

FAO-4603-2015(O&M);
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) FAO-4603-2015(O&M)

Ms.Simran (minor) and others

...Appellants

Versus

Ramesh and others

...Respondents

(2) FAO-4629-2015(O&M)

Rajinder

...Appellant

Versus

Ramesh and others

...Respondents

(3) FAO-5463-2013(O&M)

Jaipal

...Appellant

Versus

Reliance General Insurance Company Ltd. and others

...Respondents

(4) FAO-4923-2014(O&M)

Reliance General Insurance Company Ltd.

...Appellant

Versus

Simran(minor) and others

...Respondents

Date of Decision:-18.3.2019

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

Present: None for the appellants in FAO-4603-2015 and
FAO-4629-2015.

Mr.G.S. Sandhu, Advocate
for the appellant in FAO-5463-2013 and
for respondent No.2 in FAO-4603-2015 and
FAO-4629-2015.

Mr.R.K. Bashamboo, Advocate
for the appellant in FAO-4923-2014;
for respondent No.1 in FAO No.5463-2013; and
for respondent No.3 in FAO-4603-2015 and FAO-4629-
2015.

Service of respondents No.4 to 6 in FAO-4603-2015
dispensed with vide order dated 4.7.2016.

Mr.Sandeep Lather, Advocate
for respondent No.1 in FAO-4603-2015 and FAO-4629-
2015 and for respondent Nos.8 and 9 in FAO-4923-2014.

Mr.Barjinder Singh, Advocate
for respondent Nos.1 to 7 in FAO-4923-2014.

H.S. MADAAN, J.

By this order, I shall dispose of four FAOs i.e. FAO-4603-
2015, FAO-4629-2015 filed on behalf of claimants, FAO-5463-2013 filed
on behalf of owner and FAO-4923-2014 filed on behalf of appellant –
Insurance Company, which have arisen out of the same accident.

Briefly stated, the facts of the case as can be gathered from
the perusal of claim petitions are that on 31.5.2011 one Suresh was
driving motorcycle having registration No.HR-05S/6018, on which Rinku
was pillion riding; that at about 8:00 a.m. when they reached near Kutana
turning point on Kohand-Moonak road, in the meanwhile a canter having

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registration No.HR-45/A-1306 being driven by Ramesh Kumar respondent No.1 in a rash and negligent manner came and hit the motorcycle, resultantly the motorcycle got entangled under front wheels of the canter and it was dragged to some distance; thereafter, the canter hit a bicycle, which was going ahead, in the process Rajinder and Deepak also received injuries; that Suresh, who was driving the ill-fated motorcycle had suffered multiple injuries, to which he succumbed at the spot; that the matter was reported to the police and an FIR No.216 of 2011 for the offences under Sections 279/337/304-A IPC was registered against the canter driver – Ramesh (respondent No.1).

Petitioner/claimant – Rajinder had filed a claim petition bearing No.RBT-110/2012 under Section 166 of Motor Vehicles Act against respondents i.e. Ramesh – driver, Jaipal – owner and Reliance General Insurance Company Ltd. - insurer of canter having registration No. HR-45/A-1306 (hereinafter referred to as the offending vehicle) claiming compensation on account of injuries suffered by him in the motor vehicular accident.

The legal representatives of Suresh, who had lost his life in that very accident, namely, Ms.Simran – minor daughter, Smt.Manju – wife and five others had also brought a claim petition bearing No.RBT-49/2013 under Section 166 of the Motor Vehicles Act against those very respondents claiming compensation.

Both the claim petitions were tried together since those related to the same accident.

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Notice of the claim petitions was given to respondents, who put in appearance and filed separate written statements.

In the written statement filed by respondent No.1, he took various legal objections challenging the maintainability of the claim petitions, locus standi of the claimant (s) to file such petitions. On merits, he denied happening of the accident contending that a false criminal case has been registered against him.

