IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-4987-2017(O&M)

Smt.Rekha Rani and others

...Appellants

Versus

Neer @ Chotu and others

...Respondents

(2) FAO-4988-2017(O&M)

Jogi Ram

...Appellant

Versus

Neer @ Chotu and others

...Respondents

Date of Decision:-5.12.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.P. Bhandari, Advocate
for the appellants in both appeals.

Mr.Subhash Rana, Advocate
for respondent No.2 in both appeals.

Mr.Punit Jain, Advocate
for respondent No.3 in both appeals.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-4987-2017 filed on behalf of appellants – Smt.Rekha and others and FAO-4988-2017 filed on behalf of appellant – Jogi Ram, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 8.9.2015, at about

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7:00 a.m. while petitioner/claimant Jogi Ram, aged about 56 years, a resident of Subhash Nagar, District Kaithal was going to drop his grand children to school in his cycle rickshaw, which he was pulling and when he had reached near old bye-pass Kiathal, a crane bearing registration No.HR-64-7982 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Neer @ Chotu at a high speed in a rash and negligent manner came from behind and hit his cycle rickshaw due to which he suffered serious injuries; Master Rahul a grandson of Jogi Ram was crushed under tyre of the crane and died at the spot; at that time driver of the offending vehicle namely Neer @ Chotu – respondent No.1 had plugged ear phones of mobile in his ears; after seeing the condition of Jogi Ram and his grandson Rahul, respondent No.1 Neer @ Chotu ran away from the spot; the injured were removed to Civil Hospital, Kaithal where the doctor declared Rahul dead; Jogi Ram injured was medico legally examined; formal FIR No.289 dated 8.9.2015 for the offences under Sections 279/304-A IPC was registered against respondent No.1 – Neer @ Chotu with Police Station Civil Line, Kaithal.

The petitioner/claimant Jogi Ram had brought a claim petition under Section 166 of the Motor Vehicles Act bearing MACT Case No.11 of 2016 against respondents i.e. Neer @ Chotu – driver, Rohtash – owner and Cholamandalam MS General Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.5 lakhs on account of suffering of injuries in the mishap. As per the petitioner/claimant, he was aged about 56 years at the time of accident and he used to earn Rs.10,000/- per month by working as a labourer; that a

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sum of Rs.50,000/- was spent on his treatment, special diet etc. and after suffering injuries in the mishap, he is unable to do his daily routine work.

Similarly, parents of the deceased Rahul, namely, his mother Smt.Rekha Rani aged about 31 years, father – Dinesh Kumar aged about 35 years, minor sister – Tanishqa aged about 12 years, grandmother – Smt.Somwati Devi, aged about 52 years and grandfather – Jogi Ram aged about 56 years have also brought a claim petition bearing MACT Case No.12 of 2016 against the above-said respondents, claiming compensation to the tune of Rs.23 lacs, on account of death of Rahul in the said accident. It was contended that the deceased Rahul was aged about 11 years and a student of 6th class.

Since both the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Kaithal(hereinafter referred to as the Tribunal).

On notice all the three respondents had put in appearance and filed written statements contesting the claim petitions.

In the written statement filed by respondent No.1, he had raised various preliminary objections with regard to locus standi of the claimants to bring the claim petition denying that any cause of action had arose to the claimants to bring the claim petitions further contending that the Tribunal did not have any jurisdiction in the matter and petitions were bad for mis-joinder and non-joinder of necessary parties and the same were not maintainable. According to the answering respondent, he was holding a valid and effective driving licence to drive the vehicle at the time of alleged accident. On merits, such respondent denied material

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assertions in the claim petitions further contending that the crane in question driven by him had not caused any accident and a false FIR had been registered against him by the police at the instance of the claimants; that the crane in question was duly insured with respondent No.3 – insurance company at the relevant time. Refuting the remaining averments in the claim petitions, such respondent prayed for dismissal of the claim petition.

Written statement filed by respondent No.2 is almost on the similar lines as that of respondent No.1.

