IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 1.10.2019

1. **FAO No. 2171 of 2017(O&M)**

The New India Assurance Company Ltd. …..Appellant

VERSUS

Islam and others .....Respondents

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. Arun Sharma, Advocate for respondents No.2(ii), 3 and 4.

Mr. R.K. Saini, Advocate for respondents No.5 and 6.

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2. **FAO No. 2172 of 2017(O&M)**

The New India Assurance Company Ltd. …..Appellant

VERSUS

Islam and others .....Respondents

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. Arun Sharma, Advocate for respondents No.2(ii), 3 and 4.

Mr. R.K. Saini, Advocate for respondents No.5 and 6.

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3. **FAO No. 2173 of 2017(O&M)**

The New India Assurance Company Ltd. …..Appellant

VERSUS

Islam and others .....Respondents

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. Arun Sharma, Advocate for respondents No.2(ii), 3 and 4.

Mr. R.K. Saini, Advocate for respondents No.5 and 6.

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4. **FAO No. 3230 of 2017(O&M)**

United India Insurance Co. Ltd. …..Appellant

VERSUS

Islam and others .....Respondents

Present: Mr. Ram Avtar, Advocate for the appellant.

Mr. Arun Sharma, Advocate for respondents No.2(ii), 3 and 4.

Mr. R.K. Saini, Advocate for respondents No.5 and 6.

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5. **FAO No. 3231 of 2017(O&M)**

United India Insurance Co. Ltd. …..Appellant

VERSUS

Islam and others .....Respondents

Present: Mr. Ram Avtar, Advocate for the appellant.

Mr. Arun Sharma, Advocate for respondents No.2(ii), 3 and 4.

Mr. R.K. Saini, Advocate for respondents No.5 and 6.

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6. **FAO No. 3245 of 2017(O&M)**

United India Insurance Co. Ltd. …..Appellant

VERSUS

Islam and others .....Respondents

Present: Mr. Ram Avtar, Advocate for the appellant.

Mr. Arun Sharma, Advocate for respondents No.2(ii), 3 and 4.

Mr. R.K. Saini, Advocate for respondents No.5 and 6.

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7. **FAO No. 1011 of 2019(O&M)**

Ikaram and others …..Appellants

VERSUS

Gurpreet Singh and others .....Respondents

Present: Mr. Arun Sharma, Advocate for the appellants.

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8. **FAO No. 1013 of 2019(O&M)**

Ikaram and others …..Appellants

VERSUS

Gurpreet Singh and others .....Respondents

Present: Mr. Arun Sharma, Advocate for the appellants.

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9. **FAO No. 1014 of 2019(O&M)**

Ikaram and others …..Appellants

VERSUS

Gurpreet Singh and others .....Respondents

Present: Mr. Arun Sharma, Advocate for the appellants.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2171 to 2173, 3230, 3231, 3245 of 2017 and 1011, 1013 and 1014 of 2019 as these have emerged out of the same award dated 03.12.2016 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short 'the Tribunal') whereby compensation has been assessed on account of death of Salma wife of Jahid, Jahid son of Islam and Sohil minor son of Jahid, in a motor vehicular accident that took place on 09.01.2014 when the deceased were traveling in Tata Sumo bearing No.HR07-G-2192 and hit by offending truck No.PB-11-AY-5113.

Negligence for causing the occurrence has been attributed to driver of the truck while deciding issue No.1 but liability to pay compensation has been apportioned to the extent of 25% by owner of Tata Sumo and insurance company has been directed to pay the amount to claimants and thereafter recover the same from the insured. 75% liability has been fastened against the driver, owner and insurer of aforesaid truck and they are held to be jointly and severally liable to pay compensation to that extent.

FAO Nos.2171 to 2173 of 2017 have been filed by New India Assurance Company Ltd. (hereinafter referred to as 'the assurance company') with whom the aforesaid truck was insured. FAO Nos.3230, 3231 and 3245 of 2017 have been filed by United India Insurance Company Ltd. (hereinafter referred to as 'the insurance company') with whom the aforesaid Tata Sumo was insured. The remaining appeals have been preferred by the claimants seeking enhancement of compensation.

