# In the High Court of Punjab and Haryana at Chandigarh

**Date of Decision:31.1.2020**

**FAO- 2938 of 2018 (O&M)**

**The Oriental Insurance Company Limited**

**---Appellant**

**vs.**

**Dharambir and others**

**---Respondents**

**FAO- 2939 of 2018 (O&M)**

**The Oriental Insurance Company Limited**

**---Appellant**

**vs.**

**Ram Kishan and others**

**---Respondents**

**FAO- 3516 of 2018 (O&M)**

**Dharambir and others**

**---Appellants**

**vs.**

**Vijay Kumar and others**

**---Respondents**

**FAO- 3732 of 2018 (O&M)**

**Ram Kishan and others**

**---Appellants**

**vs.**

**Vijay Kumar and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr. D.P.Gupta, Advocate
for the insurance company

Mr. Surinder Gandhi, Advocate
for the claimants

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**Rekha Mittal, J.**

This order will dispose of FAO Nos. 2938, 2939, 3516 and 3732 of 2018 as these have emerged out of the same award dated 15/23.1.2018 passed by the Motor Accidents Claims Tribunal, Rohtak (in short "the Tribunal") whereby compensation has been assessed on account of death of Punit and Amit that took place on 13.1.2017.

FAO Nos. 2938 and 2939 of 2018 have been filed by the Oriental Insurance Company Limited (hereinafter referred to as "the insurance company") whereas the other two appeals have been filed by claimants seeking additional compensation with regard to death of Punit and Amit.

Counsel for the insurance company would inform that appeals have been filed to assail findings of the Tribunal on issue No. 1 and quantum of compensation.

**FAO Nos. 2938 and 3516 of 2018**

The Tribunal awarded Rs. 9,26,800/-, detailed hereunder:-

| | |
|---|---|
| Monthly income of deceased | Rs. 6000/- |
| Addition in income for future prospects | 40% |
| Deduction for personal expenses | 50% |
| Multiplier | 17 |
| Loss of dependency | Rs.8,56,800/- |
| Loss of love and affection | Rs. 40,000/- |
| Loss of estate | Rs. 15000/- |
| Funeral expenses | Rs. 15000/- |

Counsel for the insurance company would argue that ill fated motor cycle bearing No. HR-12B/8892 was driven by Amit on which Punit and Pawan were pillion riders. It is argued that as three persons were traveling on the motor cycle in violation of provisions of Section 128 of the Motor Vehicles Act, 1988 (in short "the Act"), contributory negligence is liable to be attributed to the deceased. Another submission made by counsel is that as the deceased was not wearing helmet in violation of Section 129 of the Act and fatal injury sustained by him is on his head, contributory negligence may be attributed to the deceased and compensation to that extent may not be paid to the claimants. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Mohammed Siddique and another vs. National Insurance Company Limited and others 2020 (1) RCR (Civil) 689.**

With regard to compensation, it is argued that compensation allowed under conventional heads requires modification. In support, reference has been made to judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No. 1 and so also compensation under conventional heads. It is argued that income of deceased assessed merits enhancement and loss of dependency may be computed by applying multiplier of 18 as the deceased was less than 25 years of age.

Dharambir, one of the claimants and an eye witness to the occurrence appeared in the witness box and reiterated version of the claimants by filing his duly sworn affidavit marked as Ex. PW2/A. He also tendered into evidence post mortem report Ex. P4, Senior Secondary examination certificate Ex. P6 and Bachelor of Commerce 6th Semester certificate Ex. P7. In cross examination, he has deposed that offending vehicle namely bus No. HR-63C of 9994 struck motor cycle from back side.

Vijay Kumar, driver of offending bus was examined and stated that three persons riding the motor cycle came at once in rash and negligent manner and could not control their motor cycle due to high speed and they along with motor cycle fell down resulting in injuries to riders of motor cycle due to their own rash and negligent driving. In cross examination, he had admitted registration of criminal case and presentation of challan in the court. As Vijay Kumar was indicted in criminal proceedings with regard to the accident, he has every reason to deny involvement of offending vehicle in order to save his skin both in civil and criminal proceedings. Vijay Kumar has not alleged any hostility against him by Dharambir, author of FIR. Taking into consideration that offending vehicle hit the motor cycle from behind, it is difficult to accept contention of the insurance company that contributory negligence can be attributed to the deceased merely because three persons were travelling on the motor cycle in violation of Section 128 of the Act. In this context, support can be drawn from the judgment **Mohammed Siddique and another's case (supra),** referred to by counsel for the insurance company wherein it has been held that there must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. In this view of the matter, the insurance company can not be heard to say that contributory negligence is liable to be attributed to the deceased for violation of Section 128 of the Act.

This brings the court to aspect of deceased not wearing headgear/helmet at the time of accident. Dharambir PW2 in cross examination had admitted that all the three persons were not wearing helmet.

Hon'ble the Apex court in **Mohammed Siddique and another's case (supra)** has held, quoted thus:-

> "What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked."

