

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 7347 of 2017 (O&M)
Date of decision: 15.10.2019

National Insurance Co. Ltd.

...Appellant

V/s.

Manila Goel and others

...Respondents

And

FAO No. 2033 of 2018 (O&M)

Manila Goel and others

...Appellant

V/s.

Rajinder Kumar and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. S.S.Sidhu, Advocate for
the appellant in FAO No. 7347 of 2017
and for respondent No.3-insurance co.
in FAO No. 2033 of 2018.

Mr. Ashwani Arora, Advocate for
respondents No. 1 to 5 in FAO No. 7347 of 2017
and for the appellants in FAO No. 2033 of 2018.

Mr. Govind Rana, Advocate for
Mr. Harkesh Manuja, Advocate
for respondents No. 2 and 3
(appointed as *guardian ad litum*) in
FAO No. 7347 of 2017.

RITU BAHRI, J. (Oral).

This order shall dispose of two appeals i.e. FAO No. 7347 of
2017, filed by National Insurance Company and another FAO No. 2033 of
2018, filed by the claimants.

The National Insurance Company has come up in appeal challenging the quantum of compensation whereas the claimants have come up in appeal against the award of the tribunal dated 01.08.2017 whereby they have been awarded compensation of Rs.22,50,000/- on account of death of Rishu Goel who died in a road accident which took place on 22.01.2015.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 22.01.2015, Rishu Goel, his wife Manila Goel, son Sparsh and daughter Dikshita were going from Jagadhri to Gurgaon to attend *Rasam Pagri* of their relative. They were travelling in a car bearing registration No.HR-02AB-6129 borrowed from respondent No. 2. The car was being driven by respondent No.1 Rajinder Kumar. As he was driving at a very fast speed and in a zig-zag manner, he was repeatedly advised by Rishu Goel and Manila Goel to drive carefully and to slow down but, he did not pay heed and continued driving the car in the same fashion. At about 5:30/5:45 AM when they reached near T-point of village Ishapur on Yamuna Nagar-Kurukshetra road, a tractor-trolley loaded with pebbles was going ahead of the car. On account of the flashing lights of a vehicle coming from the opposite direction, the driver of the tractor-trolley slowed down. However, respondent No. 1 did not reduce the speed and hit the tractor-trolley from behind. Due to the impact, all the occupants got stuck in the car and sustained multiple injuries. They were evacuated out of the car by the passersby. Rishu Goel was taken to Civil Hospital, Yamuna Nagar where he was declared 'brought dead'. Consequently, the claimants-appellants filed a claim petition before the tribunal.

COMPENSATION ASSESSED BY THE MACT

The parties are not in dispute with respect to finding on issue No.1 that the accident took place on account of negligent driving of respondent No.1. This finding has been rightly given in favour of the claimants keeping in view FIR No. 20 dated 20.01.2015 was registered under Sections 279/337 and 304-A IPC, Police Station Sadar Yamuna Nagar (Ex.P120), copy of DDR (Ex.P121) and copy of final report under Section 173 Cr.P.C. (Ex.P122).

The deceased was above 39 years of age as per the post mortem report (Ex.P119) and was trading in utensils. The tribunal had assessed monthly income of the deceased as Rs.15,000/- and assessed the following compensation:-

Sr. No.	HEADS	CALCULATIONS
(i)	Annual Income	15,000X12=Rs.1,80,000/-
(ii)	1/4 th of (i) is deducted as personal expenses of the deceased	1,80,000-45,000=1,35,000/-
(iii)	Compensation after multiplier of 15 is applied	1,35,000X15=Rs.20,25,000/-
(iv)	Loss of consortium	Rs.1,00,000/-
(v)	Loss of estate	Rs.50,000/-
(vi)	Funeral expenses	Rs.25,000/-
(vii)	Loss of love and affection	Rs.50,000/-
	TOTAL COMPENSATION AWARDED	Rs.22,50,000/-

Hence, the claimants were found entitled to total compensation of Rs.22,50,000/- along with interest @ 9% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the appeal.

The National Insurance Company is also challenging the award on the quantum of compensation. Learned counsel for the insurance company has argued that there is no evidence led by the claimants to show that the deceased was actually running business of utensils and the tribunal

had assessed the income of the deceased as Rs.15,000/- p.m. which is on higher side.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

The appeal filed by the insurance company is being partly allowed since there was no evidence led to show that the deceased was actually trading in utensils and keeping in view the minimum wages prevalent in State of Haryana of skilled labourer in the year 2015 i.e. Rs.9,699/-p.m. the income of the deceased is being assessed as Rs.12,000/- p.m. The compensation is hereby reassessed keeping in view the judgments passed by Hon'ble the Supreme Court in *Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others*, Civil Appeal No. 9581 of 2018 and *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Annual Income	12,000X12=Rs.1,44,000/-
(ii)	40% increase as future prospects	1,44,000+57,600=Rs.2,01,600/-
(iii)	1/4 th deduction for personal expenses	2,01,600-50,400=1,51,200/-
(iv)	Total loss of dependency after applying multiplier of 15	1,51,200X15=22,68,000/-
(v)	Funeral expenses	Rs.15,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of consortium	Rs.1,00,000/-
(viii)	Loss of love and affection	Rs.50,000/-
(ix)	Loss of filial consortium	Rs.40,000/- (to the mother of the deceased)
	TOTAL COMPENSATION AWARDED	Rs.24,88,000/-

	ENHANCED AMOUNT OF COMPENSATION	24,88,000-22,50,000/- =Rs.2,38,000/-
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The enhanced amount of compensation of **Rs.2,38,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others***, Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the appeal of the claimants is also allowed. Pending applications also stand disposed of.

(RITU BAHRI)
JUDGE

15.10.2019
Divyanshi

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