IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 9316 of 2014(O&M)**

Date of Decision: December 06 , 2019.

Mandeep Kaur and others ...... APPELLANT(s)

Versus

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

2. **FAO No. 9317 of 2014(O&M)**.

Gurmeet Kaur ...... APPELLANT(s)

Versus

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

3. **FAO No. 6826 of 2015(O&M)**.

Harbans Singh ...... APPELLANT(s)

Versus

National Insurance Company Ltd. and others ...... RESPONDENT (s)

4. **FAO No. 6829 of 2015(O&M)**.

Harbans Singh ...... APPELLANT(s)

Versus

National Insurance Company Ltd. and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ankur Gupta, Advocate
for the appellants in FAO Nos.9316 and 9317 of 2014.

Mr. Rajiv Malhotra, Advocate
for the appellants in FAO Nos.6826 and 6829 2015.

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Mr. Paul S.Saini, Advocate
for respondent-Insurance company
in all the appeals.

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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.9316 of 2014 (Mandeep Kaur and others v. Avtar Singh and others), FAO No.9317 of 2014 (Gurmeet Kaur v. Avtar Singh and others), FAO No.6826 of 2015 (Harbans Singh v. National Insurance Company Ltd. and others) and FAO No.6829 of 2015 (Harbans Singh v. National Insurance Company Ltd. and others) as all of them arise out of a motor vehicle accident which took place on 20.01.2010. FAO Nos.9316 and 9317 of 2014 have been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as, the 'Tribunal') whereas, FAO Nos.6826 and 6829 of 2015 have been filed by the owner of the offending vehicle challenging the right afforded to the Insurance company to recover the amount of compensation from him.

Brief facts necessary for adjudication of the case are that, two claim petitions under Section 166 of Motor Vehicles Act were preferred by the claimants seeking compensation on account of death of Paramjit Singh and Kulwinder Singh (who were real brothers) in a motor vehicle accident which took place on 20.01.2010. It is pleaded that the said accident occurred due to the rash and negligent driving of Scorpio car bearing registration No.PB-10BS-9817 by

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respondent-Avtar Singh. FIR No.3 dated 20.01.2010 under Sections 304A/279/ 337 IPC was registered at Police Station Humbran against the respondent-driver.

Claim petition i.e., MACT No.76 of 22.3.2010 (subject matter of FAO No.9317 of 2014) was initially filed by Gurmeet Kaur and her husband, Jagdev Singh seeking compensation on account of death of their son, Kulwinder Singh. Jagdev Singh, however, passed away during the pendency of the petition. MACT No.75 of 22.3.2010 (subject matter of FAO No.9316 of 2014) has been filed by the legal representatives of deceased-Paramjit Singh i.e., his widow, minor children and mother.

Both the claim petitions were decided by the learned Tribunal vide separate awards of even date i.e., 28.02.2014. Learned Tribunal on considering the evidence on record, facts and circumstances of the case, concluded that the accident in question took place due to the rash and negligent driving of the Scorpio car bearing registration No.PB-10BS-9817 by its driver-Avtar Singh. This finding of the learned Tribunal has attained finality.

In MACT No.75 of 22.3.2010 filed by the claimants (appellants in FAO No.9316 of 2014), learned Tribunal while assessing income of the deceased-Paramjit Singh as ₹6,000/- per month, awarded a total compensation of ₹9,66,000/- to the claimants. The deceased was held to be aged 26 years old at the time of the accident. Deduction to the extent of 1/3rd was effected. Multiplier of 17 was applied. ₹25,000/- each was awarded on account of funeral expenses and loss of estate, besides, ₹1,00,000/- to the widow on account of loss of consortium.

In MACT No.76 of 22.3.2010 filed by the claimant (appellant in

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FAO No.9317 of 2014), learned Tribunal assessed income of the deceased-Kulwinder Singh as ₹6,000/- per month and awarded a total amount of ₹3,74,000/- to the claimant. The deceased-Kulwinder Singh was held to be aged 22 years old at the time of the accident. Deduction to the extent of 50% was effected as the deceased was a bachelor. Multiplier of 9 was applied. ₹25,000/- each was awarded on account of funeral expenses and loss of estate.