Whereas respondent No.3 – insurance company in the written statement filed by it had raised various legal objections and took statutory defences, on merits controverting the assertions in the claim petitions contending that the amount of compensation claimed was highly exaggerated. In the end, such respondent also craved for dismissal of the claim petitions.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petitions were allowed partly by the Tribunal vide award dated 1.10.2016. Petitioner Jogi Ram, who had filed MACT Case No.11 of 2016 was awarded compensation of Rs.5,000/-, petitioners Smt.Rekha Rani and others, who had filed MACT Case No.12 of 2016 were awarded compensation of Rs.5,00,000/- along with interest at the rate of 7.5% per annum from the date of filing of the petitions till final realization of the amount. It was observed that the insurance company would pay the awarded amount to the claimants at the

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first instance but would get a right to recover the same from the owner on account of breach of terms and conditions of the policy.

The petitioners/claimants were dissatisfied with the compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

Notice of the appeals was issued to the respondents abnd respondents No.2 and 3 have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

As far as MACT Case No.12 of 2016 filed by claimants/petitions Smt.Rekha Rani and others with regard to death of Master Rahul, I find that the compensation of Rs.5 lakhs awarded is adequate and proper considering the fact that deceased Rahul was aged about 11 years only and was studying in Class 6th. Of course he was dependent upon his parents and was not earning hand.

Though learned counsel for the appellants has referred to authorities in support of his contention that compensation of much more than Rs.5 lakhs ought to have been granted to the claimants but those judgments do not help the case of the claimants in any manner since facts of those judgments were different and so was the context in which such observations had been made. The first judgment referred to by learned counsel for the appellants was ***Chetan Malhotra Versus Lala Ram, 2016(2) ACC 896***. Such judgment dealt with compensation awarded in case of deaths of children of various ages. In case of 7 years old boy, a sum of Rs.2,80,000/-, 11 years old boy Rs.12,11,400, 17 years old boy

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Rs.6,48,000/- were awarded.

Whereas learned counsel for the insurance company has referred to various judgments. The first being FAO-5163-2014 titled ***'Ms.Satinder Kaur Versus Shri Gurnam Singh & another'***, decided on 31.7.2018 by a Co-ordinate Bench of this Court wherein while dealing with death of a boy aged 12 years in a road side accident, compensation of Rs.4 lakhs awarded by the Tribunal was enhanced to Rs.5 lakhs.

The next judgment referred to by learned counsel for the insurance company was FAO-433-2015 titled ***'Smt.Shabra and another Versus Ajay Mangla and others'*** decided on 10.9.2019 wherein when the deceased was aged about 8 years and had died in a motor vehicular accident, his legal representatives were found entitled to compensation of Rs.3,30,000/-.

The third authority referred by the counsel for the insurance company was ***Kishan Gopal and another Versus Lala and others, 2013(4)RCR(Civil) 276*** by the Apex Court wherein while dealing with death of a child aged 10 years in a motor vehicular accident when child was assisting his parents in agricultural occupation, compensation of Rs.5 lakhs had been paid.

I find that that the view of our own High Court is that in such an eventualities, compensation of Rs.5 lakhs around should be awarded rather than more than that.

Therefore, FAO-4987-2017 filed by appellants Smt.Rekha Rani and others seeking enhancement of compensation cannot succeed and is dismissed accordingly.

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Whereas with regard to compensation awarded to Jogi Ram to the tune of Rs.8,000/-, the same is on very lower side. Though petitioner/claimant Jogi Ram had not suffered any grievous injury and had not suffered any permanent disability but keeping in view the nature and extent of injuries suffered by him in the motor vehicular accident, it could well be expected that he would have got himself treated by going to the hospital on several occasions undergoing pain and suffering for a considerable time, spending money on going to the hospital and requiring some special diet and medicines for early recovery. Rs.5,000/- awarded to the petitioner/claimant Jogi Ram by the Tribunal is on very low side. Considering all the facts and circumstances, I find that this amount should be enhanced to Rs.40,000/-.

Ordered accordingly.

The Tribunal has awarded compensation of Rs.5,000/-.

In this way, the additional amount comes out to Rs.35,000/- (40,000 - 5,000). The claimant Jogi Ram would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount of Rs.35,000/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, FAO-4988-2017 is allowed partly with costs.

5.12.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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