

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

Date of decision: 24.01.2020

**XOBJC-237-CII-2016 (O&M) in/and
FAO No.1633 of 2016 (O&M)**

Cholamandalam MS General Insurance Co. Ltd. ... Appellant

Versus

Vishavjit Singh and ors. ... Respondents

**XOBJC-238-CII-2016 (O&M) in/and
FAO No.1632 of 2016 (O&M)**

Cholamandalam MS General Insurance Co. Ltd. ... Appellant

Versus

Smt. Krishna Devi and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate
for insurance company.

Mr. Narender Kaajla, Advocate
for the cross-objectors/claimants.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1632 and 1633 of 2016 and cross objections No.238-CII of 2016 in FAO No.1632 of 2016 and cross objections No.237-CII of 2016 in FAO No.1633 of 2016 as these have emerged out of the same award dated 30.11.2015 whereby compensation has been assessed on account of death of Om Parkash and injuries sustained by Smt. Krishna Devi in a motor vehicular accident that

took place on 24.08.2014.

FAO Nos.1632 and 1633 of 2016 have been filed by Cholamandalam MS General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the cross objections have been filed by the claimant(s) for grant of additional compensation.

CM No.18546-CII of 2016 in cross objections No.237-CII of 2016 in FAO No.1633 of 2016

Heard.

Allowed as prayed for. Delay of 94 days in filing the cross objections stands condoned.

FAO No.1633 of 2016 and cross objections No.237-CII of 2016

Counsel for the appellant would argue that findings of the Tribunal on issue No.1 attributing rash and negligent driving to dumper No.HR-39-C-3518 by its driver are not based upon correct appreciation of testimonies of Krishna Devi and Satbir, alleged eye witnesses to the occurrence. It is argued that though there is no dispute that Krishna Devi was pillion rider of motorcycle No.HR-16-L-0556 driven by her husband Om Parkash but the facts brought-forth in her cross examination are sufficient to prove that she did not know the manner in which the accident took place or establish identity of the offending vehicle. It is further argued that Satbir PW2, author of FIR, in cross examination had stated that distance between his motorcycle and motorcycle of Om Parkash was two acres. When he heard the noise of accident, he reached the spot after two minutes of accident. It is vehemently argued that claimants failed to adduce

sufficient much less tangible evidence to establish their plea that driver of alleged offending vehicle can be blamed for the unfortunate occurrence.

With regard to compensation, it is argued that Om Parkash retired Subedar from Army was drawing pension of Rs.22,712/-. The widow of the deceased has been paid pension @ Rs.21,908/-, thus, claimants would be entitle to difference of two pensions for computing loss of dependency.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1 upholding plea of claimants that accident is the result of rash and negligent driving of offending vehicle by its driver. It is contended that Rattan Singh, driver of offending vehicle did not appear in the witness box to counter testimonies of Krishna Devi and Satbir. On due investigation of FIR, challan was presented in the Court and Rattan Singh was put to trial for causing the accident. He has supported findings of the Tribunal computing loss of dependency to the tune of Rs.19,98,612/- on the basis of loss of pension received by the deceased. He would pray for allowing additional compensation with regard to loss of dependency by assessing post retirement income of the deceased, 52 years old at the time of death.

I have heard counsel for the parties, perused the paper book and copies of documents supplied during the course of hearing.

The case of claimants is that on the fateful day, Om Parkash along with his wife was travelling on motorcycle aforesaid from Bhiwani to

village Lalhi. They were followed by Satbir and his son Vishwajit on a separate motorcycle. When motorcycle driven by Om Parkash reached ½ kilometer ahead of BITS College towards Rohtak, dumper bearing No.HR-39-C-3518 driven rashly, negligently and at a high speed came from opposite side and by coming on wrong side struck with motorcycle driven by Om Parkash. Om Parkash and Krishna Devi fell down and sustained multiple grievous injuries. The motorcycle was badly damaged. After causing accident, driver of aforesaid dumper fled away along with offending vehicle. Satbir noted down registration number of offending dumper. He shifted the injured to General Hospital, Bhiwani but Om Parkash was declared brought dead. FIR No.638 dated 24.08.2014 under Sections 279, 337 and 304-A IPC was registered at Police Station Sadar, Bhiwani, on the statement of Satbir son of Brijlal.

To discharge onus of issue No.1, (Whether the accident in question took place on 24.08.2014 at about 8.00 am, in the area of BITS College, Bhiwani, under the jurisdiction of Police Station Sadar, Bhiwani, due to rash and negligent driving of vehicle dumper bearing registration No.HR-39C-3518 by respondent No.1 Rattan Singh, resulting into injuries to Smt. Krishna Devi and death of Om Prakash son of Sh. Banwari Lal, as alleged?OPP) Krishna Devi, one of the injured in the accident and Satbir alleged eye witness and author of FIR were examined. Krishna Devi tendered into evidence duly sworn affidavit Ex.PW1/A and reiterated version of the claimants with regard to the date, time and manner of

accident that took place because of rash and negligent driving of offending vehicle. A relevant extract from her cross examination reads as follows:-

xx xx Dumper registration number of which is not known to me came from the opposite direction and it was head on collision between our motorcycle and dumper on the road itself. It is correct that I had not seen the dumper which came from opposite direction as I was pillion rider and as such my husband might have noticed the said dumper. My brother Satbir and my son Vishawjeet were coming on another motorcycle behind our motorcycle. The aforesaid motorcycle was being driven by my brother Satbir but I cannot tell the registration number of said motorcycle. I cannot tell about the distance between our motorcycle and motorcycle of my brother Satbir. Since I had become unconscious immediately after the accident so I cannot tell as to after how much time Satbir and my son had reached at site of accident. I do not know whether Om Parkash had become unconscious at the time of accident or not.