Learned Tribunal further held that the Insurance company is entitled to recover the awarded amount from the owner and driver of the offending vehicle as the driver of the offending vehicle was concluded to be under the influence of liquor at the time of the accident.

Aggrieved from the right to recover the amount of compensation afforded to the Insurance company by the learned Tribunal in both the claim petitions, the owner of the offending vehicle has filed FAO Nos.6826 and 6829 of 2015 whereas FAO Nos.9316 and 9317 of 2014 have been filed by the claimants seeking enhancement of the compensation awarded to them.

Learned counsel for the appellant-owner of the offending vehicle argues that the learned Tribunal has proceeded on a sheer presumption without any evidence on record, to hold that the driver of the offending vehicle was under the influence of liquor at the time of the accident. The learned Tribunal has thus wrongly held that the Insurance company shall be entitled to recover the amount of compensation from the driver and owner of the offending vehicle. It is submitted that there is no evidence on record to indicate that the driver of the offending vehicle was inebriated at the time of the accident. It is, thus, prayed that both these appeals be allowed and the finding of the learned Tribunal in this

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respect be set aside.

Learned counsel for the appellants-claimants in the appeals seeking enhancement submits that the learned Tribunal has erred in assessing income of both the deceased as ₹6,000/- per month. Both the deceased-Kulwinder Singh and Paramjit Singh were cable operators and were providing cable connection in three villages in the name and style of M/s Bhullar Cable Network. Therefore, their income be assessed as ₹15,000/- per month. Multiplier qua Kulwinder Singh, it is submitted, has been wrongly applied. Future prospects should be afforded qua both the deceased persons. Deduction has been wrongly effected in Kulwinder Singh's case. It is, however, submitted that the amount 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***. It is thus prayed that the amount of compensation awarded to the claimants in both the petitions be enhanced accordingly.

Learned counsel for respondent-Insurance company refutes the abovesaid averments and submits that no ground is made out for any interference in the impugned awards which have been correctly passed. Right to recover the compensation, it is submitted, has been rightly afforded by the learned Tribunal and no ground is made out for any enhancement. Dismissal of all the appeals is prayed for.

I have heard learned counsel for the parties and have gone through the file.

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FAO Nos.6826 and 6829 of 2015(O&M)

Learned counsel for the respondent-insurance company is unable to deny that there is indeed no evidence on record to indicate that the driver of the offending vehicle was under the influence of liquor at the time of the accident. Admittedly, medical examination of the driver was not conducted, neither is there any report of any test which may have been conducted to find out whether the driver was under the influence of liquor or any other intoxicant at the time of the accident. In this view of the matter, the learned Tribunal has indeed erred in affording the right to the Insurance company to recover the amount of compensation qua the owner and driver of the offending vehicle. It is not in dispute that the offending vehicle was insured with the respondent-Insurance company and there is no breach of the terms and conditions of the insurance policy which entitled the Insurance company to recover the compensation from the owner and driver of the offending vehicle.

Accordingly, finding of the learned Tribunal in this respect is set aside. The Insurance company is liable to indemnify the insured and is not entitled to recover the compensation from the owner and driver.

FAO Nos.9316 and 9317 of 2014(O&M)

There is no dispute regarding death of Paramjit Singh and Kulwinder Singh in a motor vehicle accident which took place on 20.01.2010 due to the rash and negligent driving of the offending vehicle bearing registration No.PB-10BS-9817 by respondent-driver. There is no challenge to this finding of the learned Tribunal in this regard. The deceased Paramjit Singh and Kulwinder Singh are accepted to be 26 and 22 years old, respectively, at the time of their death.