In the referred authority, the deceased was wearing helmet but the issue before Hon'ble the Apex Court was in respect of triple riding in violation of Section 128 of the Act. Indisputably, the deceased was not wearing helmet while travelling on a two wheeler. Section 129 of the Act deals with wearing of protective headgear. A relevant extract therefrom reads as follows:-

> 129. Wearing of protective headgear.—Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear protective headgear conforming to the standards of Bureau of

> Indian Standards: Provided that the provision of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban: Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit. Explanation.—"Protective headgear" means a helmet which,—
>
> (a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and
>
> (b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

Perusal of post mortem report of Punit marked as Ex. P4 (copy whereof was supplied by counsel for the claimants during the course of hearing) makes it evident that deceased sustained seven injuries and injury described at Sr. No. 1 is to the following effect:-

> "Bone deep lacerated would of 1 x 1CM on back of skull on D/s fracture of occipital bone running from LT to RT ear seen.
>
> On further D/S extradural and subdural haematoma present cranial cavity full of bloody discharge."

It was opined by the doctor that cause of death is head injury as described and its complications. Had the deceased been wearing helmet, the impact of accident could have been reduced to some extent. When the case is examined in view of observations made in **Mohammed Siddique and another's case (supra),** noticed hereinbefore, coupled with the provisions of Section 129 of the Act, reproduced hereinbefore, it can safely be held that contributory negligence to an extent is liable to be attributed to the deceased. There can not be any straight jacket formula to ascertain extent of negligence attributable to victim, in such like circumstances. Had the deceased been wearing helmet, he still could sustain head injury as motor cycle was hit from behind by a heavy transport vehicle or could save himself from fatal injury. The driver of heavy transport vehicle owes greater responsibility to ensure safety of two wheelers as two wheeler driver can lose balance even if it is hit with little force. Taking a cumulative view of the aforesaid, in my considered opinion, in the fitness of things, 20% negligence can be attributed to the deceased. Thus, claimants shall not be entitle to compensation to the extent of 20%.

This brings the Court to compensation assessed. Dharambir, father of the deceased had deposed that deceased was doing business under the name and style, Sonu Battery Services, Sham Lal Market, Hissar Road, Rohtak thereby earning Rs. 35000/- per month. However, he did not produce any documentary evidence with regard to avocation and income of deceased. In cross examination, he had stated that Punit appeared in 6$^{th}$ Semester of Bachelor of Commerce in May 2016 but could not appear in final semester due to his death. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with educational qualification of the deceased, income of deceased is assessed at Rs. 10,000/-.per month The Tribunal has rightly allowed addition in income for future prospects @ 40% and deduction for personal expenses to the tune of 50%. As the deceased was less than 25 years, admissible multiplier is 18.

In this manner, loss of dependency is calculated at Rs.15,12,000/- [10000x12x18 + (40% thereof) – (50%)].

Under conventional heads, compensation allowed is modified to the extent that claimants shall be entitle to Rs. 30,000/-, detailed hereunder:-

| | |
|---|---|
| Loss of estate | Rs. 15,000/- |
| Funeral expenses | Rs. 15,000/- |

Total compensation is Rs. 15,42,000/-, 80% whereof is 12,33,600/- and additional compensation is Rs. 3,06,800/-, payable with interest @ 7.5% per annum from the date of petition till realization, to mother of the deceased, to be invested in fixed deposit for a period of two years.

**FAO Nos.2939 and 3732 of 2018**

The Tribunal awarded Rs. 9,26,800/-, detailed hereunder:-

| | |
|---|---|
| Monthly income of deceased | Rs. 6000/- |
| Addition in income for future prospects | 40% |
| Deduction for personal expenses | 50% |
| Multiplier | 17 |
| Loss of dependency | Rs.8,56,800/- |
| Loss of love and affection | Rs. 40,000/- |
| Loss of estate | Rs. 15000/- |
| Funeral expenses | Rs. 15000/- |

Dhanni Devi, mother of the deceased appeared in the witness box and tendered in evidence her duly sworn affidavit marked Ex. PW1/A, post mortem report Ex. P1, Senior Secondary examination certificate Ex. P2 and Appreciation of Digital Literary certificate Ex. P3.

Perusal of post mortem report of Amit marked as Ex. P1 (copy whereof was supplied by counsel for the claimants during the course of hearing) makes it evident that deceased sustained three injuries and injury described at Sr. No. 3 is to the following effect:-

> "Bone deep lacerated would of 2 x 1CM present on RT parietal bone.
>
> On D/S fracture of RT parietal bone seen. On further dissection extra dural and sub dural haematoma present cranial cavity full of bloody discharge."

In view of discussion made while deciding FAO Nos. 2938 and 3516 of 2018, contributory negligence to the extent of 20% is attributed to the deceased. As a result, claimants shall not be entitle to compensation to the extent of 20%.

This brings the Court to compensation assessed. Dhanni Devi mother of the deceased had deposed that deceased was working as Supervisor in Marvel Buildwell Private Limited, Hisar and getting Rs. 16,750/- per month. However, she did not produce any documentary evidence with regard to avocation and income of deceased. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with educational qualification of the deceased, income of deceased is assessed at Rs. 10,000/-. The Tribunal has rightly allowed addition in income for future prospects @ 40% and deduction for personal expenses to the tune of 50%. As the deceased was less than 25 years, admissible multiplier is 18. In this manner, loss of dependency is calculated at Rs. 15,12,000/- [10000x12x18 + (40% thereof) – (50%)].

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The appeals are disposed of in the aforesaid terms.

**(Rekha Mittal)**
**Judge**

**31.1.2020**
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No