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

**Date of decision : 02/03/2020**

**1. FAO-8213-2015 (O&M)**

Poonam and others

... Appellants

Versus

Ramesh Kumar and others

... Respondents

**2. FAO-4858-2014 (O&M)**

New India Assurance Company Ltd.

... Appellant

Versus

Poonam and others

... Respondents

**CORAM: HON'BLE MRS. JUSTICE ALKA SARIN**

Present: Mr. Sandeep Gahlawat, Advocate
for the appellant in FAO-8213-2015 and
for respondent Nos.1 to 4 in FAO-4858-2014.

Mr. Deepak Suri, Advocate and
Mr. Neeraj Khanna, Advocate
for the appellant in FAO-4858-2014 and
for respondent No.3 in FAO-8213-2015.

Mr. Ram Pal Verma, Advocate
for respondent Nos.6 and 7 in FAO-4858-2014 and
for respondent Nos.1 and 2 in FAO-8213-2015.

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**ALKA SARIN, J.**

The present order would dispose of two appeals bearing ***FAO No.8213 of 2015*** titled as ***"Poonam and others V/s Ramesh Kumar and others"***, which has been filed by the claimants for enhancement, and ***FAO No.4858 of 2014*** titled as ***"New India Assurance Company Ltd. V/s Poonam and others"***, which has been filed by the Insurance Company. Both the appeals have been filed against the award dated 13.02.2014 passed by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal'). For the sake of convenience, the parties are being referred to as the claimants, driver, owner and the Insurance Company.

2. A brief matrix of the facts is as under:-

On 07.06.2012, Vijay Kumar-deceased was going from Rohtak to Fatehabad and Ellanabad in Alto Car bearing registration No.DL-8CR-3877. His relative Naveen Kumar was in another vehicle, which was behind the car of the deceased Vijay Kumar. At about 7.30 A.M., when they reached Gila Khera Dhani Mor, N.H.10, a Tata Truck bearing Registration No.HR-38H-4012, which was going ahead and was being driven in a rash and negligent manner, braked without any indication. As a result, the car which deceased Vijay Kumar was driving, struck the back side of the truck and due to the impact deceased Vijay Kumar sustained serious injuries, eventually causing his death. The claimants, who are the wife, minor children and parents of deceased Vijay Kumar, filed a claim petition stating therein that the accident had occurred due to the rash and negligent driving of driver-Ramesh Kumar and prayed for compensation to the tune of ₹One Crore along with interest @ 18% per annum, on account of death of Vijay Kumar.

3. In written statement filed by the driver and owner of the offending vehicle, the factum of the accident was denied. It was further denied that the accident took place due to rash and negligent driving of the offending vehicle. It was further averred that the driver-Ramesh Kumar had a valid and effective driving licence at the time of accident and that the vehicle was fully insured.

4. The Insurance Company contested the claim petition by filing a

separate written statement, wherein, the factum of the accident was denied and it was stated that FIR had been registered against the driver in collusion with the police. The factum of the accident having occurred due to rash and negligent driving of the driver of offending vehicle was also denied. It was further submitted that the accident in question occurred due to the fault of the deceased-Vijay Kumar.

5. On the basis of the pleadings and the evidence led by the parties, the Tribunal returned a finding that the accident took place due to the rash and negligent driving of the driver of the offending vehicle. Further, the Tribunal awarded an amount of ₹15,50,000/- along with interest @ 7.5% per annum as compensation.

6. Dissatisfied with the amount awarded, the claimants have preferred an appeal i.e. FAO No.8213 of 2015 and the appeal i.e. FAO No.4858 of 2014 has been preferred by the Insurance Company aggrieved by the fact that the Tribunal had recorded a finding that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle.

7. I have heard learned counsel for the parties.

8. It has been contended by learned counsel for the claimants that the income tax returns had been produced on record and that a purely conjectural figure of ₹10,000/- per month has been taken as salary of the deceased-Vijay Kumar. It has further been contended that the income tax returns produced by the claimants show that deceased-Vijay Kumar was earning an amount of ₹20,000/- per month. Income tax returns produced by the claimants are Ex.P3 and Ex.P4, which were neither questioned by the Insurance Company nor any evidence was led to show that the same were

created for the purpose of claiming the amount. In fact, no suggestion was even put to PW1, the wife of the deceased to suggest that the income tax returns were incorrect. It was further submitted that the Tribunal had rightly recorded a finding that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle.