Sh. Vinod Gupta, Advocate, representing the assurance company would inform that appeals have been filed to assail findings of the Tribunal on issue No.1 attributing negligence to driver of aforesaid truck and quantum of compensation allowed for death of Jahid.

Sh. Ram Avtar, Advocate, representing the insurance company would apprise that appeals have been filed to assail findings of the Tribunal directing the insurance company to pay compensation to the extent of 25% though the insurance company has been given right of recovery against the insured.

FAO Nos.2171 to 2173, 3230, 3231, 3245 of 2017

The question with regard to modification of assessment of compensation either at the behest of assurance company or the claimants would be considered while disposing of appeals preferred by claimants for the purpose.

The Tribunal framed issue No.1, reads thus:-

> "Whether Salma, Sohil and Jahid died due to injuries suffered in accident caused on 09.01.2014 by rash and negligent driving of Truck bearing registration No.PB11-AY-5113 by respondent No.1 as alleged? OPP"

To discharge this onus, claimants examined Raman Kumar PW-2, driver of ill-fated Sumo Car. To counter testimony of Raman Kumar, Gurpreet Singh driver of offending truck appeared in the witness box as RW-2. The Tribunal, in view of its findings in para 19 of the award, recorded its conclusion that accident is the result of exclusive negligence of driver of offending truck.

Counsel for the assurance company would argue that as Tata Sumo was moving behind the truck and driver did not maintain safe distance and crashed into the truck from behind, findings of the Tribunal on issue No.1 are not based upon correct appreciation of materials on record. It is further argued that though the Tribunal has accepted that Tata Sumo was driven at a distance of 5 feet from the truck but still exonerated driver of the Tata Sumo for the unfortunate occurrence in which three persons traveling in Tata Sumo succumbed to injuries and others sustained injuries but fortunately saved. It is further argued that testimony of Raman Kumar is conspicuously silent as to why he kept distance of just 5 feet from the truck, therefore, findings of the Tribunal that for the sake of visibility, vehicle behind the moving truck had to be driven somewhat closer and driver of Tata Sumo cannot be held negligent, are liable to be set aside.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue No.1 with the submission that FIR in the case was registered against Gurpreet Singh, driver of truck and on due investigation of FIR, challan was presented in the Court and Gurpreet Singh faced trial. It is further argued that since driver of Tata Sumo was following the offending truck at a distance of 5 feet on a foggy day to have convenient way, the Tribunal has rightly discarded contention of the assurance company that negligence is liable to be attributed to driver of Tata Sumo as well.

I have heard counsel for the parties, perused the award and copies of testimonies of Raman Kumar PW-2 and Gurpreet Singh RW-2, drivers of Tata Sumo and truck respectively.

Before adverting to the submissions made by counsel for the parties, it is appropriate to note that criminal proceedings were initiated against Gurpreet Singh and on due investigation of FIR, challan was presented in the Court for trial of Gurpreet Singh on the allegations of causing accident due to his rash and negligent driving. Raman Kumar tendered into evidence his affidavit Ex.PW2/A by way of examination in chief. As per statement of Raman Kumar, he started from Barara road

Shahabad (M) at 4/5 P.M. on 09.01.2014 and they reached some religious place in U.P. at about 8/9 PM. They started their return journey next day at about 3/4 AM. When they reached at Ugala at about 7.30/7.45 AM on a foggy day, the aforesaid truck was moving ahead of them and was quite close to them going towards Shahabad, without using the dipper as well as lights. The driver of the truck was driving it in a rash and negligent manner and suddenly applied brakes and stopped the truck without following any traffic rules and without indicating lights due to which Tata Sumo hit the truck. In his cross examination by counsel for the assurance company, he had stated that there was distance of 5 feet between Tata Sumo and the vehicle going ahead of Tata Sumo. He was driving Tata Sumo at speed 40-50 KM/hour and the truck was driven at the speed of 70 KM/hour. He denied the suggestion that Tata Sumo was driven at the speed of 100 KM/hour. In cross examination by counsel for owner of Tata Sumo, he had admitted that truck did not give any indication before sudden application of brakes after overtaking his Tata Sumo due to which the accident in question occurred.

