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

Reserved on:29.10.2022

Date of Pronouncement: November 7, 2022

1. **FAO-5571-2009(O&M) and XOBJC-12-C-II-2010**

Oriental Insurance Co. Ltd. …..Appellant
Versus
Hansiddh (minor) and others …..Respondents

2. **FAO-5572-2009(O&M) and XOBJC-13-C-II-2010**

Oriental Insurance Co. Ltd. …..Appellant
Versus
Smt. Bari Bai and others …..Respondents

3. **FAO-3227-2010 (O&M)**

Smt. Bari Bai .... Appellant
Versus
Ishan Sharma and others ..... Respondents

4. **FAO-3228-2010(O&M)**

Hansiddh and another …..Appellants
Versus
Ishan Sharma and others …..Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Sanjay Judge, Advocate, for the appellant(s) in FAO-3227-2010.

Mr. Sehaj Mahajan, Advocate, for
Mr. Ashwani Talwar, Advocate,
for respondent No.3-Insurance Company.

Mr. Gopal Mittal, Advocate,
for respondent No.1 in FAO No.3227 and 3228 of 2010
for respondent No.5 in FAO No.5571- 2009
for respondent No.2 in FAO No.5572- 2009

Mr. S.S.Sidhu, Advocate, for respondent No.3.

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<u>HARKESH MANUJA, J.</u>

This order of mine shall dispose of the following four appeals and two cross objections arising out of the common award dated 16.09.2009 passed by learned Motor Accident Claims Tribunal, Panchkula, (for short 'the Tribunal'):-

i) FAO-5571-2009 titled as **Oriental Insurance Co. Ltd. Vs. Hansiddh and others** (filed by the Insurance Company for granting recovery rights against driver/owner as well as for reduction of compensation amount in MACT case no. 297 of 200) and XOBJC 12-C-II-2010 in FAO no.5571 of 2009 (filed by the driver against finding of rash and negligent driving);

ii) FAO-5572-2009 titled as **Oriental Insurance Co. Ltd. Vs. Smt. Bari Bai** (filed by the insurance Company for granting recovery rights against driver/owner as well as for reduction of compensation amount in MACT case no. 330 of 2005) and XOBJC 13-C-II-2010 in FAO no. 5572 of 2009 (filed by the driver against the finding of rash and negligent driving against him);

iii) FAO-3227-2010 titled as **Smt. Bari Bai Vs. Ishan Sharma and others** (filed by claimant for enhancement of compensation awarded in MACT case no. 330 of 2005);

iv) FAO-3228-2010 titled as **Hansiddh (minor) and another Vs. Ishan Sharma and others** (filed by claimants for enhancement of compensation award in MACT case no. 297 of 2005).

A perusal of all these appeals show that common questions of law and fact are involved which can be divided into two categories. The first question to be decided is regarding the liability i.e. who shall be held responsible for the payment of the compensation amount i.e. Insurance Company or the driver/owner of the vehicle and second is regarding the quantum of compensation to be assessed and awarded to the claimants which will be discussed for each case separately. Hence there will be two prong discussion.

A- <u>FASTENING OF LIABILITY</u>:

This question has been raised in FAO Nos.5571, 5572 of 2009 and Cross Objections 12-C-II-2010 and 13-C-II-2010 respectively and, therefore, qua this aspect all these appeals and cross objections are being decided together.

Brief facts of the case are that on 21.03.2005, Smt. Xitij Singh w/o Malvinder Singh along with her sister-in-law Smt. Sarabjit Kaur Randhawa was going to the market on foot to purchase some household articles. At about 7.40 pm, when they reached near Society No.32-33, Sector-20 Panchkula, an open jeep bearing registration No. DL-4C-C-9462 (hereinafter referred to as 'Offending Vehicle') hit Smt. Xitij Singh from back side and Geeta D/o Smt. Bari Bai from the front, as a result of which Smt.Xitiz Singh sustained head injury including grievous injuries on her body while Geeta died on the spot. Smt. Xitiz was immediately shifted to Kaiser Hospital, Sector-21, Panchkula where she expired on 23.03.2005. A criminal case bearing FIR No.45 dated 22.03.2005 was registered regarding this accident under Section 279,337 and 304-A IPC. Dependents of the said two deceased filed their two separate claim petitions before learned Tribunal, alleging rash and negligent driving of respondent No.5 to be the main cause of accident. On the other hand, the involvement of the offending vehicle besides the allegations of rash and negligent driving of respondent No.5 resulting into accident was denied.

