

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

1. FAO No. 537 of 2018 (O&M)

Date of decision : July 22, 2019

IFFCO TOKIO General Insurance Co. LimitedAppellant

Versus

Asha Devi and othersRespondents

2. FAO No. 599 of 2018 (O&M)

IFFCO TOKIO General Insurance Co. LimitedAppellant

Versus

Khatun and othersRespondents

3. FAO No. 8292 of 2017 (O&M)

Asha Devi and othersAppellants

Versus

Ashok Kumar and othersRespondents

4. FAO No. 8301 of 2017 (O&M)

Khatun and othersAppellants

Versus

Ashok Kumar and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arvind Kumar Yadav, Advocate
or the appellants/claimants in FAO Nos. 8292 & 8301 of 2017,
for respondents no.1 to 4 in FAO No. 599 of 2018 and
for respondents no.1 to 5 in FAO No. 537 of 2018.

Ms. Swati Batra, Advocate
for the appellant in FAO Nos. 537 & 599 of 2018 and
for respondent no.3 in FAO Nos. 8292 & 8301 of 2017.

LISA GILL, J.

This judgment shall decide FAO Nos. 8292 & 8301 of 2017
and 537 & 599 of 2018.

All the said appeals emanate from claim petitions arising out of

the accident which took place on 24.03.2016, which have been decided by the learned Motor Accident Claims Tribunal, Rewari (hereinafter referred to 'the Tribunal') vide common award dated 22.08.2017.

FAO Nos. 537 and 599 of 2018 have been filed by the insurance company challenging award dated 22.08.2017

FAO Nos. 8292 & 8301 of 2017 have been filed by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Dalip Singh and Aslam, respectively vide award dated 22.08.2017. 80% of the awarded amount was directed to be disbursed to the claimants qua adequate surety vide order dated 29.12.2018 passed in FAO Nos. 537 and 599 of 2018. Recovery of rest of the amount was stayed.

Brief facts of this case are that in a motor vehicle accident which took place on 24.03.2016 at about 12.30 p.m., Dalip Singh and Aslam lost their lives. It is pleaded that Dalip Singh alongwith Aslam was coming from Bawal to their village Pranpura on a motorcycle bearing registration No. HR-36Q-1863 driven by Dalip Singh. When they reached near village Sahapur at Bawal to Pranpura Road, offending vehicle, i.e. a car bearing registration No. HR-19D-9080 came in a rash and negligent manner, at a very high speed and collided with the motorcycle. As a result thereof, both Dalip and Aslam sustained fatal injuries and died.

Learned counsel for the appellant – insurance company submits that learned Tribunal has erred on facts and in law in passing the impugned award dated 22.08.2017. Involvement of the vehicle in question is not proved from the evidence on record. It is submitted that though the FIR was registered on the same day, the registration number of the offending vehicle,

its details or that of its driver are not forthcoming in the FIR. Testimony of PW3 Krishan Kumar i.e. the eyewitness of the accident is not credible. It is further submitted that excessive compensation has been awarded to the claimants in both the cases. In respect to the claim petition arising out of the death of Dalip Singh, it is additionally submitted that age of Dalip Singh has been wrongly concluded to be 26 years by the learned Tribunal on the basis of the Post Mortem Report whereas the deceased Dalip Singh was in fact 32 years old. This is so reflected in his Adhaar card, which is sought to be placed on record by way of additional evidence in CM-15021-CII-2019. It is submitted that excessive compensation has been awarded by the learned Tribunal under all the heads which should be reduced. It is, thus, prayed that these appeals be allowed, the insurance company be completely absolved of its liability and in the alternate the compensation awarded to the claimants be reduced.

Per contra, learned counsel for the claimants refutes the arguments in respect to the non-involvement of the vehicle in question. It is submitted that there is ample evidence on record to prove that both Dalip Singh and Aslam lost their lives in a motor vehicle accident, which took place on 24.03.2016 caused due to the rash and negligent driving of car bearing registration No. HR-19D-9080 driven by its driver. In respect to the age of Dalip Singh, learned counsel for the claimants submits that he has specific instructions to accept Dalip Singh's age to be 32 at the time of the accident. It is, however, submitted that compensation on other counts should be enhanced. Compensation may, accordingly, be reworked. In view of the specific stand taken by the learned counsel for the claimants, CM-15021-CII-2019 is allowed.

I have heard learned counsel for the parties and have gone through the record with their assistance.

The accident in question is pleaded to have taken place on 24.03.2016. FIR No. 38 dated 24.03.2016 was registered immediately on the statement of Aas Mohmad son of Aslam (deceased). Statement of the eye witness of the accident namely Krishan Kumar (PW3) was recorded by the police officials on the very next day i.e. 25.03.2016. I have perused the statement of PW3 Krishan Kumar, who has indeed given a graphic account of the accident as it took place giving the details of the offending vehicle as well. PW3 succinctly explained that he had gone to Baba Govind Das Temple at Nangal Shahbazpur on 24.03.2016 and his statement in respect to the accident was recorded at Police Station Bawal on 25.03.2016 itself. Details of the offending vehicle, including its registration number were revealed to the police by PW3, pursuant to which the driver of the offending vehicle was proceeded against. Learned counsel for the insurance company is unable to deny that final report under Section 173 Cr.P.C. was presented against the driver of the offending vehicle and he is being proceeded against. She is unable to point out anything on record to discredit the testimony of PW3 in any manner. Despite searching cross examination, the respondents could not illicit anything in their favour. Moreover, it is a matter of record that the owner and the driver of the offending vehicle did not step in the witness box. Involvement of the offending vehicle is duly proved by the evidence on record. The Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Company Ltd. and others, 2018 (5) SCC 656 and Sunita v. RSTRC, CA No. 1665 of 2019 (arising out of SLP (civil) No. 33757 of 2018, decided on 14.02.2019**, has reiterated that the

claimants in proceedings under this Act have to prove their case on the touchstone of preponderance of probabilities and not beyond reasonable doubt. The claimants have indeed been successfully proved the involvement of the vehicle on the touchstone of preponderance of probabilities in this case.

