IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **FAO No. 3788 of 2014 (O&M)**
Date of decision : May 09, 2019

United India Insurance Company Limited .....Appellant

Versus

Smt. Priya Srivastava and others ....Respondents

2. **FAO No. 3789 of 2014 (O&M)**

United India Insurance Company Limited .....Appellant

Versus

Smt. Babita Srivastava and others ....Respondents

3. **FAO No. 5153 of 2014 (O&M)**

Smt. Babita Srivastava and another .....Appellants

Versus

Gopal Singh and others ....Respondents

4. **FAO No. 5924 of 2014 (O&M)**

Smt. Babita Srivastava and another .....Appellants

Versus

Gopal Singh and others ....Respondents

5. **FAO No. 5173 of 2014 (O&M)**

Smt. Priya Srivastava and another .....Appellants

Versus

Gopal Singh and others ....Respondents

6. **FAO No. 5739 of 2014 (O&M)**

Smt. Priya Srivastava and another .....Appellants

Versus

Gopal Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. V. Ramswaroop, Advocate
for the appellant (in FAO Nos. 3788 & 3789 of 2014)
for respondent No. 3 (in FAO Nos. 5153, 5173, 5739 &
5924 of 2014

Mr. Vivek Khatri, Advocate
for respondents No. 1 & 2 (in FAO Nos. 3788 & 3789 of 2014)
for the appellants (in FAO Nos. 5153, 5173, 5739 &
5924 of 2014

Mr. Devender Kumar, Advocate for
Mr. Surinder Dagar, Advocate
for respondents No. 3 and 4 (in FAO No. 3788 & 3789 of 2014)
for respondents No. 1 and 2 (in FAO Nos. 5153, 5173, 5739 &
5924 of 2014

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LISA GILL, J.

This judgment shall decide FAO Nos. 3788, 3789, 5153, 5173, 5739 and 5924 of 2014.

All the said appeals emanate from claim petitions arising out of the accident which took place on 04.02.2014 which have been decided by the learned Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to 'the Tribunal') vide common award dated 04.02.2014.

FAO Nos. 3788 and 3789 of 2014 have been filed by the insurance company challenging award dated 04.02.2014.

FAO Nos. 5153, 5173, 5739 and 5924 of 2014 have been filed by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Ishita, Ravish, Sherya, Munish, respectively vide award dated 04.02.2014.

Brief facts of this case are that in a motor vehicle accident which took place on 30.01.2011 at about 11.30 p.m., four persons lost their lives. An accident took place between the car bearing registration No. HR-13-E/4892 and offending truck bearing registration No. HR-55-E/1247. It is pleaded that Munish Srivastava, Babita Srivastava, Ravish Srivastava, Priya Srivastava and their children Ayushi, Ishita, Shreya and Vansh left Kannauj in a car bearing registration No. HR-13-E/4892. It is pleaded that the car crossed Bata Chowk, Faridabad at about 11.30 p.m. The truck bearing registration No. HR-55-E/1247 was parked on the main road without any indication. Due to wrong parking of the truck, the car struck against the truck from behind. It is averred that as a result of impact of the collision, the passengers of the car suffered injuries. Ravish Srivastava, Munish Srivastava, Shreya and Ishita died at the spot.

It is held by the learned tribunal that the accident in question took place due to the rash and negligent act of the driver of the offending truck, having left the vehicle parked on the main road without any indication as well as the negligent driving of the car in which the deceased were travelling. Learned Tribunal has held that both the vehicles i.e. truck and the car were fully responsible for the accident, therefore, were guilty of contributory negligence in the ratio of 50% each. Compensation was awarded to the legal representatives of four deceased persons and they were held entitled to 50% of the amount so awarded.

It is brought to my notice that initially four appeals, including FAO No. 3788 and 3789 of 2014, were filed by the insurance company. FAO Nos. 3790 and 3791 of 2014 in respect to the death of minor children Shreya and Ishita respectively, already stand decided on 29.05.2014. The insurance company, as in the present two appeals by the company, had sought to be exonerated completely of its liability, while taking a stand that the accident in question was caused entirely due to the rash and negligent act of the car in which the deceased/injured were travelling. A co-ordinate Bench of this Court dismissed both the petitions while observing as under:-

> " I, however, find that the Tribunal has recorded that the parking light of the truck were not on. In these circumstances, I am of the considered opinion that the apportionment of

negligence head at 50:50 cannot be faulted. Resultantly, since no other point has been raised, the appeal is dismissed.”