On the issue of liability, the learned Tribunal held that accident occurred due to rash and negligent driving of respondent No.5/driver Ishan Sharma. Learned Tribunal also held in its finding on Issue No. 3 that Insurance Company did not adduce any evidence to prove that driver/respondent No.5 did not possess any valid driving license at the time of accident and hence, decided this issue against Insurance Company in both the claim petitions, meaning thereby that Insurance Company was liable to pay the compensation amount with no rights to recover the same from driver/owner. Thus, the primary question to be decided here is that on which shoulder shall lie the responsibility to pay the compensation.

Learning counsel of the appellant/Insurance Company contends that though learned Tribunal recorded that the license of driver/respondent No.5 (Ex-R2) was issued on 25.04.2006 (sic 05.04.2005) and it was admitted by him in cross-examination while appearing as RW1 that there was no other license with him prior to Ex-R2, it proves that the driver/respondent No.5 was not possessing any valid license at the time of accident and hence, offending vehicle was being driven against the terms of the insurance policy. He further contends that Insurance Company even moved separate application calling upon respondent No.5/driver to prove the driving license at the time of accident, however, said application was dismissed vide order dated 16.02.2009 by learned Tribunal, while recording that it has come in the evidence that respondent No.1 never possessed a driving license at the relevant time and hence the application was disposed off as infructuous. He contends that in the circumstance as the driver was not having a valid driving license and the offending vehicle was being driven in violation of the terms of insurance policy, recovery rights should have been granted to the appellant/ Insurance Company.

Per contra, learned counsel of the cross objector driver/ respondent No.5 contends that FIR was registered against an unknown vehicle besides an unknown driver, however, respondent No.5/ driver was arrested on 22.06.2005 i.e. after three months of the accident. He further contends that respondent No.5 has been falsely implicated in this case and at the time of accident, offending vehicle was being driven by one Anand Khullar and he is also the man from whom recovery of vehicle was made and he is actually the person who was responsible for the accident. Learned counsel also pointed out that driver/ respondent No.5 has been acquitted by the Juvenile Justice Board in this case.

Having heard learned counsel for the parties and after gone through the paper-book as well as the complete set of lower Courts record provided to me in Court by learned counsel representing appellant-Insurance Company, I find force in the argument raised by the learned counsel of appellant/ Insurance Company. Learning Tribunal while recording its finding on Issue No 3 noted that the copy of driving license of Ishant Sharma which was brought on record as Ex-R2 was issued on 25.04.2006 (sic 05.04.2006) i.e. subsequent to the accident which occurred on 21.03.2005. In his cross-examination, it was admitted by him that he did not possess any other driving license prior to Ex-R2, in that case nothing more was left to be proved by the Insurance Company. Even on his driving license his date of birth has been mentioned as 21.01.1988 meaning thereby that on the date of accident he has not completed 18 years of age and was not entitled for a driving license. This finding of Learned Tribunal is also in the teeth of its own order dated 16.09.2009, where it recorded that it has come into the evidence that at the relevant time driver did not possess a driving license and it was only on this basis that the application of appellant/Insurance Company was disposed off as infructuous. In that circumstance, appellant/Insurance Company cannot be held liable for indemnifying the driver/ owner of the vehicle as the offending vehicle was being driven in violation of the terms of Insurance Policy.

