

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1712-2016

Date of Decision: September 23, 2021

Chandermukhi

..... Appellants(s)

Versus

Sanjay Kumar and others

..... Respondent(s)

with

FAO- 7353-2016 (O&M)

Sanjeev Kumar and another

..... Appellants(s)

Versus

Chandermukhi and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sumit Sangwan, Advocate
for the appellant (in FAO-1712-2016).

Mr. Vaibhav Jain, Advocate
for the appellants (in FAO-7353-2016).

Mr. Rajneesh Malhotra, Advocate
for respondent no.4-insurance company (in both appeals).

LISA GILL, J.

This judgment shall dispose of FAO-1712-2016 (Chandermukhi
Vs. Sanjay Kumar and others) as well as FAO-7353-2016 (Sanjeev Kumar
and another Vs. Chandermukhi and others) as both the above noted appeals
arise out of award dated 29.09.2015, passed by the learned Motor Accident
Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal).

Brief facts necessary for adjudication of the cases are that a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the appellant Chandermukhi and her husband (since deceased) seeking compensation on account of death of their son Mahipal @ Palha. In the claim petition it is averred that on 29.11.2013, Mahipal was going from Charkhi Dadri to his village Birhi-Kalan on his motorcycle bearing registration No. HR18/4810. At about 4:15 P.M., when he reached near Pardhan Beej Bhandar at village Bhairvi, a car bearing registration No. HR55JT-5530, being driven by Sanjay Kumar, at a very high speed and in a rash and negligent manner, dashed into the motorcycle being driven by Mahipal, due to which, Mahipal fell on the road and sustained multiple grievous injuries and died on the spot. It is averred that the accident was caused solely due to the rash and negligent driving of the offending vehicle by respondent – Sanjay Kumar. Thereafter, FIR No. 448 dated 29.11.2013 under Sections 279, 304A IPC at Police Station Sadar, Dadri was registered on the statement of Naresh son of Parasram, an eyewitness of the accident. The deceased was stated to be 30 years old, a labourer by profession with the parents being totally dependent upon the deceased. Compensation was accordingly sought.

Separate written statements were filed by the respondents, who contested the petition. Dismissal of the claim petition was sought.

Following issues were framed by the learned Tribunal on the basis of the pleadings:-

1. Whether the accident occurred on 29.11.2013 at about 4:15 pm, near Pardhan Beej Bhandar at village Bhairvi, District Bhiwani on Dadri – Badhsa road, causing death of Mahipal alias Palha son of Sh. Rati Ram, took place due to rash and negligent driving of respondent no.1, while driving the offending vehicle i.e. car bearing registration no. HR-55JT-5530? OPP.
2. If issue no.1 is proved, whether the petitioners are entitled to the compensation, if so to what amount and from whom? OPP
3. Whether the respondent no.1 was not holding a valid and effective driving license at the time of alleged accident? OPR.
4. Whether the insured has violated the terms and conditions of the insurance policy? OPR-3
5. Whether the present petition is not maintainable in the present form?OPD
6. Relief.

Evidence was led by both the parties. Respondent- Sanjeev Kumar was later impleaded as a party as he had purchased the offending vehicle from proprietor/Manager of M/s. Orange Cabs Private Ltd., Gurgaon which was still the registered owner of the vehicle in question.

Learned Tribunal on considering the evidence on record concluded that accident in question took place due to the rash and negligent driving of the offending car bearing registration No. HR-55JT-5530, by its driver Sanjay Kumar-respondent no.1 and that Mahipal lost his life due to the injuries sustained by him in the said motor vehicle accident. Mahipal (deceased) was concluded to be 32 years old. His income was assessed to be

Rs.6,000/- per month. Learned Tribunal awarded a sum of Rs.5,62,400/- as compensation to the claimants, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Income	6,000/- per month
2.	Income after deducting 1/2 as personal and living expenses of the deceased	$3,000 - 1/2 = 3,000/-$ per month
3.	Income after addition at the rate of 50% on account of future prospects.	$3000 + 1500(3000 \times 50\%) = 4,500/-$
4.	Annual income after deducting 10% on account of standard income tax	$4,500 \times 12 - 10\% = 48,600/-$
5.	Dependency after applying multiplier of 9	$48,600 \times 9 = 4,37,400/-$
6.	Loss of love and affection	1,00,000/-
7.	Funeral expenses and transportation	25,000/-
	Total	Rs.5,62,400/-

Learned Tribunal concluded that driver of the offending vehicle was holding a driving license for driving motorcycle with gear, tractor, light motor vehicle- LMV (non transport car only) whereas the offending vehicle was a taxi and insured as such as per the insurance policy (Ex.R1). Therefore, due to violation of the terms and conditions of the insurance policy, insurance company was exonerated from its liability. Respondents i.e. two owners and driver of the vehicle were held liable to pay the compensation.