Gurpreet Singh RW-2 also tendered into evidence his affidavit Ex.RW2/A, in examination in chief. A relevant extract from his testimony with regard to manner of accident reads as follows:-

> "I reached near village Ugala at about 8:00 AM, a Tata Sumo No.HR07G-2192 being driven by one Raman Kumar (respondent No.4) hit his Tata Sumo in the back portion of my truck from behind and due to this accident, occupants of the Tata Sumo received serious injuries. It was a foggy day and the speed of the Tata Sumo was not les than 100 KM per hour

at the time of alleged accident. Almost complete body of the Tata Sumo came under my truck from behind due to very high speed of Tata Sumo and the speed of my truck was not more than 30 K.M. per hours and all the indicators/dippers and tail light were being used and were on at the time of said accident. This accident occurred due to the fault and sole negligence of Raman Kumar (respondent No.4), who was driving his Tata Sumo at a very high speed. There was no fault of mine in causing the said accident. I was falsely challaned by the police in collusion with the occupants of Tata Sumo."

In cross examination by counsel for the insurance company, he has stated that he cannot tell with certainty as to when did Tata Sumo came behind his truck and continued its journey. He had no idea of the speed of said Tata Sumo but he had narrated about speed on the basis of what he saw at the spot. He had admitted that criminal case for causing the accident was going on against him and he has not filed any application before any authority in respect of challan filed against him.

Perusal of testimonies of the aforesaid witnesses leaves no manner of doubt that in cross examination of Raman Kumar, there is no challenge to his version that driver of the truck was not using dipper as well as lights and he suddenly applied brakes and stopped the truck ahead of his vehicle. No such fact has been put to Gurpreet Singh that he was driving the truck at the speed of 70 KM/hour or he had applied sudden brakes on account of which Tata Sumo hit behind the truck. No other witness has been examined in the case to clear ambiguities left in the testimonies of Raman Kumar and Gurpreet Singh. However, it remains a fact that driver of Tata Sumo was following the truck at a distance of 5 feet, meaning thereby that he was not maintaining safe distance from the vehicle going ahead. As has been contended by counsel for the assurance company, findings of the Tribunal justifying action of driver of Tata Sumo for driving it at a distance of 5 feet from the vehicle going ahead are not borne out from testimony of Raman Kumar. Raman Kumar has not stated as to what reasonable care was taken by him to avoid collision with the truck even if the driver had applied sudden brakes. His statement that truck was driven at the speed of 70 KM/ hour and Tata Sumo at 40-50 KM/hour is not worthy of credence and reliance because had it been so there could be no occasion for Tata Sumo driver to maintain distance of 5 feet from the truck. As per the settled position in law, the driver following another vehicle has to maintain safe distance in order to avoid collision in case driver of the vehicle going ahead applies sudden brakes. Hon'ble the Supreme Court in **Nishan Singh and others Vs. Oriental Insurance Co. Ltd. through Regional Manager and others, 2018(2) RCR (Civil) 891** has held that there is no precise definition of safe distance but distance of 15 feet between the two vehicles was not considered to be a safe distance. Since in the present case, Raman Kumar was maintaining distance of 5 feet from the vehicle going ahead, it can be safely held that he was not maintaining safe distance. At the same time, there is no explanation by Gurpreet Singh as to why did he apply sudden brakes as stated by Raman Kumar in his testimony that remains unchallenged in cross examination. This apart, it is not denied that on the basis of FIR registered at the behest of Raman Kumar, Gurpreet Singh RW-2 was put to trial for causing the accident. The statement of Raman Kumar during cross examination by his own counsel who was also representing owner of Tata Sumo that the truck did not give any indication before sudden application of brakes after overtaking his Tata Sumo cannot be given much weightage for the reason that there is no such pleadings by the claimants nor it has been stated by Raman Kumar in his examination in chief that truck had overtaken the Tata Sumo and thereafter applied sudden brakes. On the contrary, he had stated that truck was moving ahead of them going towards Shahabad without using dipper as well as lights.

