

FAO-5948-2012(O&M);
FAO-5949-2012(O&M);
FAO-943-2013(O&M); and
FAO-944-2013(O&M)

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

(1) FAO-5948-2012(O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Harbans Singh and others

...Respondents

(2) FAO-5949-2012(O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Charanjit Kaur and others

...Respondents

(3) FAO-943-2013(O&M)

Charanjit Kaur and another

...Appellants

Versus

Amarinder Singh and others

...Respondents

(4) FAO-944-2013(O&M)

Harbans Singh

...Appellant

Versus

Amarinder Singh and others

...Respondents

Date of Decision:-27.2.2019

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

Present: Mr.Ashwani Talwar, Advocate
for the appellant in FAO-5948-2012 and
FAO-5949-2012 and for respondent No.3 in
FAO-943-2013 and FAO-944-2013.

Mr.S.L.Bhalla, Advocate for the appellants in
FAO-943-2013 and FAO-944-2013 and for
respondent No.1 in FAO-5948-2012 and
for respondents No.1 and 2 in FAO-5949-2012.

H.S. MADAAN, J.

By this order, I shall dispose of four FAOs i.e. FAO-5948-2012, FAO-5949-2012 filed on behalf of appellant – New India Assurance Company Ltd., FAO-943-2013 filed on behalf of appellants Charanjit Kaur and Pavittar Pal Singh and FAO-944-2013 filed on behalf of appellant – Harbans Singh, which have arisen out of the same accident.

Petitioner/claimant – Harbans Singh aged about 47 years had filed a claim petition bearing MACT No.15 dated 15.3.2010 under Section 166 of Motor Vehicles Act against respondents i.e. Amarinder Singh – driver, Gursewak Singh – owner and New India Assurance Company Ltd. - insurer of Ceilo Car having registration No.CH-01-U0587 (hereinafter referred to as the offending car) claiming compensation on account of injuries suffered by him in the motor vehicular accident, which occurred on 22.4.2009 at about 7:00 p.m. in the area of village Hiragarh statedly on account of rash and negligent driving of the offending car by respondent No.1 – Amarinder Singh.

The legal representatives of Baljit Singh, who had lost his life

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in that very accident, namely Mrs.Charanjit Kaur – widow, Pavittar Pal Singh – son and Amandeep Kaur - daughter had also brought a claim petition bearing MACT Case No.16 dated 15.3.2010 under Section 166 of the Motor Vehicles Act against those very respondents claiming compensation.

After contest, the claim petitions were allowed by Motor Accidents Claims Tribunal, Patiala and separate awards dated 31.8.2012 were passed and compensation of Rs.3,09,015/- with interest @ 7.5% per annum from the date of the claim petition till realization besides costs of the petition was awarded in MACT Case No.15 dated 15.3.2010 to claimant Harbans Singh and compensation of Rs.5,22,000/- with interest @ 7.5% per annum from the date of the claim petition till realization besides costs of the petition was awarded in MACT Case No.16 dated 15.3.2010 to claimants Mrs.Charanjit Kaur and others.

The claimant/petitioner Harbans Singh MACT Case No.15 dated 15.3.2010 and claimants/petitioners Smt.Charanjit Kaur and Pavittar Pal Singh in MACT Case No.16 dated 15.3.2010 being dissatisfied with the said Award and insurance company being dissatisfied with both the Awards have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

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

Taking up FAO-5948-2012 and FAO-5949-2012 filed by the

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insurance company first, the main thrust of arguments advanced by learned counsel for the insurance company has been that the Tribunal has wrongly decided issue No.1 in both the petitions in favour of claimant(s) against the respondents holding that the accident had taken place on account of rash and negligent driving of Cielo car bearing registration No.CH-01-U-0587 by its driver Amarinder Singh; that as a matter of fact this car was not involved in the accident and has been wrongly planted; that the FIR was got registered by Mrs.Charanjit Kaur widow of deceased Baljit Singh claiming to be an eye-witness of the accident but in the FIR, number of the vehicle and name of the driver had not been mentioned despite the fact that FIR was registered after 17 ½ hours of the accident; that the SHO of Police Station Sadar, Patiala as a result of investigation had concluded that neither the car nor the driver were involved in the accident; that DSP of the Halqa had also reached that conclusion but the Tribunal discarded those reports mentioning that ultimately the challan has been filed against the car driver, therefore, the finding in that regard is required to be set aside.

Whereas learned counsel appearing for the respondents has countered those arguments submitting that the Tribunal has rightly come to the conclusion that accident had taken place on account of rash and negligent driving of the car by Amarinder Singh and there is no reason to upset that finding.

After hearing the rival contentions of learned counsel for the parties and going through the record, I find that the arguments advanced

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by learned counsel for the appellant insurance company are devoid of any merit. Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. Furthermore the Tribunal deciding the claim petition is to reach its own conclusion on the basis of evidence adduced before it. The reports of the police officers and even judgment of a Criminal Court are not binding upon the Tribunal.