Satbir PW2 tendered into evidence affidavit Ex.PW2/A and para 3 of the affidavit is verbatim reproduction of para 3 of affidavit of Smt. Krishna Devi so far as deposing about the manner of accident. As has been pointed out by counsel for the insurance company, Satbir had stated that his motorcycle was at a distance of two acres from the motorcycle of Om Parkash and he arrived at the spot two minutes after the accident. In the given circumstances, testimony of Satbir neither independently nor by way

of corroboration can be taken into consideration to prove that accident took place in the manner deposed by Satbir. It is difficult to accept that a person who is driving motorcycle at a distance of two acres from another motorcycle going ahead would be in a position to depose about the offending vehicle having gone on wrong side and thereafter struck against the motorcycle driven by deceased Om Parkash. The testimony of Krishna Devi with regard to offending vehicle having gone on the wrong side gets demolished in view of the fact that she had not seen the dumper which came from opposite direction as she was pillion rider. At the same time, testimony of Krishna Devi corroborated by Satbir coupled with that on due investigation of FIR, Rattan Singh driver of offending vehicle was put to trial, it is sufficient to prove that accident took place between motorcycle driven by Om Parkash and offending vehicle bearing No.HR39C-3518. This apart, an adverse inference is liable to be drawn against the respondents therein for non examination of Rattan Singh, driver of offending vehicle. Taking into consideration the aforesaid discussion and the fact that accident was head on collision that took place on the road itself, it can safely be inferred rather concluded that the present is a case of contributory negligence of Om Parkash (since deceased) and driver of offending vehicle. As the dumper is a heavy goods vehicle and driver of a four wheeler owes a greater responsibility to ensure safety of two wheelers on the road coupled with that Rattan Singh did not appear in the witness box to depose as to what reasonable care was taken by him to avoid

collision, interest of justice would be served if findings of the Tribunal on issue No.1 are modified to the extent that 20% negligence is liable to be attributed to deceased Om Parkash and 80% to driver of offending vehicle.

Ordered accordingly.

This brings the Court to issue of compensation payable for death of Om Parkash. The Tribunal awarded Rs.22,23,612/-, detailed hereunder:-

Monthly income of the deceased	Rs.22,712/-
Multiplier	11
Deduction for personal expenses	1/3 rd
Loss of dependency	Rs.19,98,612/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-

Indisputably, the deceased was a pensioner from Indian Army, drawing net pension of Rs.22,712/- per month. The widow of deceased has been paid pension @ Rs.21,908/- per month. The claimants shall be entitle to difference of pension i.e. Rs.804/- per month (22,712 – 21,908). In this context, reference can be made to judgment of this Court **Charanjit Singh Vs. Harish Kumar Sachdeva and others, FAO No.10228 of 2014, decided on 30.01.2018 and connected cases**. By deducting 1/3rd towards personal and living expenses and applying multiplier of 11, loss of dependency is calculated at Rs.70,752/- [(804 x 12 x 11) – (1/3rd deduction for personal expenses)].

The deceased was 52 years old at the time of unfortunate occurrence. He was a retired Subedar from Indian Army. It is difficult to

accept that deceased would sit at home and spend the rest of life as a retiree. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time along with that deceased was retired Subedar, income of the deceased is assessed at Rs.6500/- per month. Claimants shall be entitle to addition in income for future prospects @ 10%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency with regard to post retirement income of the deceased is assessed at Rs.6,29,200/- [(6500 x 12 x 11) + (10% future prospects) – (1/3rd deduction for personal expenses)].

The total loss of dependency is Rs.6,99,952/-.

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.7,69,952/- and 80% thereof is Rs.6,15,961/-. Compensation assessed by the Tribunal is reduced to the extent of Rs.16,07,651/- (22,23,612 - 6,15,961). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal and cross objections are disposed of in the

aforesaid terms.

FAO No.1632 of 2016 and cross objections No.238-CII of 2016

In view of findings recorded in FAO No.1633 of 2016, 20% negligence has been attributed to deceased Om Parkash. However, with regard to Krishna Devi, it would be a case of composite negligence and as such, she was entitle to recover compensation from either of the joint tort-feasers. Krishna Devi sought compensation from driver, owner and insurer of offending dumper. She will be entitle to entire compensation assessed by the Tribunal and additional compensation, if any, allowed by this Court.

Counsel for the parties have not made any submissions with regard to compensation assessed in respect of injuries sustained by Krishna Devi.

The Tribunal awarded Rs.64,000/-, detailed hereunder:-

Compensation on account of hospitalisation	Rs.9000/-
Pain and sufferings	Rs.50,000/-
Special diet	Rs.5000/-

The injured remained hospitalised for a period of 10 days from 24.08.2014 to 02.09.2014. The claimant examined Rakesh Bidlan, MRC, PGIMS Rohtak PW2 and he produced short stay file in respect of the injured. Dr. Parveen Kumar PW4 proved MLR Ex.PW4/B in respect of injuries sustained by Smt. Krishna Devi. The claimant did not produce bills in respect of medical expenses. Possibility of getting reimbursement qua medical expenses from Army authorities is not ruled out. In this view of the

matter, the Tribunal has rightly rejected plea of the claimant with regard to payment of medical expenses. There is nothing on record suggestive of the fact that injured has suffered any disability on account of sustaining injuries. The Tribunal has shown magnanimity in awarding Rs.50,000/- on account of pain and sufferings. In this view of the matter, there is no justification for allowing additional compensation either under the heads for which compensation was allowed or under any additional head.

In view of what has been discussed hereinbefore, the appeal and cross objections stand disposed of.

24.01.2020

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Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No

(REKHA MITTAL)
JUDGE