO No. 8328 of 2015) is dismissed and the appeal filed by the insurance company (FAO No.7484 of 2015) is partly allowed.

August 22, 2019.

Sunil

(LISA GILL)
JUDGE

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