

228 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 23.10.2019

1. FAO-8161-2017(O&M)

Sardar Singh and another

..... Appellants

versus

Satpal and another

..... Respondents

2. FAO-8162-2017(O&M)

Sardar Singh and another

..... Appellants

versus

Prince and another

..... Respondents

3. FAO-8163-2017(O&M)

Sardar Singh and another

..... Appellants

versus

Satpal and others

..... Respondents

4. FAO-8164-2017(O&M)

Sardar Singh and another

..... Appellants

versus

Sneha and another

..... Respondents

5. FAO-8165-2017(O&M)

Sardar Singh and another

..... Appellants

versus

Shivam and another

..... Respondents

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6. FAO-8167-2017(O&M)

Sardar Singh and another

..... Appellants

versus

Smt.Mamta and another

..... Respondents

7. FAO-4112-2018(O&M)

Satpal and another

..... Appellants

versus

Sardar Singh and others

..... Respondents

CORAM : HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr.Munish Behl, Advocate for the appellants.

Mr.Barjinder Singh, Advocate
for Mr.Ashish Gupta, Advocate for the respondents-claimants.

Mr.Paul S.Saini, Advocate for the respondent-insurance company.

NIRMALJIT KAUR, J. (ORAL)

CM-26903-CII-2017 in FAO-8161-2017

For the reasons mentioned in the application, the delay of 220 days
is filing the present appeal is condoned.

Application stands disposed of.

Main Appeals

This order shall dispose of the above mentioned appeals which
have arisen out of a common award dated 30.01.2017 passed by Motor

Accidents Claims Tribunal, Gurgaon in respect of a motor vehicle accident that took place on 25.07.2015 due to the rash and negligent driving of offending truck bearing no. HR-38R-4401. The aforesaid appeals (except FAO No. 4112 of 32018) have been filed by the owner and driver of the offending vehicle on the ground that the Tribunal has erred in granting recovery rights in favour of the insurance company and thus the said finding being illegal, is liable to be set aside.

Learned counsel for the appellants while praying for modification in the award to the extent of recovery rights submitted that a perusal of the driving licence of the driver of offending vehicle shows that the same was initially issued for Non-Transport/LMV valid from 25.06.1991 to 30.12.2015. Thereafter the licence in question was duly endorsed for driving HTV and was valid from 30.12.2012 to 31.12.2015.

With the help of learned counsel for the parties and after perusing the said driving licence, it is evident that the Tribunal has failed to see the said endorsement and thereby committed an error in granting recovery rights to the insurance company. Learned counsel for the insurance company is not able to rebut the said fact.

In view thereof, the impugned award to the extent vide which recovery rights have been given in favour of the insurance company, is set aside. Now, the driver and owner would be jointly and severally liable along with the insurance company to pay the amount of compensation as awarded by the Tribunal

However, besides the above order, in addition, in **FAO No. 8163 of 2017**, learned counsel for the respondent-insurance company has pointed out

that the compensation awarded is on the higher side under the head 'future prospects' and under the 'conventional heads'. As per him, future prospects should have been given at the rate of 40% instead of 50% and under the conventional heads, an amount of Rs.30,000/- and not Rs.1,25,000/-should have been awarded. Learned counsel for the claimants in the said appeal does not dispute the said factual and legal position in view of the settled proposition of law in **National Insurance Co.Ltd.V. Pranay Sethi and others, 2017 AIR(SC) 5157**. In view of the same, the award also deserves to be further modified to the extent of compensation granted to the claimants in FAO No. 8163 of 2017:-

1. Income of the deceased	Rs.5887
2. 40% future prospects to be added	Rs.5887+ 2354=Rs.8241
3. ½ deductions as personal expenses	Rs.8241- 4120= Rs.4121
4. Compensation after applying multiplier of 18	(Rs.4121x12x18)=8,90,136
5. Compensation under conventional heads	Rs.30,000/-
Final compensation	Rs. 9,20,136/-

At this stage, learned counsel for the claimants has pointed out that the amount has since been paid by the insurance company and also disbursed to the claimants. If it is so, then in the interest of justice, the amount already paid to the claimants will not be recovered, taking into account that any recovery at this stage would amount to a lot of hardship to the already bereaved family.

In view of the same, learned counsel for the appellants in **FAO No. 4112 of 2018** which is the cross appeal by the claimants, seeks permission of the Court to withdraw the same. Ordered accordingly.

In view of the above discussion, the aforesaid appeals are disposed of in the terms as ordered above.

(NIRMALJIT KAUR)
JUDGE

23.10.2019
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No