As on date FAO Nos. 3788 and 3789 of 2014 filed by the insurance company survive for adjudication.

Question regarding contributory negligence is taken up for hearing first as the claimants have also agitated that the driver of the car was not negligent in any manner.

Argument on behalf of insurance company in respect to exoneration of its liability on the ground that it is the driver of the offending car, who was entirely responsible for the accident, needless to say, does not survive in view of decision dated 29.05.2014.

Learned counsel for the claimants vehemently argues that the learned Tribunal has grossly erred in holding the driver of the car to be guilty of contributory negligence to the extent of 50%. It is submitted that the offending vehicle was wrongly parked on the main road without any indication of its presence. It is, thus, prayed that this finding of the learned Tribunal be set aside. The amount of compensation be enhanced and the entire amount of compensation be released to the claimants.

Learned counsel for the insurance company has refuted this argument while submitting that once it is proved on record that the offending car had struck against the truck from behind, there is a clear cut case of contributory negligence to the extent of 50% as held by the learned Tribunal. It was the duty of the driver of the car to take steps to avert the accident in question. In case, he had been vigilant enough, the accident could have been averted. It is further submitted that car in question was overloaded, therefore, finding of contributory negligence should be upheld. It is further argued that this Court while deciding FAO Nos. 3790 and 3791 of 2014 has found no fault with the apportionment of negligence to the extent of 50% each, therefore, the question stands decided.

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

At the outset, it is to be noted that FAO Nos. 3790 and 3791 of 2014 filed by the insurance company, primarily challenging contributory negligence on the part of the vehicle insured with the insurance company, were dismissed. There is no merit in the argument raised by learned counsel for the insurance company that dismissal of the said appeals also precludes the claimants from raising the question of there being no contributory negligence on the part of the car in which the deceased were travelling. The above said two appeals filed by the insurance company have not dealt with the question of negligence on the part of the driver of the said car. It is only the question of negligence on the part of the offending truck, which stands decided in the said appeals. Therefore, the question regarding contributory negligence, if any, on the part of the car driver remains open for adjudication by this Court.

A perusal of the record reveals that the accident in question admittedly took place at about 11.30 p.m., when the car in which the deceased were travelling, crossed Bata Chowk, Faridabad. The offending truck was lying parked on the main road without any indication of its presence. A perusal of the site plan attached with the copy of police report under Section 173 Cr.P.C. (Ex.P10) is extremely telling of the factual matrix of the case. Learned counsel for the insurance company is unable to deny that the truck is shown to be lying parked alongwith the divider on the side of the road towards Delhi. It is a matter of record that the car, in which the deceased were travelling, was proceeding towards Delhi itself. Therefore, in this situation, merely because the car in question struck against the truck from behind, is per se, not indicative of negligence on the part of the car driver in the absence of any positive evidence to this effect. It has been held by the Hon'ble Supreme Court in the case of **Archit Saini and another versus Oriental Insurance Company Limited and others 2018 (5) RCR (Civil) 80** that merely because a vehicle strikes against a vehicle from behind does not, per se, lead to an inference of contributory negligence on the part of the vehicle coming from behind. In the present case, the car in question was proceeding towards Delhi. In normal course, the car would necessarily be proceeding in the same lane in which the offending truck was parked in the dead of the night. Clearly, rash and negligent act on the part of the truck driver is apparent on the face of it. It is not open to the insurance company to plead that even though the truck was left parked in the lane in which normal traffic would be proceeding and there admittedly being no indication of the presence of the truck, the car driver would be guilty of any contributory negligence merely because the truck was struck from behind. There is no evidence on record to indicate the truck being beset by any mechanical defect due to which it could not even have been moved away. Moreover, it was incumbent on the driver of the truck to have ensured clear and proper indication of the presence of the truck on the road, so as to warn the commuters on the road of its presence from a sufficient distance to enable them to avoid any collision. Admittedly, there was no such indication.