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So far as the income of the deceased is concerned, the claimants have set up a case that both the deceased, who are brothers, were running a firm, namely, M/s Bhullar Cable Network and were providing cable connections to the residents in three villages. However, learned counsel for the claimants is unable to deny that the witnesses, CW2 Sukhminder Singh and CW3 Hardeep Singh, have admitted that no license had been obtained by the firm in question from the principal distributor of cable signals and the deceased or their firm were not the principal distributor. Furthermore, the receipts (Ex.P1 to P10) cannot be relied upon to conclude that the cable service had indeed been provided by Paramjit Singh and Kulwinder Singh. The receipts were not signed by either the consumers or Paramjit Singh and Kulwinder Singh. Therefore, there is no ground, whatsoever, to assess income of both the deceased any differently as done by the learned Tribunal. I also do not find any ground in the argument raised by the respondent-Insurance company that income of both the deceased should have been assessed with reference to the minimum wage available to an unskilled labourer in the State of Punjab at the relevant time, which was ₹3,398/- per month. In the present case CW2 Sukhmnder Singh, a member Panchayat, has deposed regarding the cable connections being provided by the deceased, though there is no licence etc. or any other attending document which may prove the same. The said evidence cannot be totally ignored and the deceased equated with unskilled labourers. Moreover, there is no appeal or cross-objections by the respondent-Insurance company in this regard. Therefore, income of both the deceased is upheld as ₹6,000/- per month.

In both the appeals, claimants are held entitled to increment at the

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rate of 40% on account of future prospects in terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi (supra)**.

In MACT No.76 of 22.3.2010 (subject matter of FAO No.9317 of 2014) filed in respect to death of Kulwinder Singh, deduction to the extent of 50% has been rightly effected. The matter regarding application of multiplier while assessing the compensation is no longer res integra. The Hon'ble Supreme Court in **Munna Lal Jain v. Vipin Kumar Sharma, (*2015) 6 SCC 347*** has specifically held that multiplier is to be applied with reference to the age of the deceased. The deceased – Kulwinder Singh in this case was admittedly 22 years old at the time of the accident. Therefore multiplier of 18, instead of 9, is required to be applied.

Instead of ₹25,000/- each, the claimant is entitled to ₹15,000/- each towards funeral expenses and loss of estate. The claimant i.e., mother of the deceased is held entitled to ₹40,000/- on account of loss of filial consortium in terms 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).

Appellant-claimant in FAO No.9317 of 2014 is, thus, entitled to compensation which is reworked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	6,000 per month i.e., 72,000 per annum
2.	Total income after addition at the rate of 40% on account of future prospects	72,000 + (72,000 **x** 40%) = 1,00,800

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3.	Deduction of 50% on account of personal expenses	1,00,800 – (1,00,800 **x** 1/2) = 50,400
4.	Total dependancy after applying a multiplier of 18	(50,400 **x** 18) = 9,07,200
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium	40,000
	Grand Total	₹9,77,200/-

In MACT No.75 of 22.3.2010 (subject matter of FAO No.9316 of 2014) filed in respect to death of Paramjit Singh, deduction to the extent of 1/4th is to be effected instead of 1/3rd keeping in view the number of dependants. Multiplier of 17 has been rightly applied. Instead of ₹25,000/- each, the claimants are held entitled to ₹15,000/- each towards funeral expenses and loss of estate. Instead of ₹1,00,000/-, the claimant-widow is held to ₹40,000/- on account of loss of spousal consortium. Minor children of the deceased are entitled to ₹40,000/- on account of loss of parental consortium and mother of the deceased is held entitled to ₹40,000/- on account of loss of filial consortium in terms 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).

Appellants-claimants in FAO No.9316 of 2014 are, thus, entitled to compensation which is reworked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	6,000 per month i.e., 72,000 per annum

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2.	Total income after addition at the rate of 40% on account of future prospects	72,000 + (72,000 **x** 40%) = 1,00,800
3.	Deduction of 1/4th on account of personal expenses	1,00,800 – (1,00,800 **x** 1/4) = 75,600
4.	Total dependancy after applying a multiplier of 17	(75,600 **x** 17) = 12,85,200
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium to appellant No.1	40,000
8.	Loss of parental consortium to appellants No.2 and 3	40,000
9.	Loss of filial consortium to appellant No.4	40,000
	Grand Total	₹14,35,200/-

Needless to say, the amount already awarded by the learned Tribunal to the claimants in both the appeals shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petitions till realization. Ratio of apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal.

Accordingly, FAO Nos.6826 and 6829 of 2015 filed by the owner of the offending vehicle are allowed. FAO Nos.9316 and 9317 of 2014 filed by the claimants are disposed of with the modification in the amount of compensation as above.

(LISA GILL)
JUDGE

December 06 , 2019.
'om'

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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