

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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|---|--------|-----------------|
| 1. FAO No.6658 of 2012 (O&M) | | |
| Karamjit Kaur | | ... Appellant |
| | Versus | |
| Rajo Devi & others | | ... Respondents |
| 2. FAO No.6659 of 2012 (O&M) | | |
| Karamjit Kaur | | ... Appellant |
| | Versus | |
| Harjinder Kaur @ Sito & others | | ... Respondents |
| 3. FAO No.6668 of 2012 (O&M) | | |
| Karamjit Kaur | | ... Appellant |
| | Versus | |
| Kulwinder Singh & others | | ... Respondents |
| 4. FAO No.1905 of 2014 (O&M) | | |
| Rajo Devi & another | | ... Appellants |
| | Versus | |
| Manjeet Kaur & others | | ... Respondents |
| 5. FAO No.8197 of 2014 (O&M) | | |
| Harjinder Kaur @ Sito & others | | ... Appellants |
| | Versus | |
| Manjeet Kaur & others | | ... Respondents |

Date of decision: 27th February, 2020

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.L. Bajaj, Advocate
 for the appellant in FAOs No.6658, 6659 & 6668 of 2012.

 Mr. Virender Singh Punia, Advocate
 for the appellants in FAOs No.1905 & 8197 of 2014.

 Mr. Jaspal Singh, Advocate for

Mr. Puneet Sharma, Advocate as well as
Mr. Punit Jain, Advocate for
Mr. M.B. Jain, Advocate for New India Assurance Co. Ltd.

Mr. Vishal Aggarwal, Advocate
for M/s Bajaj Allianz General Ins. Co.

Mr. Arvind Bansal, Advocate
for respondent No.1 in FAO 6668 of 2012.

FATEH DEEP SINGH, J.

All the above detailed first appeals against orders, in all numbering five, having arisen out of the same very award regarding accident between the same very motor vehicles where similar facts and law points are involved and therefore, for the sake of brevity, are being taken up for disposal together by way of this common judgment.

The brief background that emerges from the arguments of the two sides in each of the appeals and that from the records is that on 26.07.2009 a newly purchased motorcycle bearing chassis No.S1077RP602050 (registration number applied for) was being driven by deceased Gautam who happens to be a bachelor aged around 22 years, son of the claimants namely Rajo Devi and Prem Chand (MACT Case No.56 of 2009) and on which his brother-in-law Harpal Singh, a hair-dresser aged around 30 years, was riding pillion and whose dependents are Harjinder Kaur alias Sito widow aged around 28 years, Babu Singh (minor son) and Nurdeep (minor daughter) (MACT Case No.56-A of 2009) and were going on the main road in the area of Police Station

Kaithal when from the opposite side an Alto car bearing registration No.HR08-J-3157 being driven by Guljar Singh, in which Kulwinder Singh (since injured) (MACT Case No.80 of 2009) was sitting next to the seat of driver, came and as a consequence of driving of the two vehicles they met with a head-on collision leading to death of both the motorcyclists and injuries to Kulwinder Singh. It is worthwhile to refer here that subsequent thereto because of some other reason Guljar Singh, the owner of the Alto car, too had died after some time and is now being represented by his LRs namely Manjeet Kaur (widow), Virender Singh and Sarabjeet Singh (both sons). The Alto car is admitted to be insured with M/s New India Assurance Co. Ltd. whereas the motorcycle is claimed to be insured with M/s Bajaj Allianz General Insurance Company Limited.

On account of this accident Rajo Devi and her husband Prem Chand, parents of deceased Gautam, filed case MACT No.56 of 2009 claiming to be the heirs of their unmarried son on whom they were totally dependent and after his death were left desolate and rudderless and therefore, sought compensation from Guljar Singh the owner and driver of the Alto car through his heirs Manjeet Kaur, Virender Singh and Sarabjeet Singh; insurer of Alto car M/s New India Assurance Co. Ltd.;

Karamjit Kaur the owner of the motorcycle and its insurer M/s Bajaj Allianz General Insurance Company Limited.

Similarly dependents of deceased Harpal Singh comprising of Harjinder Kaur alias Sito (widow), Babu Singh (minor son) and Nurdeep (minor daughter) filed claim petition bearing MACT No.56-A of 2009 against the owner and driver of the Alto car, its insurer, the owner of the motorcycle, its insurer and Kulwant Kaur mother of Guljar Singh.

Injured Kulwinder Singh filed claim petition bearing MACT case No.80 of 2009 against Guljar Singh (through his heirs abovesaid); the insurer of the Alto car; heirs of deceased Gautam driver of the motorcycle namely Rajo Devi and Prem Chand; Karamjit Kaur owner of the motorcycle and insurer of the motorcycle, claiming that on account of accidental injuries he has suffered 49% disability and therefore laid claim to compensation.