The written statement filed by respondent No.2 is on the similar lines as those of respondent No.1. Whereas respondent No.3 – insurance company in its written statement besides taking various legal objections, came up with a plea that respondent No.1 was not having a valid and effective driving licence; that the vehicle in question was not having route permit, registration certificate and fitness certificate of the vehicle at the time of accident and that the accident had taken place due to rash and negligent driving of motorcycle by deceased Suresh, who was trying to overtake the vehicle going ahead of him, in that process, he hit the incoming vehicle i.e. canter, resulting in the accident.

All the respondents prayed for dismissal of the claim petitions.

On the pleadings of the parties, following issues were framed :-

1. Whether the motor vehicular accident, which took place on 31.5.2011 was caused on account of rash and negligent driving of vehicle no.HR-45A-1306 by Ramesh respondent No.1 resulting into the injuries to claimant Rajinder and death of Suresh. If so its

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effect? OPP.

2. If issue no.1 is proved, whether the claimants are entitled to claim any compensation. If so how much and from whom? OPP.
3. Whether the respondent no.1 was driving the offending vehicle in violation of terms and conditions of policy of insurance? OPR.
4. Whether the claim petitions are not maintainable? OPR.
5. Whether the present claim petitions have been filed by the claimants in collusion with driver and owner i.e. respondents no.1 and 2. If so its effect? OPR.
6. Relief.

Both the parties led evidence in support of their respective claims.

During the course of evidence, the claimants examined PW1 Manju, PW2 Rajinder and PW3 Dr.Tarun Goel besides tendering certain documents.

On the other hand the respondents tendered in evidence Photocopy of driving licence of Ramesh as Ex.R1, photocopy of RC of vehicle No.HR-45A-1306 as Ex.R2, photocopy of the route permit as Ex.R3, photocopy of fitness certificate as Ex.R4, photocopy of cover note as Ex.R5, insurance policy as Ex.R6, photocopy of ration card as Mark-D and certificate issued by Sarpanch as Mark-E.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioners, issue No.2 in favour of petitioners, issue No.3 in favour of respondent No.3, issues No.4 and 5 against respondent No.3.

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Resultantly, the claim petitions were partly allowed with costs by Motor Accidents Claims Tribunal, Karnal and compensation of Rs.25,500/- with interest @ 6% per annum from the date of the claim petition till realization besides costs of the petition was awarded in claim petition No.RBT-110/2012 to claimant Rajinder and compensation of Rs.35,78,000/- with interest @ 6% per annum from the date of the claim petition till realization besides costs of the petition was awarded in claim petition No.RBT-49/2013 to petitioners No.1 to 4.

The claimant/petitioner No.1 to 4 in claim petition No.RBT-49/2013; claimant/petitioner Rajinder in claim petition No.RBT-110/2012 being dissatisfied with the compensation awarded to them; Jaipal – owner being dissatisfied with the award regarding grant of recovery rights to the insurance company from the owner - insured in both the petitions and insurance company being dissatisfied with the award with respect to quantum of compensation granted in claim petition bearing No.RBT-49/2013 have filed separate appeals before this Court.

Notices of the appeals were issued to the respective respondents, who put in appearance through counsel. Subsequently there was no representation on behalf of learned counsel for the appellants in FAO-4603-2015 and FAO-4629-2015.

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

Coming to FAO-4629-2015 filed by appellant Rajinder, according to him, he was a skilled worker earning Rs.10,000/- per month;

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he was aged about 25 years at the time of accident; due to the injuries suffered by him in the accident, he had spent Rs.1 lac on his treatment and medicine; in addition to that he had suffered great mental pain and agony as well as financial loss.

The Tribunal on analysis of evidence available on the file awarded a sum of Rs.15,451/- towards medical expenses. It is a matter of common knowledge that it is not possible to keep record of each and every penny incurred towards purchase of medicines by retaining bills, vouchers etc. That fact needs to be taken into consideration, which was not so done by the Tribunal. Thus, the amount under the head of treatment expenses is enhanced to Rs.20,000/-.

The injured has been awarded a sum of Rs.5,000/- towards pain and suffering. I find this amount to be somewhat on lower side since it is difficult to quantify pain and suffering undergone by a person suffering such type of injuries. The compensation under this head is enhanced to Rs.10,000/-.

