IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) **FAO-6223-2014 (O&M)**
Decided on : 06.01.2020

Sunita and others

. . . Appellant(s)

Versus

Rajender Singh and others

. . . Respondent(s)

2) **FAO-3474-2014 (O&M)**

Subhash Chander Gupta

. . . Appellant(s)

Versus

Sunita and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sandeep Goyal, Advocate
for the appellant(s) (in FAO-6223-2014) &
for respondents No.1 to 4 (in FAO-3474-2014).

Ms. Ramandeep Kaur, Advocate
for the appellant(s) (in FAO-3474-2014) &
for respondent No.2 (in FAO-6223-2014).

Mr. Vinod Chaudhary, Advocate
for respondent No.4 – Insurance Company
(in FAO-6223-2014) &
for respondent No.7 – Insurance Company
(in FAO-3474-2014).

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MANJARI NEHRU KAUL, J.

This order shall dispose of FAO-3474-2014 and FAO-6223-2014, as both the above noted appeals arise out of the same award dated 06.03.2014, passed by the Ld. Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal').

FAO-6223-2014

The instant appeal has been filed by the legal heirs of deceased Purshotam claiming compensation on account of his death in the motor vehicle accident, which occurred on 24.03.2012, due to the rash and negligent driving of the offending truck bearing registration No. HR-38V-5577, by its driver Rajinder Singh-respondent no.1.

The Tribunal while holding that the accident happened due to the rash and negligent driving of the offending truck bearing registration No. HR-38V-5577, by its driver respondent no.1 – Rajinder Singh, awarded compensation in the sum of Rs. 3,61,600/- with interest @ 7.5% per annum from the date of filing the petition till its realisation, which is reproduced as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	4,400/- per month
2.	Income after deducting $1/4^{th}$ as personal living expenses of the deceased	4,400 - $1/4^{th}$ = 3,300/-
3.	Loss of dependency after applying multiplier of 17	3,300 x 12 x 17 = 6,73,200/-
4.	Loss of love and affection as well as consortium	25,000/-
5.	Funeral expenses	25,000/-
	Total	**7,23,200/-**
	The claimants were entitled to receive 50% (i.e. **Rs.3,61,600/-**) of the total amount, as the Tribunal observed that it is a case of contributory negligence.	

The present appeal has been filed by the appellants/claimants seeking enhancement of the aforesaid compensation.

Ld. counsel for the appellants submits that enhancement on account of future prospects be awarded and compensation be worked out in terms of the judgments of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others*, *2017(16) SCC 680*** and ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.* 2018(4) RCR Civil 333**.

There is no dispute regarding the age of the deceased Purshotam, who was aged 30 years at the time of the accident. Ld. counsel for the appellants has raised an objection *qua* the income of the deceased having been assessed on the lower side by the Tribunal as ₹ 4400/- per month, whereas, as per the notification issued by the State of Haryana for the relevant year, the minimum wages for unskilled labourer should have been assessed as ₹ 4900/- per month.

Hence, in terms of the judgment of the Apex Court in ***Pranay Sethhi's case*** (supra) and ***Magma Insurance Company's case*** (supra), the compensation awarded to the appellants/claimants deserves to be re-assessed as follows:-

Sr. No.	***Heads of Claim***	***Amount (₹)***
1.	Income ₹ 4900 – 1/4th = 3675/-	44,100/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	44,100+17,640 (44,100 **x** 40%) = 61,740/-
3.	Total dependency after applying a multiplier of 17	61,740 **x** 17 = 10,49,580/-
4.	Funeral expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Loss of consortium to appellant no.1	40,000/- (instead of 25,000/- as earlier awarded by the Tribunal)
7.	Loss of consortium (parental) to appellants no. 2 to 4	40,000/- each (40,000 x 3) = 1,20,000/-
	Grand Total	**₹ 12,39,580/-**

It would be relevant to clarify that as held by the Tribunal, the claimants shall be entitled to receive only 50% of the total compensation, as it was proved to be a case of contributory negligence. Hence, the appellants/claimants are entitled to a sum of ₹ 6,19,790/- i.e. 50% of the total amount of ₹ 12,39,580/-, as compensation.

Needless to say, the amount already awarded by the Tribunal shall stand deducted from the compensation as detailed above. Claimants are entitled to interest at the rate of 9% per annum on the entire amount from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the Tribunal shall remain the same.

FAO-3474-2014 (O&M)

As already noticed earlier, the Tribunal while deciding the claim petition under Section 166 of the Motor Vehicles Act, 1988, concluded that the accident in question had occurred due to the rash and negligent driving of the offending Truck bearing registration No. HR-38V-5577, which was being driven by Rajinder Singh, arrayed as respondent No.1 in the claim petition. Present appellant (i.e. registered owner) as well as respondent-Rajinder Singh, who was driving the offending vehicle were held liable, jointly and severally, to pay the amount of compensation to the claimants.

Appellant who is the registered owner of the vehicle in question is aggrieved of his liability being fixed by the Tribunal in the claim petition and has urged that being the owner of the offending vehicle, he could not have been burdened with the liability of compensation. It has also been urged that the Tribunal while assessing the compensation to the claimants, has assessed the same on the higher side. It has been strenuously urged by the appellant-owner that since the offending vehicle was duly insured, coupled with the fact that the offending driver had a valid driving licence (Ex.R2), which was issued in the year 1999 by the State Transport Department, Govt. of Maharashtra and as per the endorsement on the said driving licence, it was valid till 16.06.2019, the insurer was liable to pay the compensation amount. Further, the Tribunal gravely erred in ignoring that the driving licence (Ex.R2), which was admittedly in the name of the offending driver, was not challenged much less proved by the respondent No.7 - Insurance Company, to be a forged and a fabricated document.

Per contra, Respondent No.7 – Insurance Company vehemently opposed the submissions of the learned counsel for the appellant-owner. It has been urged that the driving licence which was taken into possession (Ex.R1) from the offending driver soon after the accident in question by the police authorities, was on verification found to be a fabricated and a forged document and as such the Insurance Company could not be held liable to pay the compensation.

I have heard Ld. counsel for the parties and have gone through the evidence and other material on record.

I am unable to agree with the submissions of the Insurance Company. The fact remains that the driving licence (Ex.R2), which was issued in the name of the offending driver in the year 1999, was much prior in time to the accident in question, vis-a-vis the driving licence which was taken into possession by the police soon after the accident. It cannot be disputed that on the date of accident, the offending driver was indeed holding a valid driving licence in his name. The least that the Insurance Company could have done was to verify Ex.R2 (Driving License issued in 1999) *qua* its authenticity, which was admittedly not done and verification only *qua* Ex.R1 (Driving License issued in the name of one Vijay Kumar by the Licensing Authority, Gurdaspur) was made. It would also be pertinent to notice that the driving licence Ex.R2 was got verified by the offending driver himself vide Ex.R5, wherein, also the factum of the driving licence Ex.R2 having been issued in the year 1999 and being valid on the date of the accident stands corroborated.

In view of the above factual matrix, in my considered view the Tribunal gravely erred in exonerating respondent No. 7 – Insurance Company from its liability and fastening the liability to pay compensation on the appellant-owner by ignoring that the driving licence (Ex.R2) was admittedly in the name of the offending driver i.e. respondent No.2 – Rajinder Singh and on the date of accident, its validity was upto 16.06.2019.

Consequently, the instant appeal is allowed and respondent No.7 – Insurance Company is held liable to pay the compensation.

Both the appeals stand disposed off in aforesaid terms.

(MANJARI NEHRU KAUL)
JUDGE

January 06, 2020

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*