With respect to the arguments raised by Learned counsel for driver/respondent No.5, I do not find much substance therein. It is trite law that proceedings under Motor Vehicles Act are summary in nature and in addition judgment of a criminal case is not binding in these proceedings where the burden of proof is strict. Therefore, merely the fact that the driver has been acquitted by the Juvenile

Justice Board cannot come to the rescue of driver/respondent No. 5. Though, FIR was registered against an unknown driver and unknown vehicle, it is natural as it was registered at the instance of Bari Bai who was an illiterate lady and so it was not possible for her to provide the complete details. In statement of PW-7 Sarabjit Kaur Randhawa who was sister-in-law of deceased Xitiz Singh, she has very categorically deposed that it was she who noted down the number of offending vehicle and informed the police about this. She not only provided the name of the driver as Ishan but also provided finer details regarding the offending vehicle and respondents have not been able to find any fault with her statement during cross-examination. Amit Sharma who is friend of driver/respondent No.5, while appearing as PW5 has stated that respondent No.5/driver-Ishan Sharma was driving the vehicle at the time of accident and this fact was even informed by him to the police. Respondent No.5/driver Ishan Sharma has known to PW-5 since childhood which has been admitted by him in his cross-examination. When two eye-witnesses identified respondent No.5/driver Ishan Sharma as driver of the offending vehicle; his name appeared as accused in police report filed under section 173 Cr.P.C. and he was charged sheeted and faced trial in FIR No.45 dated 22.03.2005, in these circumstances learned Tribunal rightly held that respondent No.5/driver Ishan Sharma was driving the vehicle at the time of accident and the same occurred due to his rash and negligent driving. Mere non-impleadment of Anand Khullar, from whom the offending vehicle was recovered, cannot be termed to be fatal for the case of claimants as it has been sufficiently explained by RW1-Ishan Sharma himself in his statement that the registered owner of the offending vehicle was Suresh Kumar, who had already been impleaded as one of the respondents in the claim petition. Therefore, in view of the discussion made above, appellant/Insurance Company is directed to pay the compensation amount to the claimants in both the cases, however, it is given the right to recover the same from respondent Nos. 5 & 6 i.e. driver and owner of the offending vehicle.

Thus, **FAO Nos.5571-2009 and 5572-2009** filed by the Insurance Company on the aspect of granting recovery rights are hereby **allowed**. On the other hand, **Cross Objections XOBJC 12-CII-2010** and **XOBJC 13-CII-2010** in these FAOs filed at the instance of driver of the offending vehicle questioning the findings recorded against him on the point of rash and negligent driving are hereby **dismissed**.

B- <u>QUANTUM OF COMPENSATION AMOUNT</u>:

The quantum of compensation awarded to the claimants/ appellants is also under challenge and this aspect of the appeals is required to be decided separately for each claimant.

I- FAO-3228-2010 and 5571-2009 and cross objection 12-CII-2010

By way of FAO-3228-2010 the dependents of deceased Smt. Xitiz Singh have claimed enhancement of compensation. While in FAO-5571 of 2009 and cross-objection **12-CII-2010,** Insurance Company and driver respectively, have prayed for reducing the same and, therefore, both these appeals and cross-objections qua the compensation amount are being discussed together.

Learned counsel for the appellants/claimants contends that as deceased Smt. Xitiz Singh at the time of her death was working as a Lecturer in Government College, Naraingarh, getting salary of Rs.15786/- per month and her age was 26 years, future prospects should have been awarded @ 50% on the amount of loss of dependency which was assessed at Rs.10,000/- per month. He further contends that compensation under conventional heads has not been appropriately awarded.

On the other hand, learned counsel for Insurance Company and driver argues that as the age of the deceased was 26 years, multiplier of 17 should have been applied instead of 18 and compensation awarded by the learned Tribunal is extremely on higher side and therefore, the same should be reduced accordingly.

Having heard learned counsel for the parties and perused the paper-book as well as the records of the case, I find merit in the contentions raised on behalf of appellants/claimants. As deceased Smt. Xitiz Singh at the time of her death was working as a Lecturer in Government College and her age was 26 years, in view of the judgments rendered by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009 and in ***Smt. Sarla Verma and others Vs. Delhi***

Transport Corporation and another, 2009 (3) RCR (Civil) 77, the appellants/ claimants are entitled to 50% future prospects on the amount of dependency which has been assessed at Rs.10000/- pm. However as the age of the deceased has been taken to be 26 years, multiplier of '17' should have been applied. Deduction on account of personal expenses has been taken to be 1/3rd of the income which is correct. In view of above referred judgments, the appellants/ claimants are also entitled for compensation under other conventional heads, such as consortium, loss of estate and funeral expenses.