The learned Motor Accident Claims Tribunal, Kaithal before whom the matters were pending, vide orders dated 08.09.2010 consolidated all these claim petitions and through award dated 03.06.2011 allowed all the claim petitions awarding an amount of ₹1,72,000/- to the dependants of deceased Gautam, driver of the motorcycle, and on account of a case of contributory negligence they were held entitled to 50% of this amount i.e. ₹ 86,000/- in equal shares

along with interest @ 7% per annum from the date of filing of the petition till realization. Similarly dependants of deceased Harpal Singh were allowed compensation of ₹ 4,23,000/- along with interest @ 7% per annum from the date of filing of the petition till realization, out of which Harjinder Kaur @ Sito (widow) was held entitled to ₹ 2,23,000/- and the two minor children namely Babu Singh and Nurdeep to ₹ 1,00,000/- each; whereas injured Kulwinder Singh was granted compensation to the tune of ₹ 1,53,320/- along with interest @ 7% per annum from the date of filing of the petition till realization. It is in consequence of this award affecting the respective respondents in the claim petitions, these five above detailed appeals have come about.

Heard leaned counsel for the respective parties and perused the records of the case.

The stand of the respective claimants that both the riders of the motorcycle died in the accident at the spot whereas co-driver in the Alto car namely Kulwinder Singh suffered injuries, is not at all displaced by the respective respondents in their written replies to the claim petitions. Rather what has come about is shifting the blame on the other vehicle but it is not in any manner displaced that both the vehicles, the car and the motorcycle, have struck head-on in the middle of the road. The insurers of these vehicles have sought to shift the burden from their

shoulders in paying compensation by taking up usual pleas of there being no legal, valid and effective driving license at the time of accident and that the claimants were not the legitimate legal heirs and that no case for grant of compensation was made out besides usual defences available by virtue of Sections 147, 149, 150, 157 and 170 of the Motor Vehicles Act, 1988.

The Tribunal after consolidation of the cases, framed following issues:

1. Whether Gautam and Harpal died and Kulwinder Singh claimant sustained injuries in a Motor Vehicular Accident which took place on 26.7.2009, in the area of Police Station city Kaithal, on account of rash and negligent driving of respondent No.1 while driving Alto Car No.HR08J-3154? OPP
2. What role the respondents No.3 to 6 have to play in the present accident? OPP
3. If both the above issues are proved, to what amount of compensation the claimants are entitled to and from whom? OPP
4. Whether there is any violation of terms and conditions of Insurance Policy, if so, its effect? OPR

5. Relief.

The claimants examined Rajo Devi PW1, Harjinder Kaur PW2, MHC Jai Kishan PW3, Suresh Kumar PW4 and Kulwinder Singh PW5 and proved documents copy of post mortem report of Harpal Singh Ex.PA, copy of post mortem report of Gautam Ex.PB, Copy of FIR Ex.PW3/A, medical bills pertaining to claimant Kulwinder Singh Mark A1 to A46, discharge and follow up card Mark 47, receipt issued by Amar Hospital Mark 48, disability certificate of Kulwinder Singh Mark A49, copy of voter card of Harjinder Kaur Mark A, copy of ration card of Harnam Singh father of Harjinder Singh claimant Mark B, copy of voter card of Prem Chand father of deceased Gautam Mark C and copy of ration card of Prem Chand Mark D.

On the other hand no oral testimony has been brought as evidence on behalf of the respondents except placing on record copy of driving license of Guljar Singh Ex.R1, copy of registration certificate of Alto car Ex.R2, copy of insurance policy of M/s New India Assurance Co. Ltd. Ex.R3 and R4. Consequent upon the submissions, impugned findings were spelled out and that is how these appeals have come to crystallize.

The factum that Gautam was driving the motorcycle and Harpal Singh was sitting pillion and both of them died after the crash is

not at all displaced by any of the sides and so is the position that the Alto car was being driven by Guljar Singh (since dead) and in which claimant Kulwinder Singh was sitting by his side and has suffered accidental injuries. The testimony of Kulwinder Singh is the most important one as no other eye-witness to this incident has been examined by any of the sides. Being an injured eye-witness, is certainly a stamp witness in the realm of evidence. In his cross-examination Kulwinder Singh as PW5 has admitted the fact that the Alto car was being driven at a speed of 60 kilometers per hour and the accident has occurred in middle of the road and it was a head on-collision. The contentions of the counsel representing the insurance company that it is a clear cut case of contributory negligence could not be displaced by any of the counsel representing the other side. Learned counsel for the insurance company has placed on record '**Bijoy Kumar Dugar vs. Bidyadhar Dutta & others**' 2006(2) RCR (Civil) 590, where in a similar proposition, the Supreme Court has held that where the vehicles had a head-on collision the drivers of both vehicles need to be responsible to have contributed equally to the accident. In the present case, in the light of the fact that there is no evidence to the contrary, this Court needs to hold it so and the findings drawn by the impugned award to that effect need to be upheld.

