

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Decided on: 14.02.2020

1.

**X-Obj. No.38-CII of 2016 and
FAO No.1232 of 2002 (O & M)**

Oriental Insurance Company Limited

....Appellant

Versus

Harjinder Kaur & others

.....Respondents

2.

FAO No.1227 of 2002

Oriental Insurance Company Limited

....Appellant

Versus

Sukhvinder Kaur & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Sanjeev Pabbi, Advocate, for the appellant.

Mr. Munish Gupta, Advocate, for cross-objectors/
respondent No.1 to 5 (FAO No.1232 of 2002).

Sant Parkash, J

CM No.5006-CII of 2016 In
X-Objection No.38-CII of 2016 in FAO N o.1232 of 2002

For reasons stated in the application, delay of 75 days in filing
the cross objections is condoned.

Application is allowed.

CM No.5007-CII of 2016 In
X-Objection No.38-CII of 2016 in FAO N o.1232 of 2002

Application is allowed as prayed for.

Main Appeals

This judgment shall dispose of aforementioned two appeals

arising out of same Award dated 18.10.2001 passed in two claim petitions

by the Motor Accident Claim Tribunal, Hoshiarpur, involving same accident and involving similar questions of law.

Learned counsel for the appellant - Insurance Company, has contended that misreading of oral as well as documentary evidence has resulted into miscarriage of justice. The impugned award has been passed on the basis of conjectures and surmises. The liability has been fastened upon the appellant on flimsy ground, on the assumption that the tractor-trolley was not insured with any insurance company and the accident was caused by negligence of the driver of Maruti car, insured with the appellant.

Learned counsel has further contended that it is evident from the DDR that it was a case of contributory negligence inasmuch as the accident occurred due to wrong parking of the tractor-trolley. There was no light reflector on the back of the tractor-trolley, which was parked on the metalled road. Thus, the accident took place due to wrong parking of the tractor-trolley.

Cross-objections have been filed on behalf of respondent Nos.1 to 5 seeking enhancement of compensation awarded in favour of claimants on account of death of Harbhajan Singh, submitting that the amount of compensation is on lower side.

Learned counsel for the cross - objectors has contended that the Tribunal fell in error and ignored the substantial evidence placed on record to show that Harbhajan Singh was posted as Assistant Lineman in Punjab State Electricity Board, having salary of ₹ 7,359/- per month, which has been wrongly assessed as ₹ 4,500/- per month. The Tribunal did not award any amount under the head of future prospects, loss of consortium, loss of estate, loss of love & affection and funeral expenses.

I have heard the submissions of learned counsel for the parties and perused the record.

Admittedly, the accident took place on 28.03.2000 at about 8.30 pm in the area of Chhinderwala, Police Station, Raiwala, District Dehradun, between car - Maruti Zen No.PB-54-3898 and tractor-trolley No.UP-07C-1678, the car struck against the back side of parked tractor-trolley on Dehradun - Haridwar road. As a result of the accident, Gurjinder Singh, Jaswinder Singh (driver of Maruti Zen) and Harjot Singh lost their lives. The accident was witnessed by Baljit Kaur and Jaswinder Kaur. DDR was also got recorded with regard to the incident.

Rash and negligent driving does not in every case necessarily mean the excessive speed. Not taking due care while driving the vehicle and in particular overtaking, either stationary or moving vehicle also would amount to rash and negligent driving. In the instant case, the car dashed the stationary tractor - trolley from behind, de hors it was not parked properly. Had he been diligent and careful while overtaking the stationary vehicle, the accident would not have occurred.

If the facts and circumstances of the present case are scanned minutely, it would transpire that it was not solely the driver of the car who was responsible, rather the driver of the tractor bearing No. UP-07C-1678 was also equally responsible, resulting into the accident. From the DDR and other evidence on the file, it was explicitly clear that the tractor trolley was not parked properly as the trolley of the tractor was on the metalled road. It is further evident and it could not be gathered that that driver of the tractor had taken all precautions while parking the tractor in such a way. Though, sufficient distance has not been defined in the regulation or otherwise, the

seconds gap in ideal conditions to avert collision and to allow the following driver sufficient time to respond. The aforesaid observations were taken from the decision of the Apex Court rendered in *Nishan Singh and others v. Oriental Insurance Company Limited and others, 2018 (2) RCR (Civil) 891*.