Aggrieved therefrom instant two appeals have been filed, one by the claimant i.e. FAO-1712-2016 and the other by the owner and driver of the offending vehicle i.e. FAO-7353-2016.

Learned counsel for the appellant-claimant vehemently argues that learned Tribunal has grossly erred in as much as inadequate compensation has been afforded to the appellant and that the same needs to be reworked in terms of the judgment of 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. 2017(4) RCR Civil 333.**

Learned counsel for the owner and driver of the offending vehicle submits that driving license held by the driver of the vehicle has been wrongly discarded to be invalid. Merely because the vehicle was being used as a taxi, does not render the driving license held by Sanjay Kumar to be invalid. Vehicle in question is admittedly a light motor vehicle and merely because it is a non-transport license, is not a ground to exonerate the insurance company from its liability. It is thus prayed that appeal filed by the owner and driver be allowed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

FAO-1712-2016

It is not in dispute that son of the appellant-claimant died due to injuries received by him in the motor vehicle accident, which took place due to rash and negligent driving of respondent no.1 – Sanjay Kumar, while driving the offending vehicle i.e. car bearing registration no. HR-55JT-5530. There is no dispute regarding income as assessed by the learned Tribunal or age of the deceased i.e. 32 years. Income of the deceased is

upheld as Rs.6,000/- per month. However, learned Tribunal has erred in applying a multiplier of 9. It is a settled position that multiplier has to be applied with respect to age of the deceased and not with respect to age of parent of the deceased. Gainful reference can be made in this respect to the judgment of the Hon'ble Supreme Court in *Munna Lal Jain Vs. Vipin Kumar Sharma, (2015) 6 SCC 347*. Therefore, it is a multiplier of 17, which has to be applied in the present case.

In terms of the judgment of Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, 40% increment instead of 50% towards future prospects has to be afforded. As the deceased was a bachelor, deduction of 50% was correctly effected by learned Tribunal. Claimant is not entitled to a sum of Rs.1,00,000/- towards loss of love and affection but is entitled to Rs.40,000/- towards loss of filial consortium and 15,000/- each towards funeral expenses and loss of estate. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in *Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333* and *United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur and others, 2020(3) RCR (Civil) 751*.

Appellant-claimant in FAO No. 1712 of 2016 is, thus, entitled to compensation which is re-worked as under:-

Sr. No.	Heads	Calculations
1.	Income	6,000/- per month

2.	Income after deducting 1/2 as personal and living expenses of the deceased	$3,000 - \frac{1}{2} = 3,000/-$ per month
3.	Income after addition at the rate of 40% on account of future prospects.	$3000 + 1200(3000 \times 40\%) = 4,200/-$
4.	Annual income after deducting 10% on account of standard income tax	$4,200 \times 12 - 10\% = 45,360/-$
5.	Dependency after applying multiplier of 17	$45,360 \times 17 = 7,71,120/-$
6.	Loss of filial consortium	40,000/-
7.	Loss of estate	15,000/-
8.	Funeral expenses	15,000/-
	Total	Rs. 8,41,120/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest at the rate of 6% per annum on the enhanced amount, from the date of filing of the claim petition till realization.

FAO-7353-2016

Learned counsel for respondent-Insurance company is unable to deny that the controversy raised in this appeal is no longer *res integra*. The Hon'ble Supreme Court in **Mukund Dewangan v. Oriental Insurance Company Limited, 2017 (4) RCR (Civil) 111**, has held as under:-

“A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving licence to

drive class of “light motor vehicle” as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.”

As per the Driving License (Ex.R1) held by appellant no.2 – Sanjay Kumar, he was authorized to drive a motorcycle with gear, tractor, LMV (non transport car only).

Admittedly, the gross unladen weight of the offending vehicle, as per the Registration Certificate, is 1520 Kg. Therefore, it is evident that appellant no.2 – Sanjay Kumar had a valid driving license at the time of the accident and the Insurance company cannot be absolved of its liability in this case. It is to be noted at this stage that there is no dispute regarding the offending vehicle being duly insured by the respondent-insurance company.

In this view of the matter, learned Tribunal has erred in holding that the appellant No.1 was not authorised to drive the offending vehicle in question. Finding of the learned Tribunal in this respect is set aside. It is consequently held that respondent-Insurance company is liable to indemnify the insured and pay the awarded compensation.

In this view of the matter, finding of the learned Tribunal exonerating the insurance company of its liability is set aside. It is accordingly, held that the insurance company is liable to pay the compensation awarded.

FAO No. 1712 of 2016 is disposed of in the terms as mentioned in the foregoing paras and FAO No. 7353 of 2016 is allowed.

September 23, 2021

Sunil

**(LISA GILL)
JUDGE**

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