

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

1. FAO No. 2905 of 2018

Iffco Tokio General Insurance Co. Ltd. ...Appellant

Versus

Gurdev Singh and others ...Respondents

2. FAO No. 5985 of 2018

Gurdev Singh and others ...Appellants

Versus

Harvinder Singh and others ...Respondents

Date of decision:- 13.11.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Amit Goyal, Advocate
for the appellant-Insurance Company in FAO No. 2905-2018
& for respondent No.3 in FAO No. 5985 of 2018

Mr. R.C. Gupta, Advocate for the appellant
in FAO No. 5985-2018
for respondent Nos. 1 to 3 in FAO No. 2905-2018

Ms. Shweta Nahata, Advocate
for respondent Nos. 4 and 5 in FAO No. 2905-2018

RITU BAHRI J.

1. The above said appeals, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned award dated 05.04.2018 passed by the learned Motor Accident Claims Tribunal, Panchkula (for short the Tribunal) in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') whereby the claimants have been awarded compensation to the tune of Rs.15,82,000/-

Facts not in dispute

2. On 31.12.2016, Smt.Sabu Devi @ Subu Devi @ Sabhu Devi @ Sabhu Devi (since deceased) alighted from three-wheeler in service lane of

NH-21 near Peer Baba, Sector-21, Panchkula and started walking on katcha path towards Village Devi Nagar and had walked only 2-3 steps in katcha portion, in the meantime, a Tata 407 bearing registration No.HR-37-A-1430 (hereinafter in brevity, referred to as the offending vehicle), being driven by its driver/respondent No.1 rashly, negligently, in zigzag manner, without blowing any horn and at a very high speed and without using any indicator came from behind i.e. Majri Chowk, Panchkula side and after overtaking i20 Car No.HR-03-Q-3660 being driven by Sachin Kumar, author of FIR, respondent No.1 brought his Tata 407 on his extreme left hand side of the road in katcha portion and hit against Smt.Sabu Devi @ Subu Devi @ Sabhu Devi @ Sabhu Devi. As a result of the accident, Smt.Sabu Devi @ Subu Devi @ Sabhu Devi @ Sabhu Devi fell down on the side of road and suffered multiple, simple and grievous injuries. Sachin Kumar alighted from his car and started taking care of deceased Smt.Sabu Devi. Sachin Kumar shifted injured Smt.Sabu Devi @ Subu Devi @ Sabhu Devi to General Hospital, Sector-6, Panchkula, where she was declared brought dead. FIR No.2 dated 01.01.2017 under Sections 279, 304-A IPC was registered at Police Station Sector-5, Panchkula against respondent No.1 on the basis of statement of eye witness namely Sachin Kumar.

COMPENSATION AWARDED BY THE TRIBUNAL

3. While assessing the compensation, the Tribunal took the income of the deceased at Rs.9000/- per month and applied the multiplier of 14 and Rs.15,000/- were awarded towards last rites and transportation of body, Rs.15,000/- were awarded towards loss of estate, Rs.40,000/- were awarded towards loss of consortium. The total compensation of Rs.15,82,000/- was awarded to the claimants.

4. The appellant insurance company challenges the Award of the learned Motor Accident Claims Tribunal, Panchkula, dated 05.04.2018, by which respondents no.1 to 3 (claimants in the claim petition), have been awarded a compensation of Rs.15,82,000/-, on account of the unfortunate death of Sabu Devi @ Subu Devi @ Sabhu Devi in a motor vehicle accident that took place on 31.12.2016.

5. Mr. Goyal, learned counsel for the appellant, submits that the insurance company is challenging the Award both on the quantum of compensation as also on the negligence in the accident being caused, the stand of the appellant being that respondent no.4 was not negligent in causing the accident.

6. As regards the issue on respondent no. 4 herein, i.e. the driver of the Tata-407 vehicle insured by the appellant, not being negligent in causing the accident, this Court see no reason to interfere with the finding of the Tribunal, in view of the fact that no evidence whatsoever was led either by the appellant or by respondents no. 4 and 5, to refute the testimony of the eye witness, Sachin Kumar, who is also stated to have got the FIR lodged on 01.01.2017, i.e. a day after the accident.

7. Undoubtedly, the FIR has been lodged on the next day of the accident but with not even a complaint having been made to any higher authority with regard to an allegedly false FIR registered against respondent no. 4 and nothing having been pointed out by learned counsel for the appellant to suggest that the accident did not take place in the manner described in the claim petition, in support of which PW-2 duly testified, the contention with regard to negligence in causing the accident that of respondent no. 4 is to be rejected.

8. This is especially so because the deceased lady is stated to have been walking on the *katcha* portion of a side lane, when the vehicle driven by respondent no.4 is stated to have come from behind after overtaking a car driven by the aforementioned Sachin Kumar, and thereafter having hit the deceased. No evidence to the contrary, in any manner, was led on behalf of the appellant or respondents no.4 and 5 to controvert the aforesaid version of the accident given in the claim petition, as was also testified to by Sachin Kumar.

9. Hence, the challenge to the finding of the learned Tribunal on issue no.1 (negligence in causing the accident) is rejected.

10. Learned counsel for the Insurance Company has argued that the age of the deceased has been taken to be 43 years of age but actually she was 52 years of age as per her aadhar card wherein the date of birth of the deceased has been mentioned as 01.01.1964. The learned Tribunal has erred in law in assessing the age of the deceased as 43 years at the time of her death, as per post mortem report (Ex P-5).

11. Learned counsel for the claimants is not disputing the aadhar card of the deceased wherein the date of birth of the deceased has been mentioned as 01.01.1964 (A-3). However, learned counsel for the claimants submits that the income of the deceased has been taken on the lower side and deserves to be enhanced.

REASSESSED COMPENSATION

12. I have heard learned counsel for the parties and perused the case file.

13. The argument of learned counsel for the appellant-Insurance Company that the multiplier of 14 has been wrongly taken by the Tribunal

while assessing the compensation is duly supported by the aadhar card of the deceased (A-3) and the same is also not being disputed by learned counsel for the Insurance Co. Thus, the compensation has to be re-assessed by applying the multiplier of 11 instead of 14.

14. However, the children as well as parents are also entitled for compensation of Rs.40,000/- each under the head of loss of consortium, in view of judgment of Hon'ble the Supreme Court of India in a case of ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram, 2018 (4) RCR Civil 837***.

15. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** wherein the issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

“54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot

remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”.

16. In the present case, the compensation is being reassessed as per the judgments mentioned above :-

Re-assessed compensation

Sr. No.	Heads	Calculations
(i)	Income	Rs.9000/- per month
(ii)	Loss of dependency	Rs. 9000 X 12 =Rs.1,08,000/- annually
(iii)	Compensation after multiplier of 11	1,08,000X11=Rs.11,88,000/-
(iv)	Conventional heads (Loss of estate, consortium and funeral expenses)	Rs.70,000/-
(v)	Loss of fillail consortium (two sons)	Rs.80,000/- (Rs.40,000/- each)
	Total Compensation to be awarded now	Rs.13,38,000/-

13. Resultantly, the appeals are partly allowed. Accordingly, the claimants are entitled to compensation of Rs.13,38,000/- which shall be payable within a period of forty five days from the date of receipt of

certified copy of this order. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of judgment of Hon'ble the Apex Court in Civil Appeal No. 4528-2019 titled as *Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019*. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

November 13, 2019
G Arora

(*RITU BAHRI*)
JUDGE

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