At the same time, driver of the Maruti car which was coming from the side of Rishi Kesh should have been equally vigilant in noticing the vehicle parked in the middle of the road. The appellant cannot be allowed to escape from its liability when the driver of the Maruti car, if he could have visualized the parked standing vehicle in the middle of the road and had applied the brakes at the appropriate time.

In the light of what has been discussed above, an irresistible and unerring conclusion can be drawn that the driver of car, Maruti Zen bearing No.PB-54-3898 was not solely responsible for the accident. The driver of the tractor bearing No.UP-07C-1678 was equally responsible as he had parked the tractor having its trolley on the metalled road. In the given circumstances, both the drivers i.e. driver of car, Maruti Zen bearing No.PB-54-3898 and that of tractor bearing No.UP-07C-1678 are held equally responsible for the accident having taken place on 28.03.2000 in which Gurjinder Singh, Jaswinder Singh and Harjot Singh had died.

It is pertinent to mention here that driver of the car namely Jaswinder Singh died in the accident and name of the driver of the tractor-trolley stood deleted vide order dated 02.01.2000 from the array of parties, in both the claim petitions, as his identity could not be ascertained. In this view of the matter, owners of both the vehicles i.e. tractor and the car, namely, Malkiat Singh and Sudhir Aggarwal, shall be liable to the extent of

Now coming to the question of enhancement of compensation for the cross - objectors, it is contended that learned Tribunal did not assess the monthly income of the deceased according to the salary certificate; that multiplier was not correctly applied and other statutory benefits were not granted which resulted in the miscarriage of justice.

A perusal of the record, it would be revealed that there is no denial of the fact that gross monthly income of the deceased at the time of his death was ₹ 7,349/- (₹ 4,450/- Basic Pay + ₹ 1,691/- ADA + ₹ 50/- Risk Allowance + ₹ 658/- House Rent Allowance + ₹ 250/- Medical Allowance + ₹ 100 CCA + ₹ 150/- Special Allowance). The Tribunal, while considering all the facts and further considering that the deceased was bound to pay income tax, assessed the monthly income of Harbhajan Singh to be ₹ 4,500/- per month. In the considered view of this Court, no fault can be found in the assessed monthly income of the deceased at this stage.

Admittedly, the learned Tribunal had applied the cut of 1/3rd, ignoring the fact that claimants in the case were five in number. In case ***Smt. Sarla Verma & others vs. Delhi Transport Corporation & another, 2009(3) RCR (Civil) 77***, in such an eventuality where claimants are five in number, learned Tribunal was required to deduct 1/4th of the income of the deceased for his personal expenses. Thus, deducting the 1/4th, the monthly dependency of the claimants comes to ₹ 3,375/-. The deceased at the time of his death was 40 years of age and according to the judgment in the case of ***Sarla Verma (supra)***, the multiplier of 14 was correctly applied. In the given circumstances, the total compensation comes to ₹ 5,67,000/-.

The learned Tribunal miserably failed to provide any compensation on account of Loss of Consortium, loss of Love & Affection,

Funeral Expenses, which should have been given and are awarded hereunder:-

Sr. No.	Particulars	Award of Compensation
1	Dependency of Claimants (3375X12X14)	₹ 5,67,000/-
2	Loss of Consortium	₹ 40,000/-
3	Loss of Love & Affection	₹ 15,000/-
4	Funeral Expenses	₹ 15,000/-
Total Compensation		₹ 6,37,000

The compensation so awarded through this judgment shall entail interest @ 7.5% from the date of filing of claim petition till actual payment. It is made clear that if the appellant - Insurance Company has made the payment in pursuant to the impugned award dated 18.10.2001, it shall have the right to recover it from the owner of the tractor, proportionately.

Disposed of accordingly.

(Sant Parkash)
Judge

14.02.2020
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Whether Speaking : Yes/No
To be reported or not : Yes/No