I do not find any ground whatsoever to interfere in the finding so returned by the learned Tribunal on this issue. The same is, accordingly, upheld.

FAO No. 8292 of 2017

This appeal has been preferred by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Dalip Singh vide award dated 22.08.2017.

Learned Tribunal while assessing the income of the deceased to be ₹19,250/- per month awarded a sum of ₹46,43,028/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Increment of 50% was afforded by the learned Tribunal. Deduction of 1/4th was effected. Multiplier of 17 was applied. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded. A sum of ₹25,000/- on account of funeral expenses and a sum of ₹1,00,000/- on account of loss of love and affection was awarded.

The deceased Dalip Singh was admittedly working as a Supervisor in R.S. Engineering on a monthly salary of ₹19,250/-. There is no dispute regarding the salary being received by Dalip Singh at the time of his death. However, there is no evidence on record to indicate that he was a permanent employee of the Firm in question. Learned counsel for the claimants is unable to point out any such evidence on record to indicate the

same. In fact, PW4 Rambir son of Raghubir who was examined to prove the employment of Dalip Singh with the firm stated in his cross examination that none of the employees in the firm are working on a regular basis. Thus, income of the deceased, as assessed by the learned Tribunal, is upheld as ₹19,250/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase on account of future prospects at the rate of 40% instead of 50% (₹7700/-) has to be afforded, which takes income of the deceased to ₹26,950/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77**, deduction of 1/4th is to be applied as number of dependants is five (5), thereby rendering income of the deceased to be ₹20212.5/-(26,950-6737.5). As the age of the deceased has been accepted to be 32 years at the time of the accident, multiplier of 16 instead of 17 is applied and dependancy of the claimants is assessed as ₹38,80,800/- (₹20212.5 x12x16). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹25,000/-) and loss of estate (instead of ₹1,00,000/- for loss of love and affection) besides the claimant widow is entitled to ₹40,000/- (instead of ₹1,00,000/-) on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others**, appellants No. 2 and 3 i.e. children of the deceased are entitled to ₹40,000/-

on account of loss of parental consortium and appellants No. 4 and 5 to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to compensation of ₹40,30,800/- instead of ₹46,43,028/- detailed as under:-

Loss of dependency(₹20212.5 x12x17)	₹38,80,800/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹40,30,800/-

Rate of interest awarded by the learned Tribunal is maintained.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

FAO No. 8301 of 2017

Learned Tribunal while assessing the income of the deceased to be ₹17,430/- per month awarded a sum of ₹25,06,536/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Increment of 30% was afforded by the learned Tribunal. Deduction of 1/3rd was effected. Multiplier of 13 was applied. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded. A sum of ₹25,000/- each on account of funeral expenses and loss of estate was awarded.

The deceased Aslam was admittedly working as a Machine Operator in R.S. Engineering on a monthly salary of ₹17,430/-. There is no dispute regarding the salary being received by Aslam at the time of his

death. However, there is no evidence on record to indicate that he was a permanent employee of the Firm in question. Learned counsel for the claimants is unable to point out any such evidence on record to indicate the same. Income of the deceased, as assessed by the learned Tribunal, is thus upheld as ₹17,430/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 25% instead of 30% (₹4357.5/-) has to be afforded, which takes income of the deceased to ₹21,787.5/- per month.

There is a merit in the argument raised by learned counsel for the claimants that deduction of 1/4th instead of 1/3rd should be effected as the claimants are the widow and three children of the deceased. They were all living together. There is indeed no evidence on record to show that all of them were not dependent upon the deceased. Therefore, deduction of 1/4th instead of 1/3rd has to be effected, in view of the guidelines laid down by the Hon'ble Supreme Court in case of **Sarla Verma** (supra), thereby rendering income of the deceased to be ₹16340.5/-(21787.5-5447). Applying a multiplier of 13, dependancy of the claimants is assessed as ₹25,49,118/- (₹16340.5 x 12 x 13). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate (instead of ₹25,000/-) besides the claimant widow is entitled to ₹40,000/- (instead of ₹1,00,000/-) on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited** (supra) and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others**, appellants No. 2 to 4 i.e. children of the deceased are entitled to ₹40,000/- on account of loss of parental consortium. Claimants are, thus,

entitled to total compensation of ₹26,59,118/- detailed as under:-

Loss of dependency(₹16340.5 x12x13)	₹25,49,118/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹26,59,118/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Rate of interest awarded by the learned Tribunal is maintained qua the compensation awarded by the learned Tribunal. Claimants shall be entitled to 7.5% interest on the enhanced amount.

Apportionment of the amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, FAO Nos. 537, 599, 8292 & 8301 of 2017 are disposed of.

July 22, 2019
rts

(Lisa Gill)
Judge

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