

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

(1) FAO-5245 of 2017 (O&M)
Date of Decision: 18.12.2019

SUSHIL KUMAR @ SURJIT KUMAR AND ANR
...Appellants

Vs.

RAM KRISHAN AND ORS.
...Respondents

(2) CM-11744-CII of 2018 in/and
FAO-3020 of 2018 (O&M)

RAM KRISHAN AND ORS
...Appellants

Vs.

SUSHIL KUMAR @ SURJIT KUMAR AND ORS
... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ishant Khanagwal, Advocate for
Mr. Rajesh Bansal, Advocate
for appellants in FAO No. 5245-2017
Mr. B.S. Toor Advocate, for appellants in
FAO -3020 of 2018.
Mr. R. K. Bashamboo, Advocate
for respondent Insurance Company.

JAISHREE THAKUR, J. (Oral)

C.M. No.11744-CII of 2018 in
F.A.O. No. 3020 of 2018

It is an application that has been filed by the appellants seeking condonation of 95 days delay in filing of the first appeal. The counsel for the respondent Insurance Company does not oppose the application subject to the fact that the claimants would not claim interest for the delayed period. Delay in filing the appeal is condoned subject to the

condition that the claimants appellants shall not be entitled to interest on the enhanced amount of compensation if any for the period of delay i.e. 95 days.

Main Cases

This court by this order proposes to dispose of FAO No. 5245 of 2017 titled as “*Sushil Kumar @ Surjit Kumar and another Vs. Ram Krishan and Others*” as well as FAO No. 3020 of 2018 titled as “*Ram Krishan and Others Vs. Sushil Kumar @ Surjit Kumar and Others*” since they arise out of a common award dated 06.04.2017 as passed by the Motor Accident Claims Tribunal, Ludhiana, out of the same accident which took place on 19.08.2015. The facts, however, are taken from FAO No. 3020 of 2018.

The deceased Sarabjit Kaur was riding pillion along with her husband on motor cycle, bearing Registration No. PB-65-A-5960 and at about 8.20 a.m. when they reached near Shiv Mandir Dhaliara area, the motor cycle was hit by offending bus bearing Registration No. HP-68A-6283. As a result of the accident both the driver and Smt. Sarabjit Kaur fell down on the road and received multiple injuries. Sarabjit Kaur died on the spot whereas her husband was shifted to Civil Hospital Dehra (H.P.). On account of the death of Smt. Sarabjit Kaur FIR No. 115 dated 19.08.2015 was registered at Police Station Kangra, under Sections 279, 427 & 304-A of IPC against respondent No. 1 subsequent to which a claim petition under Section 166 of the Motor Vehicle Act came to be filed.

Upon notice both respondent No. 1 and 2 i.e. driver and the

owner of the offending vehicle appeared and filed the written statement taking a plea that false and fabricated case had been registered against the driver. Respondent No. 3, insurance company has contested the claim petition on the ground that at the time of accident respondent No. 1 did not possess any valid driving licence to drive the offending vehicle in question and further it was averred that owner of the offending vehicle was not holding valid registration and fitness certificate qua the same at the relevant time and thus there was clear violation of terms and conditions of the the insurance policy.

In order to substantiate the contentions, the claimants examined CW-1 Ram Krishan, CW-2 Baldev Singh and CW-3 Lachhman Singh and produced on record certain documents which evidence was sought to be rebutted by respondent No. 3 who examined RW-1 Ashwini Kumar, the dealing clerk from the RTO office as well as RW-2 Gurmail Singh, Superintendent, RLA Amb, District UNA and also produced the documents EX. R-1 and Ex. R-14 and closed the evidence whereas respondent No. 1 and 2 produced documents EX. R-1 to Ex. R-4.

As per the case of claimant-appellants, respondent No. 1 came at a high speed and due to the rash driving hit the motor cycle from the back and due to the impact Sarabjit Kaur died on the spot whereas Ram Krishan her husband suffered injuries. The factum of the accident has not been challenged either by the owner or by the driver. The Tribunal while allowing the claim petition, fastened the liability upon the insurance

company while allowing it recovery rights on the ground that respondent No. 1 was not having a valid driving licence on the date of the accident.

Aggrieved against the compensation, the claimants have filed the instant appeal while contending that the income of the housewife has been assessed at Rs. 5,000/- per month whereas it should have been taken at Rs. 9,000/- per month in terms of judgment rendered by this Court in **United India Insurance Co. Ltd. Vs. Sube Singh & Others, FAO No. 218 of 2014 decided on 15.01.2014** while also contending that incorrect multiplier of 12 has been allowed which should have been taken at 14. Counsel appearing on behalf of the owner of the offending vehicle to the contrary contends that the Tribunal has erred in ignoring the valid driving licence of the driver.

Learned counsel for the parties have produced the pleadings of the case. The fact of the accident is not in dispute. Since neither the owner/driver of the offending vehicle has challenged the accident nor has the Insurance Company, therefore, first question to be decided is whether liability could have been fastened on the respondent No. 1 and 2 by allowing recovery rights to the Insurance Company on the ground that the driver was not holding the valid driving licence.

In FAO No. 5245 of 2017, an application has been filed under Order 41 Rule 27 C.P.C. seeking permission for leading additional evidence in order to establish that the driver was holding a valid driving licence. In response to the said application, counsel for the Insurance Company states that the driving licence that has been relied upon has been found to be

genuine. Consequently, a very fair statement having been made by the counsel for the insurance company that the driving licence relied upon is a valid driving licence the award of the Tribunal is modified to the extent that the liability for the payment of compensation would rest entirely upon the insurance company.

The second question that needs to be settled is whether inadequate compensation has been allowed to the family of the deceased or not. On account of the deceased being a housewife, her notional income is to be determined at Rs. 9000/- per month in terms of judgment rendered in the case of **Sube Singh (supra)**. The Tribunal took the age of the deceased at 41 years at the time of the accident and, therefore, the multiplier ought to have been taken at 14 as against 12 as per the judgments rendered in “**Smt. Sarla Verma and others Vs. Delhi Transport Corp. and Another 2009 (6) SCC 121 and National Insurance Co. Ltd Vs. Pranay Sethi & Others 2017 (4) RCR (Civil) 1009**” Therefore, the compensation needs to be reassessed as follows:-

Sr. No.	Heads of claim	Calculation
1.	Name of deceased	Sarabjit Kaur
2.	Date of accident	19.08.2015
3.	Age of deceased	41 years
4.	Notional income of deceased housewife	9000/- per month
5.	Compensation calculated after applying multiplier of 14	9000 x 12 x 14
6.	Compensation for loss of consortium	40,000/-
7.	Funeral expenses	15,000/-
8.	Total (5+6+7)	15,67,000/-

Thus in all, the compensation payable shall be Rs.15,67,000/-.

The amount in excess over what had been awarded by the Tribunal shall

also attract interest @ 7.5% per annum from the date of filing of claim petition till realization except for the period of delay in filing the appeal i.e. 95 days.

With the award passed by the Tribunal being modified to the aforesaid extent both the appeals are disposed of.

December 18, 2019
monika

(JAISHREE THAKUR)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether reportable:</i>	<i>Yes/No</i>