9. Per contra, learned counsel for the Insurance Company has contended that the present case was a case of contributory negligence inasmuch as the car had hit the truck from behind. It has further been contended that the car is expected to maintain sufficient distance, which it failed to do and hence, the fault could not be attributed to the truck driver and the blame must rest on the driver of the car. In support of his arguments, he has relied upon the judgment of the Hon'ble Supreme Court rendered in ***"Nishan Singh and others V/s Oriental Insurance Company Ltd. through Regional Manager and others" 2018 (2) RCR (Civil) 891***. He has further contended that the liability could not have been fastened on the truck driver inasmuch as it was the car driver, who was at fault and hence, the Insurance Company cannot be held liable to pay the compensation. If at all, it could be a case of contributory negligence and in that case, the Insurance Company would be liable to pay only 50% of the amount awarded.

10. To controvert the arguments raised by the counsel for the claimants that the income of the deceased was ₹20,000/- per month, learned counsel for the Insurance Company has contended that the income tax returns for the assessment year 2010-11 and 2011-12, were not proved by producing any one from the Income Tax Department and therefore, the same could not be relied upon.

11. Dealing with the arguments of the Insurance Company qua negligence on the part of the deceased-Vijay Kumar, it is to be seen that the driver of the offending vehicle did not step into the witness box. Even the owner of the vehicle did not step into the witness box and it was only his special power of attorney holder who stepped into the witness box as RW-1. The driver of the truck would have been the best witness to state as to how the accident had occurred. However, for reasons best known to him, he chose to stay away and did not step into the witness-box. Naveen Kumar filed his affidavit in evidence as Ex.PW-2/A, he is the eye-witness of the accident and it was categorically stated by him that the offending vehicle suddenly applied the brakes, due to which car of the deceased struck the back side of the truck. In cross-examination, no suggestion was put to the said witness qua the fact whether the driver of the truck had indicated prior to applying the brakes. In view of the evidence on record, the argument raised by the Insurance Company qua the accident having occurred due to the fault of the deceased Vijay Kumar deserves to be rejected.

12. Regarding arguments raised by the counsel for the claimants that the income of the deceased was ₹20,000/- per month as it was evident from the income tax returns for the assessment year 2011-12, the income tax returns for the assessment years 2010-11 and 2011-12 were produced by Poonam wife of deceased Vijay Kumar as Ex.P3 and Ex.P4 along with Pan Card (Ex.P5). Income Tax Returns (Ex.P3 and Ex.P4) were produced on record, which clearly reveal that total income of the deceased for the assessment year 2011-12, after deductions, was over ₹20,000/- per month. The respondents did not lead any evidence which would create a doubt regarding the authenticity of the Income Tax Returns. Further even though

PW1, the wife of the deceased was cross-examined no suggestion was even put to her regarding the Income Tax Returns. This Court is of the view that the income tax returns produced by the claimants duly proved the income of the deceased and the figure of ₹10,000/-, which has been taken by the Tribunal as monthly income is purely conjectural.

13. In view thereof, I deem it just and proper to award the following compensation:-

| Sr. No. | Heads | Compensation Awarded |
|---|---|---|
| 1 | Monthly Income | ₹21,069/- |
| 2 | Annual Income | ₹21069 x 12 = ₹252828/- |
| 2 | Deduction 1/4th | ₹1,89,621/- (252828-63207) |
| 3 | Future Prospects 25% | ₹2,37,026/- (189621+47405) |
| 4 | Multiplier '15' | ₹35,55,390/- (237026x15) |
| 5 | Loss of Estate | ₹15,000/- |
| 6 | Funeral Expenses | ₹15,000/- |
| 7 | Spousal Consortium | ₹40,000/- |
| 8 | Parental Consortium to appellant Nos.2 and 3 | ₹80,000/- (₹40000/- each) |
| 9 | Filial Consortium to mother | ₹40,000/- |
| 10 | Total Compensation | ₹37,45,390/- |

14. Thus, the claimants shall be paid the enhanced amount of compensation to the tune of ₹21,95,390/- (₹37,45,390-15,50,000) over and above the amount awarded by the Tribunal along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization. Out of the enhanced amount an amount of ₹5,00,000/- be paid to appellant No.1, an amount of ₹6,50,000/- each to appellant Nos.2 & 3, which shall be invested in an FDR, till they attain majority. Remaining amount of

₹3,95,390/- be paid to the appellant No.4.

15. In view of the above, the appeal i.e. FAO No.4858 of 2014 filed by the Insurance Company is dismissed and the appeal i.e. FAO No.8213 of 2015 filed by the claimants is allowed and the award of the Tribunal is modified accordingly.

**( ALKA SARIN )**
**JUDGE**

**02/03/2020**
Yogesh Sharma

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|---|---|
| Whether speaking/reasoned | **Yes** |
| Whether Reportable | **Yes** |