Taking a cumulative view of aforesaid discussion, I find myself unable to concur with findings of the Tribunal that accident is the result of exclusive negligence of Gurpreet Singh, driver of offending truck. On the contrary, accident is the result of composite negligence of driver of Tata Sumo namely Raman Kumar and Gurpreet Singh, driver of offending truck. Keeping in view the facts and circumstances of the present case, interest of justice would be served if negligence to the extent of 70% is attributed to driver of truck and 30% to driver of Tata Sumo, ordered accordingly. In this view of the matter, findings recorded by the Tribunal on issue No.1 stand modified in the aforesaid terms. As a natural corollary, compensation to the extent of 70% shall be borne by the driver, owner and insurer of the aforesaid truck and liability to the extent of 30% would be of driver and owner of Tata Sumo whereas question of liability of insurance company would be decided in later part of the judgment.

This brings the Court to contention of counsel for the insurance company that no liability can be fastened against the insurer as Tata Sumo was used for hire or reward and the policy is an Act Policy.

The Tribunal, in para 55 of the award, has held that Tata Sumo was used as a taxi, in violation of terms and conditions of insurance policy, therefore, 25% of compensation shall be paid by the insured but insurance company shall discharge this liability towards the claimants and thereafter recover the same from the insured. This finding of the Tribunal is contrary to its findings on issue No.1 though the same have been modified now, in view of discussion made hereinbefore. Had findings of the Tribunal on issue No.1 been affirmed by this Court, there was no question of fastening any liability to pay compensation by the driver or owner of ill-fated Tata Sumo.

The first question for consideration is whether findings of the Tribunal that Tata Sumo was used as a taxi can be allowed to sustain.

Raman Kumar PW-2 driver of the Tata Sumo was examined in the case. In cross examination at the behest of counsel for the insurance company before the Tribunal, he has denied the suggestion that he was plying the vehicle on hire for commercial purposes or occupants of the Tata Sumo had paid fair to him for going to religious place i.e. Kaleer Sharif. However, he has stated that the injured were not relatives of the driver or owner of the vehicle. The insurance company examined Trivedi Lal Kanwar, Investigator RW-1 to substantiate its plea that Tata Sumo was used for hire or reward. He produced investigation report Ex.R1 and statement of Islam father of deceased Jahid Ex.R2. In cross examination, he had stated that he did not know name of the person who scribed the statement Ex.R2 but volunteered to state that person who scribed the statement was related to Islam and called by him for writing the statement. He admitted that signature of Islam has not been attested by anyone and no date is mentioned under the statement. He even did not remember the date on which the statement was recorded. He would further state that report Ex.R1 is based on the statement of Islam and versions of Aktar, Pammi and Shahazad called by Islam. He had also stated that manner of happening of accident was told to him by Islam and other above-stated persons.

Islam, one of the claimants being father of Jahid (since deceased) appeared in the witness box and cross examined by counsel representing the insurance company before the Tribunal. Counsel for the insurance company has failed to point out that statement Ex.R2 or report Ex.R1 was put to Islam to seek his explanation in regard thereto. Keeping in view the facts elicited in cross examination of Trivedi Lal Kanwar and failure of the insurance company to confront Islam with the aforesaid documents leaves no manner of doubt that report prepared by RW2 does not carry much weight to establish plea of the insurance company that Tata Sumo was used for hire or reward, in violation of the policy conditions. That being so, findings of the Tribunal recorded in para 55 of the award are faulty, thus, set aside.

The policy Ex.R20 is a Private Car Liability Only policy valid from 30.03.2013 to midnight of 29.03.2014. As the policy is an Act Policy, the insurance company cannot be fastened with liability to pay compensation qua death of gratuitous passengers traveling in the ill-fated Tata Sumo. As such, compensation to the extent of 30% would be joint and several liability of driver and owner of Tata Sumo.

In view of what has been discussed hereinbefore, FAO Nos.2171 to 2173, 3230, 3231, 3245 of 2017 are partly allowed in the aforesaid terms.