As regards the contention that the vehicle number and name of the driver are not mentioned in the FIR, it is not in dispute that FIR is not an encyclopedia and the detailed version of an incident need not be given there. The only purpose of lodging of FIR with regard to commission of a cognizable offence is to set the criminal machinery into motion. It is only after registration of the FIR that the investigating agency came to know about the manner in which the offence was committed and person responsible for doing so. Amarinder Singh driver of the offending car has been challaned by the police on completion of investigation. The reports said to have been submitted by SHO Police Station Sadar, Patiala and DSP of Halqa giving him clean chit and observing that the car in question was not involved in the accident are not of much value. The very fact that Amarinder Singh has been challaned with regard to the present accident on account of alleged rash and negligent driving of the car

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bearing registration No.CH-01-U-0587 *prima facie* goes to show involvement of the said car and Amarinder Singh being responsible for causing the accident by his wrongful driving. The findings recorded by the Tribunal on issue No.1 in both the petitions are correct that respondent No.1 Amarinder Singh was author of the accident by his rash and negligent driving of car bearing registration No.CH-01-U-0587, resulting in causing injuries to Harbans Singh, Baljit Singh and Charanjit Kaur wife of Baljit Singh had suffered injuries and Baljit Singh had succumbed to those injuries.

In the claim petition filed by claimant-petitioner – Harbans Singh, he himself had got his statement recorded as PW1 stating that the accident had taken place due to rash and negligent driving of Amarinder Singh while driving the car in question. The Tribunal has observed that he was cross-examined at length and his evidence inspires confidence and he has no enmity with respondent No.1. He having suffered injuries in the accident is a stamped witness and his presence at the spot cannot be doubted. Whereas in the petition filed by petitioner/claimant Charanjit Kaur and others, Charanjit Kaur injured claimed had also stated so. The Tribunal has found her testimony to be worthy of reliance. The Tribunal has further referred to cross-examination of respondent No.1 – Amarinder Singh wherein he admitted that he was facing criminal trial in Court of Additional Chief Judicial Magistrate, Patiala on the charge of causing death of Baljit Singh and injuries to Harbans Singh. He had further admitted that his car bearing registration No.CH-01-U-0587 was taken

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into possession by the police and he was arrested in this case and released on bail.

Therefore, I conclude that the verdicts given by the Tribunal with regard to issue No.1 in both the petitions are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and no interference therewith is called for.

Thus, **FAO-5948-2012** and **FAO-5949-2012** filed by the insurance company stand dismissed.

Learned counsel for the appellant has further contended that the compensation awarded in both the claim petitions is on higher side. Whereas according to the claimants the same is on the lower side.

First coming to FAO-943-2013 filed by appellants/claimants Charanjit Kaur and another, the Tribunal has taken the age of deceased Baljit Singh to be 54 years keeping in view his date of birth mentioned in his income tax return as 3.6.1955. The claimants in the claim petition have also given age of the deceased as such. Coming to the income of the deceased, in light of the copies of receipts of income tax return submitted by deceased Ex.A2 and Ex.A3, the Tribunal has taken income of the deceased to be Rs.96,000/- per annum(Rs.8,000/- per month).

However, no addition has been made towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 10% of the amount is to be added towards future prospects.

Doing that the monthly income of the deceased is taken as Rs.8,000 + 800

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= Rs.8,800/-.

The deduction of 1/3rd of the amount is to be made towards personal expenses in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77 .** Doing that the dependency of claimants comes out to Rs.5,867/- per month, annual dependency comes out to Rs.5,867 x 12 = Rs.70,404/-.

Keeping in view the age of the deceased, multiplier of 11 is required to be used in terms of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.**(supra). Doing that the compensation payable comes out to Rs.70,404 x 11 = 7,74,444/-.

The Tribunal has granted Rs.5,000/- as funeral expenses and Rs.5,000/- on account of loss of consortium.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs.7,74,444/- + 70,000 = 8,44,444/-.

The Tribunal has awarded compensation of Rs.5,22,000/-.

In this way, the enhanced amount comes out to Rs.3,22,444/- (8,44,444 - 5,22,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.3,22,444/-. The other terms and conditions

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given in the award shall apply to the enhanced amount as well.

Coming to FAO-944-2013 filed on behalf of appellant/claimant Harbans Singh, injured Harbans Singh was stated to be aged 45 years at the time of accident having suffered 40% permanent disability. He has been granted compensation of Rs.3,09,015.

As far as compensation under the head of pain and suffering to the tune of Rs.50,000/-, I find that the same is adequate. Then he has been granted compensation for medical treatment to the tune of Rs.84,015/- on the basis of the medical bills produced by him. Since it is not possible to retain each and every bill or receipt for purchase of the medicines and no amount has been granted towards future medical treatment, in my considered view the amount needs to be enhanced and this amount is accordingly increased to Rs.90,000/-.

With type of injuries suffered by the claimant and his permanent disability considering the period of his hospitalization on two occasions, the amount awarded by the Tribunal on account of loss of income during the period of hospitalization seems to be on lower side. The same is accordingly enhanced to Rs.40,000/-.

As regards loss for permanent disability granted at the rate of Rs.1,00,000/-, special diet of Rs.25,000/-, attendant charges of Rs.20,000/-, the same do not call for any interference.

However, the transportation charges awarded as Rs.10,000/- needs to be enhanced. Therefore, the amount is enhanced to Rs.20,000/-.

The Tribunal has not taken into consideration the fact that

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with such type of injuries suffered by the claimant, he would not be in a position to do his normal work i.e. walk, run and otherwise lead normal life as he used to be earlier. A sum of Rs.30,000/- is awarded to him as loss of amenities.

Thus, total compensation comes out to Rs.3,75,000/-.

The Tribunal has awarded compensation of Rs.3,09,015/-.

In this way, the enhanced amount comes out to Rs.65,985/- (3,75,000 - 3,09,015). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.65,985 /-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

Thus, **FAO-943-2013** filed by appellants/claimants Charanjit Kaur and another and **FAO-944-2013** filed on behalf of appellant/claimant Harbans Singh stand allowed partly.

27.2.2019
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No