The claimant/injured has been awarded a sum of Rs.5,000/- towards special diet, which also seems to be on lower side and I enhance it to Rs.10,000/-.

No separate amount has been awarded under the head of service of attendant, rather that has been tagged with the head special diet. A person suffering injuries does require assistance of a person to help him in moving about like going to wash room, going to doctor for follow up treatment etc. A sum of Rs.10,000/- is awarded to the claimant under this

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head.

The Tribunal has not awarded any amount to the injured towards transportation charge. Of course going to doctor for follow up treatment does entail expenses. Rs.5,000/- is awarded to the claimant on that account.

No amount has been awarded to the petitioner/claimant towards loss of income. Keeping in view the nature of injuries, he would certainly not have been able to do his normal work for quite some time. A sum of Rs.10,000/- is awarded to him for that reason.

The petitioner is not shown to have suffered any permanent disability. Therefore, no compensation is being given to him under the head loss of amenities.

Thus the total compensation comes out to Rs.65,000/-.

The Tribunal has awarded a total sum of Rs.25,500/- as compensation along with interest @ 6% per annum from the date of filing of the claim petition till actual realization.

In that way, the enhanced amount comes to Rs.39,500/- (65,000 - 25,500). The appellant/claimant shall be entitled to recover the enhanced amount with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment. The other terms and conditions (except recovery rights) shall remain the same as given in the original award.

With such modification, the *FAO-4629-2015* filed by appellant Rajinder is allowed partly.

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Coming to compensation awarded by the Tribunal to legal representatives of deceased Suresh, the Tribunal has taken age of the deceased to be 20 years considering the age mentioned in his post mortem report. In view of the income tax returns Ex.P14 and Ex.P15, his annual income has been taken to be Rs.2,64,300/-, making deduction of 1/4th towards personal expenses of the deceased annual dependency of petitioners has been assessed to be Rs.1,98,225 and by using multiplier of 18, total compensation was worked out to Rs.35,78,050/-. The petitioners have been awarded Rs.5,000/- for transportation of dead body and Rs.5,000/- for last rites. It may be mentioned here that though on behalf of the insurance company an argument was advanced that the income tax returns Ex.P14 and Ex.P15 filed by the petitioners in claim petition No. RBT-49/2013 are not genuine documents since those had not been signed by Suresh or his Chartered accountant or counsel and were created later on. It may be mentioned here that when these contentions were put forward before the Court on July 17, 2014, Income Tax Department was directed to produce record of such returns and in compliance Income Tax Officer, Ward No.1, Karnal appeared in the Court on 1.8.2014 and stated at bar that the original income tax returns dated 25.3.2011 for the assessment year 2009-10 and dated 31.3.2011 for the assessment year 2010-11 were filed by Suresh Kumar only. It being so, the argument advanced by learned counsel for the Insurance company does not have any merit.

However, no addition has been made towards future

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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 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.22,025 + 8,810 = Rs.30,835/-.

The deduction of 1/4th 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.23,127/- per month, annual dependency comes out to Rs. 23,127 x 12 = Rs.2,77,524/-.

Keeping in view the age of the deceased, multiplier of 18 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. 2,77,524 x 18 = 49,95,432/-.

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.49,95,432/- + 70,000 = 50,65,432/-.

The Tribunal has awarded compensation of Rs.35,78,050/-.

In this way, the enhanced amount comes out to Rs.14,87,382/- (50,65,432 - 35,78,050). The claimants would be entitled

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to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.14,87,382/-. The other terms and conditions (except recovery rights) given in the award shall apply to the enhanced amount as well.

With such modification, the **FAO-4603-2015** filed by appellants Ms.Simran (minor) and others is allowed partly.

Since FAO-4603-2015 filed by appellants Ms.Simran (minor) and others is allowed partly, **FAO-4923-2014** filed by the insurance company stands dismissed as the compensation awarded by the Motor Accidents Claims Tribunal has been enhanced and there is no occasion to reduce the same.