In view of the discussions made hereinabove, the claimants are entitled for following enhanced compensation, as detailed in the table:-

Sr.No.	***Particulars***	***Amount (Rs.)***
1.	*Loss of annual dependency after applying 1/3rd deduction (Rs.10,000 x 12)*	*Rs.1,20,000/-*
2.	*Add 50% of Future prospects*	*Rs.60,000/-*
3.	*Total loss of dependency*	*Rs.1,80,000/-*
4.	*Multiplier of 17 as per age of 26 years (Rs.1,80,000 x 17)*	*Rs.30,60,000/-*
5.	*Funeral Expenses*	*Rs.16,500/-*
6.	*Loss of Consortium (filinial and spousal) i.e. Rs.44000 x 2*	*Rs.88,000/-*
7.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.31,81,000/-*
	Amount Awarded by the Tribunal	*Rs.21,67,000/-*
	Enhanced Amount	*Rs.10,14,000/-*

The grant of interest @ 9% per annum is just in view of the facts and circumstances of the present case and does not warrant any interference.

In view of the above, **FAO-3228-2010 and 5571-2009 and cross objection 12-CII-2010,** on the aspect of compensation are **disposed of** in the aforesaid terms.

II- FAO-3227-2010 and 5572-2009 and cross objection 13-CII-2010

By way of FAO-3227-2010, the mother of deceased Geeta has claimed enhancement of compensation. While in FAO-5572 of 2009 and cross-objection **13-CII-2010,** Insurance Company and driver respectively, have prayed for reduction of the same and, therefore, both these appeals and cross-objections qua the compensation amount are being discussed together.

Learned counsel for the appellants/claimants contends that though age of deceased Geeta was only 4 years at the time her death in accident, however, learned Tribunal erred while granting a lump-sum compensation of Rs.1 Lakh and rather learned Tribunal in view of **"Kurvan Ansari @ Kurvan Ali & another vs. Shyam Kishore Murmu and another"** reported as (2022) 1 SCC 317, learned Tribunal should have calculated just compensation after taking into consideration the notional income of the deceased as Rs.30,000/- per annum and applying a multiplier of 15. He further contends that compensation under conventional heads has not been awarded appropriately.

On the other hand, learned counsel for Insurance Company and driver argues that compensation awarded by the learned Tribunal is extremely on higher side as deceased was a child of 4 years, and there could be no assessment of her income and therefore, the compensation amount should be reduced accordingly.

Having heard learned counsel for the parties and perused the paper-book as well as the records of the case, I find merit in the contentions raised on behalf of appellant/claimant. The authorities cited by the learned Tribunal has been shadowed by the recent judgments of Hon'ble Apex Court in this regard wherein it has been held that in case of death of a non-earning member like a child, compensation shall be calculated after taking into consideration the notional income of the deceased who happened to be 4 years of age at the time of accident. Therefore, in the present case as well compensation need to be granted by taking into consideration the notional income as Rs.30,000/- per annum (including future prospects) after applying the multiplier of 15. In addition, in view of **Pranay Sethi's** case (supra) **and Sarla Verma's** case (supra) the appellant/ claimant is also entitled for compensation under other conventional heads, such as consortium, loss of estate and funeral expenses.

In view of the discussions made hereinabove, the claimants are entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	***Particulars***	***Amount (Rs.)***
1.	*Annual Income of deceased*	*Rs.30,000/-*
2.	*Multiplier of 15*	*Rs.4,50,000/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (filial) i.e. Rs.44000 x 1*	*Rs.44,000/-*

8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.5,27,000/-*
	Amount Awarded by the Tribunal	*Rs.1,00,000/-*
	Enhanced Amount	*Rs.4,27,000/-*

The grant of interest @ 9% per annum is just in view of the facts and circumstances of the present case and does not warrant any interference.

In view of the above, **FAO-3227-2010 and 5572-2009 and cross objection 13-CII-2010,** on the aspect of compensation are **disposed of** in the aforesaid terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the files of other connected cases.

November 7, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

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