In case of claim by the parents of deceased Gautam, it is admitted that the deceased was a bachelor aged around 22 years. Though much fanfare has been sought to be raised over the factum that he was not holding a valid driving license, but the same has not been proved by the insurance company on whom the onus lay, and rather the driving license of driver of the Alto car Guljar Singh has been brought on record as Ex.R1, registration certificate of the Alto car as Ex.R2 and the insurance police as Ex.R3. Learned counsel for the insurer of the Alto car fairly concedes that at the time of accident the car was under insurance cover. No avocation of deceased Gautam and Harpal Singh has been proved. It is also not in any manner displaced that they were running hair-cutting saloon and were hair-dressers. The Tribunal has wrongly assessed the earnings of Gautam and Harpal to be of casual labourers. Keeping in view the age of Gautam and the fact that he happens to be young unmarried grown up son of aged parents, who were totally dependent and that Harpal Singh too was young aged around 30 years with a widow and two minor children as dependents and keeping in view that the factum of their avocation is not denied though there is no proof of their earnings, this Court taking into consideration the objective of the Act being of welfare nature, feels it expedient to hold that by all likelihood Gautam must be earning ₹ 4,000/- per month and Harpal Singh

₹ 5,000/- per month. The same is also commensurate with the family strength they were looking after in such days of escalating prices of essential commodities and cost of living. Accordingly the annual income of deceased Gautam comes to ₹48,000/- and that of deceased Harpal Singh ₹ 60,000/-.

As regards future prospects are concerned, the dependants of deceased Gautam shall be entitled to 50% of his annual earnings i.e. ₹24,000/- and thus his total income after addition of future prospects comes to ₹ 72,000/-. Keeping in view that Gautam was a bachelor and must be contributing $1/3^{\text{rd}}$ on his own upkeep and maintenance, and has only two aged parents as dependents therefore, deduction of $1/3^{\text{rd}}$ on his personal expenses and maintenance is appropriate and as such his dependency comes to ₹ 48,000/- ($72000 \times 2/3$). In the light of age of the deceased and that of his parents, multiplier of 18 is applied whereby the compensation comes to ₹ 8,64,000/- (48000×18). Since it is a proven case of contributory negligence and Gautam was driving the motorcycle and has equally contributed to this accident, therefore the claimants in his case shall be entitled to 50% of the compensation i.e. ₹4,32,000/-.

Taking the earnings of deceased Harpal Singh to be ₹60,000/- per annum and adding 40% (i.e. ₹24,000/-) towards his future prospects, his total earnings would come to ₹84,000/-. Keeping in view that he has

left behind widow and two minor sons and in view of the dependency he must be contributing $1/5^{\text{th}}$ on his own upkeep and maintenance so his dependency comes to ₹67,200 ($84000 \times 4/5$). More so, with the passage of time, children would grow up and their requirements in life on account of education etc. would also increase and keeping in view the age of Harpal Singh deceased multiplier of 17 is appropriate. Therefore, the amount of compensation comes to ₹11,42,400/- (67200×17). As it was a case of contributory negligence, his dependents shall be entitled to 50% of the compensation i.e. ₹5,71,200/-.

Besides this, in case of both the deceased an amount of ₹50,000/- each is awarded on account of loss of consortium, ₹ 20,000/- each for expenses of funeral and last rites and a sum of ₹ 50,000/- each on account of loss of estate. Resultantly, the total amount of compensation in case of deceased Gautam comes to ₹ 5,52,000/- whereas in case of deceased Harpal Singh the total compensation is ₹ 6,91,200/-.

As observed by the learned Tribunal, both the claimants in case of deceased Gautam who are his aged parents, shall be entitled to compensation in equal shares. In case of deceased Harpal Singh also, since the children are young and have a long way to go in life and have lost the breadwinner father that would have its own repercussions and therefore in view of future growth, education and settlement in life, both

the children and the widow of deceased shall be entitled to the total amount of compensation in equal shares.

The Tribunal has awarded interest only @ 7% per annum on the compensation which is on the lower side. Keeping in view the prevalent rate of interest, to the mind of this Court rate of 9% per annum would be appropriate and thus, the rate of interest awarded on the amount of compensation in case of both the deceased, namely Gautam and Harpal Singh, is hereby modified from 7% to 9% per annum from the date of filing the claim petitions till realization of the amount.

Since the claimant injured Kulwinder Singh has not come up before this Court challenging the award, the findings of learned Tribunal to that extent are hereby upheld.

Since the motorcycle and the Alto car at the relevant time as per the documents proved were duly insured, the motorcycle with M/s Bajaj Allianz General Ins. Co. and the Alto car with M/s New India Assurance Co. Ltd., the owners of both the vehicles, the driver of Alto car and insurers of both the vehicles are jointly and severally liable to pay the compensation amount.

In the light of what has come about in the foregoing discussions, the appeal of claimants Rajo Devi and Prem Chand being FAO No.1905 of 2014 as well as FAO No.8197 of 2014 moved by

claimants Harjinder Kaur, Babu Singh and Nurdeep, are hereby disposed off and the impugned award modified to that extent; whereas FAO No.6658 of 2012, FAO No.6659 of 2012 and FAO No.6668 of 2012 filed on behalf of Karamjit Kaur, owner of the motorcycle, stand dismissed.

(FATEH DEEP SINGH)
JUDGE

February 27, 2020

rps

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