Now coming to FAO-5463-2013(O&M) filed by appellant – Jaipal, owner of the offending vehicle.

It may be mentioned here that the Tribunal had framed issue No.3 “*Whether the respondent no.1 was driving the offending vehicle in violation of terms and conditions of policy of insurance? OPR.*” and this issue has been decided in favour of respondent No.3 – insurance company. For ready reference, the discussion is reproduced as under:

ISSUE No.3.

The onus to prove this issue was on respondent no.3, who in its pleadings has taken objections that the vehicle in question was being plied by the respondent no.1 in violation of terms and conditions of insurance policy and that the driver of offending vehicle was not holding a valid and effective driving

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licence at the time of accident. Also Driving Licence Ex.R1 of respondent no.1 produced on file reveals that this licence is although valid up to 6.2.2014, however, further perusal given to this licence, it comes out that this licence has been issued by the District Transport Officer of the State of Nagaland, while the holder of this licence, respondent no.1 Ramesh is resident of village Sanch situated in District Kaithal, which is contrary to law and in such like circumstances, an inference is drawn that respondent no.1 Ramesh (holder of this licence got this licence prepared from Nagaland State for some extraneous reasons, despite the fact that as per Motor Vehicle Act, a person who is a resident of the same State in which, he/she applying for the same is held that the licence Ex.R1 is not a legal and valid one. Thus, it is further held that respondent no.1 was not having a valid driving licence and was driving the offending vehicle in violation of terms and conditions of insurance policy. From perusal of Registration Certificate Ex.R2, fitness certificate Ex.R4 and permit Ex.R3, it is established on record that all these documents were valid and perfect, at the time of accident, in all manners. From insurance policy Ex.R5, it is proved that vehicle was insured from 30.5.2011 to 29.5.2012 and the present accident has taken place on 31.5.2011. Thus, the insurance policy was valid at the time of accident, however, in view of the observations made by this Tribunal under this issue to the effect that respondent no.1 has not proved that he was holding a

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valid and effective driving licence and was ever authorized by registered owner of the offending vehicle to drive the offending vehicle at the time of accident on the fateful day. Thus, it is held that respondent No.1 drove the offending vehicle in violation of terms and conditions of the insurance policy. Resultantly, this issue is decided in favour of respondent No.3.

From the above discussion, I find that the whole approach of the Tribunal was wrong and erroneous. The onus of proving this issue was on the insurance company. The Tribunal had observed that the driving licence of respondent No.1 Ex.R1 was valid up to 6.2.2014. The accident in this case had taken place on 31.5.2011, that means respondent No.1 was having a valid licence at the time of accident. The Tribunal found fault with the driving licence for the reason that it had been issued by District Transport Officer State of Nagaland while holder of the licence is resident of village Sanch situated in District Kaithal. The driving licence could not be held to be invalid for the said reason. Either copy of licence should have been sent to District Transport Officer, State of Nagaland calling for report by the Tribunal whether it had been issued by the said office and if report was received in negative, then of course, the Tribunal was justified in holding that respondent No.1 was not having a legal and valid driving licence. The Insurance company should have been taken initiative in getting that exercise carried out. The other alternative available was to summon the record from the issuing office to find out as to whether the driving licence Ex.R1 had in fact been issued by said office

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or not. The Insurance company is not shown to have taken recourse to any of the alternative as such it had failed to discharge the onus of proof placed upon it. The Tribunal rather jumped to conclusion that Ramesh had got the licence prepared from Nagaland State for some extraneous consideration, as such the licence is not legal. There could be a possibility of such person having resided in State of Nagaland for some time and then obtaining the licence . Though it was one of the possibility but that could be ruled out by adopting the proper course, which the Tribunal has not done. In absence of failure of the insurance company to discharge onus placed upon it, the verdict was wrongly given by the Tribunal in favour of the insurance company against the other two respondents i.e. driver and owner of the vehicle.

It being so, the Insurance company is certainly not entitled to have any recovery rights.

Thus, *FAO-5463-2013* filed by appellant – Jaipal, owner of the offending vehicle stands allowed.

18.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No