Similarly, I do not find any merit in the argument raised by learned counsel for the insurance company that the car driver was guilty of contributory negligence as there were eight persons travelling in the car. This is so for the reason that overloading of the car is not proved to be a causative factor of the accident in question. Finding of the learned Tribunal regarding contributory negligence on the part of the car driver is, therefore, incorrect and is set aside.

It is held that the accident in question took place due to the sole negligence of the driver of the offending truck, having left the truck parked on the main road without any kind of indication regarding its presence in the dead of the night, so as to warn the commuters on the road. Having, thus, decided the issue of contributory negligence, the appeals are dealt with individually.

FAO No. 5924 of 2014

This appeal has been preferred by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Munish Srivastava vide award dated 04.02.2014.

Learned Tribunal awarded the total compensation of ₹41,36,496/-. Income of the deceased was assessed as ₹27,700/- per month. Increment of 30% was afforded by the learned Tribunal. Deduction of 1/3rd was effected. Multiplier of 14 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 ₹5,000/- on account of loss of estate was awarded. The claimants were, however, held entitled to a sum of ₹21,98,248/- in view of the finding of contributory negligence to the extent of 50% on the part of the car driver.

Learned counsel for the appellants submits that there is no dispute regarding income of the deceased assessed as ₹27,774/- per month by the learned Tribunal but his income has been wrongly rounded off to ₹27,700/- whereas it should be ₹27,800/-. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 04.02.2014 be upheld.

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

The deceased Munish Srivastava was claimed to be working as Deputy Manager in Surya Roshni Limited, Bahadurgarh and earning a sum of ₹27,774/- per month. It is also not disputed that the deceased was 45 years old at the time of the accident.

There is no dispute regarding income of the deceased to be ₹27,774/- per month as assessed by the learned Tribunal but his income has indeed been wrongly rounded off to ₹27,700/- whereas it should be ₹27,800/- per month. Therefore, income of the deceased is assessed as ₹27,800/- 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 30% (₹8340/-) is afforded, as the deceased was 45 years old at the time of accident and in a permanent job, which takes income of the deceased to ₹36,140/- 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 1/3rd is to be applied as number of dependants is two (2), thereby rendering income of the deceased to be ₹24,093/-(36140-12047). Applying a multiplier of 14, dependancy of the claimants is assessed as ₹40,47,624/- (₹24093x12x14). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹25,000) and loss of estate, besides the claimant widow is entitled to ₹40,000/- (instead of ₹1,00,000/-) on account of loss of spousal 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**. appellant No. 2 i.e. daughter of the deceased is entitled to ₹40,000/- on account of loss of parental consortium. Claimants are, thus, entitled to total compensation of ₹41,57,324/- instead of ₹41,36,496/- detailed as under:-

Loss of dependency(₹24093x12x14)	₹40,47,624/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹41,57,324/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants are entitled to interest at the rate of 7.5% instead of 6% per annum on the entire amount of compensation from the date of filing of the petition till realization. Needless to say the claimants are entitled to the entire amount of compensation in view of the finding regarding there being no contributory negligence on the part of the car driver in which the deceased was travelling.

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. 5924 of 2014 is, thus, partly allowed.

FAO No. 5173 of 2014

This appeal has been preferred by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Ravish Srivastava vide award dated 04.02.2014.

Learned Tribunal concluded the total compensation to be of ₹49,28,112/-. Income of the deceased was assessed as ₹33,000/- per month. Increment of 30% was afforded by the learned Tribunal. Deduction of 1/3rd was effected. Multiplier of 14 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 ₹5,000/- on account of loss of estate was awarded. The claimants were, however, held entitled to a sum of ₹24,64,056/- in view of the finding of contributory negligence to the extent of 50% on the part of the car driver.

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

There is no dispute regarding income of the deceased assessed as ₹33,000/- per month by the learned Tribunal. Compensation awarded to the claimants has to be reworked according to the judgments of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) and **Magma General**

Insurance Company Limited (supra).