FAO No.1014 of 2019

The Tribunal awarded Rs.19,62,246/- detailed hereunder:-

Monthly income of the deceased	Rs.6655/-
Addition in income for future prospects	50%
Deduction for personal expenses	$1/4^{th}$
Multiplier	17
Loss of dependency	Rs.15,27,246/-
Loss of love and affection to claimants	Rs.1,00,000/- each
Expenses on funeral	Rs.25,000/-
Transportation charges	Rs.10,000/-

Counsel for the claimants would argue that income of the deceased assessed by the Tribunal is on lower side and needs enhancement.

Counsel for the assurance company, on the other hand, would argue that income of the deceased has been assessed on the basis of Deputy Commissioner's rates (DC rates), meant for payment of salary to employees out of contingency fund. It is further argued that addition in income for future prospects and compensation allowed under conventional heads may be modified, in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**.

The plea of the claimants is that the deceased was working as Raj Mistri thereby earning Rs.15,000/- per month. In para 30 of the award, the Tribunal has noticed that except self serving statement of Islam PW-1, there is no evidence to prove avocation and income of the deceased.

As has been rightly argued by counsel for the insurance company, DC rates are meant for wages to employees out of contingency fund. Taking a clue from notification issued by the State of Haryana fixing minimum wage, income of the deceased is assessed at Rs.5600/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 40%. Multiplier applied by the Tribunal is correct and affirmed.

The application for compensation has been filed by the parents and two minor children of the deceased. Father of the deceased aged about 51 years cannot claim loss of dependency as there is no evidence that he is suffering from impairment rendering him unable to earn his livelihood. In the given scenario, admissible deduction for personal expenses would be $1/3^{rd}$. In this manner, loss of dependency is calculated at Rs.10,66,240/- [Rs.11,42,400/- (Rs.5600/- x 12 x 17) + Rs.4,56,960/- (40% addition towards future prospects) – Rs.5,33,120/- ($1/3^{rd}$ deduction towards personal expenses)]

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss to estate.

In view of the above, total compensation is Rs.10,96,240/- and compensation assessed by the Tribunal is reduced to the extent of Rs.8,66,006/- (Rs.19,62,246/- - Rs.10,96,240/-). The insurers shall be entitle to recover the excess amount, if already paid, in the light of findings aforesaid. It is clarified that in case the insurance company has already paid compensation to the extent of 25% to the claimants in terms of the award, it shall be entitle to recover the excess amount from the claimants and remaining from the insured.

The appeal stands disposed of accordingly.

FAO No.1011 of 2019

The Tribunal has awarded Rs.13,05,000/- detailed hereunder:-

Monthly income of the deceased	Rs.5,000/-
Multiplier	17
Loss of dependency	Rs.10,20,000/-
Loss of love and affection to minor Claimants No.3 and 4	Rs.1,00,000/- each
Loss of love and affection to claimants No.1 and 2	Rs.50,000/-
Last rites and funeral expenses	Rs.25,000/-
Transportation	Rs.10,000/-

Salma was 28 years old at the time of unfortunate occurrence. She had been looking after family consisting of three minor children, her husband and parents in law. A house-maker has multifarious duties to perform and she cannot be equated with a daily wager. When the case is examined in the light of judgment of this Court **United India Assurance Co. Ltd. Vs. Sube Singh, FAO No.218 of 2014, decided on 15.01.2014**, affirmed by Hon'ble the Supreme Court, value of services of the deceased is assessed at Rs.9,000/- per month. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.18,36,000/- (Rs.9000/- x 12 x 17).

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.15,000/- for expenses on funeral/last rites.

In view of the above, total compensation is Rs.18,51,000/- and additional amount is Rs.5,46,000/- (Rs.18,51,000/- - Rs.13,05,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 691 days, to minor claimants namely Tamanna and Samir in the ratio 70:30, to be invested in fixed deposit till they attain majority or for a period of 3 years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

FAO No.1013 of 2019

The Tribunal has awarded Rs.3,75,000/- with regard to death of minor Sohil aged 6 years. I do not find any reason to allow additional compensation.

Accordingly, the appeal fails and is dismissed.

OCTOBER 1, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no

He would further state that as the Tata Sumo was used for hire or reward as against terms and conditions of policy and deceased were gratuitous passengers in Tata Sumo, the insurance company has wrongly been fastened with liability to pay compensation keeping in view that the policy obtained by the insured is an Act Policy.