The deceased Ravish Srivastava was claimed to be working as an Executive in Jindal Company, Hisar and earning a sum of ₹33,000/- per month. Nature of his job is admittedly permanent. It is also not disputed that the deceased was 41 years old at the time of the accident.

There is no dispute regarding income of the deceased to be ₹33,000/- per month as assessed by the learned Tribunal. Therefore, income of the deceased, as assessed by the learned Tribunal, is thus upheld as ₹33,000/- 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 30% (₹9900/-) is maintained, as the deceased was 41 years old at the time of accident, which takes income of the deceased to ₹42,900/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Sarla Verma*** (supra), deduction of 1/3rd was correctly applied as number of dependants is two (2), thereby rendering income of the deceased to be ₹28,600/-(42900-14300). Applying a multiplier of 14, dependancy of the claimants is assessed as ₹48,04,800/- (₹28,600x12x14). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹25,000) and loss of estate besides the claimant widow is entitled to ₹40,000/- (instead of ₹1,00,000/-) on account of loss of spousal consortium. In terms of the judgment of the Hon'ble Supreme Court in 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**. appellant No. 2 i.e. son of the deceased is entitled to ₹40,000/- on account of loss of parental consortium. Claimants are, thus, entitled to total compensation of ₹49,14,800/- instead of ₹49,29,112/- detailed as under:-

Loss of dependency (₹28,600x12x14)	₹48,04,800/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹49,14,800/-

Appellants are entitled to interest at the rate of 7.5% instead of 6% per annum on the entire amount of compensation from the date of filing of the petition till realization. Needless to say the claimants are entitled to the entire amount of compensation in view of the finding regarding there being no contributory negligence on the part of the car driver in which the deceased was travelling.

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. 5173 of 2014 is, thus, partly allowed.

FAO Nos. 5153 and 5739 of 2014

These appeals have been preferred by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Ishita Srivastava and Shreya Srivastava (minor) vide award dated 04.02.2014.

Learned Tribunal awarded a consolidated sum of ₹2,00,000/- with interest at the rate of 6% per annum from the date of filing of the claim petition till date of actual realisation of the award in both these petitions.

Learned counsel for the appellant has relied upon judgment of this Court in **<u>Sunita Devi and another versus Vijay Pal and others 2018</u>**

(2) Law Herald 1659 to submit that notional income of the deceased should be assessed as ₹50,000/- per annum and compensation should be, accordingly, awarded.

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

As per the judgment of a Co-ordinate Bench in **Sunita Devi's** case (supra), notional income of a child aged 4/5 years was assessed as ₹50,000/- per annum in respect to the accident which took place in the year 2014. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Kishan Gopal and another v. Lala and others 2013 (4) RCR (Civil) 276** wherein notional income of 10 years old child was taken as ₹30,000/- in respect to the accident took place in the year 1992. Reference is also made to the judgment of this Court in **Beet Nath and another versus Gulab Singh and others (FAO No. 159 of 2015) decided on July 10, 2017** wherein notional income of a child who died in an accident which took place in the year 2012, was assessed as ₹50,000/- per annum.

In the given facts and circumstances of the case, there is no impediment in assessing the notional income of the deceased children, aged 7 and 8 years, as ₹50,000/- per annum each. Multiplier of 15 in terms of the judgment of the Hon'ble Supreme Court in case of **Sarla Verma** (supra) is applied. Sum of ₹15,000/- under the conventional heads is awarded.

Claimants/appellants are, thus, entitled to compensation of ₹7,65,000/-[(15**x**50,000) +15,000] in both FAO Nos. 5153 and 5739 of 2014. Appellants are entitled to interest at the rate of 7.5% instead of 6% per annum on the enhanced amount from the date of filing of the petition till realization.

Both the abovesaid FAOs are partly allowed.

Accordingly, FAO Nos. 5153, 5173, 5739 and 5924 of 2014 are partly allowed. FAO No. 3789 of 2014 filed by the insurance company is dismissed qua the question of contributory negligence and partly allowed qua quantum of compensation. FAO No. 3788 of 2014 is dismissed.

(Lisa Gill)
Judge

May 09, 2019
rts

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