IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No.4579 of 2010 (O&M)

Surinder Pal & another

… Appellants

Versus

The New India Insurance Co. Ltd. & others

… Respondents

2. FAO No.6214 of 2010 (O&M)

Satwant Kaur & another

… Appellants

Versus

Charanjit Singh & others

… Respondents

Date of decision: 28th October, 2022

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Pankaj Kundra, Advocate for
Mr. Deepak Sabharwal, Advocate
for appellants in FAO-4579-2010; and
for respondents No.1 & 2 in FAO-6214-2010.

Mr. Mohit Giri, Advocate
for the appellants in FAO-6214-2010;
for respondents No.4 & 5 in FAO-4579-2010.

Mr. Suvir Dewan, Advocate
for respondent No.1 in FAO-4579-2010; and
for respondent No.3 in FAO-6214-2010.

MANJARI NEHRU KAUL, J.

Learned Motor Accident Claims Tribunal, Nawanshahr, vide impugned award dated 18.03.2010 has awarded following compensation to the claimants on account of the death of Sukhjit Singh in a motor vehicular accident which took place on 07.03.2006:

Sr. No.	Head	Amount
1.	Monthly income	₹ 6,000/-
2.	Annual income 12 x 6,000/-	₹ 72,000/-
3.	Multiplier	12
4.	Total amount	₹ 8,64,000/-
5.	Funeral expenses	₹ 2,000/-
6.	Loss of estate	₹ 2,500/-
	Total compensation	**₹ 8,68,500/-**

The driver and owner of the offending vehicle as well as the insurance company were held jointly and severally liable to pay the amount of compensation and after payment of compensation amount to the claimants, the insurance company was held entitled to recover the same from driver and the insured of the offending vehicle. The claimants were held entitled to interest at the rate of 7.5% per annum from the date of filing the claim petition till realization of the amount.

FAO No.4579 of 2010 has been preferred by the owner and driver of the offending vehicle challenging the impugned Award on account of the recovery rights given to the insurance company, whereas the claimants have preferred FAO No.6214 of 2010 seeking enhancement in the amount of compensation.

Since both these appeals pertain to the same accident and have originated from the same Award passed by the learned Tribunal, they are being taken up together for disposal by way of this common judgment.

As per the pleaded case of the claimants, Sukhjit Singh (hereinafter referred to as, 'the deceased') was travelling with one Balbir Singh on scooter bearing registration No.PB-26B-7174 on 07.03.2006 at 10.00 p.m. The offending truck owned by Surinder Pal was being driven by Charanjit Singh and was being towed away by another truck. As a result of sudden application of breaks by the offending truck, the scooter of the deceased, collided with it from the rear side. Resultantly, the deceased as well as Balbir Singh received multiple injuries. The deceased, on account of injuries received, died at the spot.

Learned counsel appearing for the appellants, owner and driver of the offending vehicle, has vehemently urged that the Tribunal erroneously exonerated the insurance company of its liability to indemnify the insured on the ground that the driving license of appellant No.2 driver was fake. Learned counsel submits that the onus was on the insurance company to prove that appellant No.1 owner was aware of the driving license of his driver, appellant No.2, being fake and still he had permitted the driver to drive the offending vehicle. Learned counsel submits that no cogent evidence in the said regard was led by the insurance company. He further submits that while employing the driver, the owner had satisfied himself about the driving skills of appellant No.2 as well as the validity of the driving license which he was holding at that point of time, and which was shown to him at the time of employment. Learned counsel, still further submits that there was no occasion for appellant No.1 owner to doubt the genuineness of the driving license of appellant No.2 as it was a matter of record that the said driving license had been continuously and periodically renewed from the concerned department. He thus, prayed for modifying the impugned Award vide which recovery rights were given to the insurance company, more so when there had been no violation on the part of appellant No.1 with respect to the insurance policy.

Learned counsel appearing for the insurance company, while controverting the submissions made by the counsel opposite, submits that the driving license of the driver was proved to be fake and enough evidence had been led in the said regard. Therefore, in the light of the aforementioned facts, it was evident that the appellant No.2 driver was not holding a valid driving license at the time of accident in question which in turn was a clear violation of the insurance policy. Learned counsel, thus prays for dismissal of the appeal by urging that the Tribunal had rightly exonerated the insurance company of its liability to indemnify the insurer. Learned counsel also submits that since the owner appellant No.1 had failed to satisfy itself qua the genuineness of the driving license of the driver, the owner and driver could not now shirk their liability to satisfy the award of compensation.

Learned counsel appearing for the claimants, on the other hand, submits that the amount of compensation so awarded was inadequate and not in consonance with the settled law and hence it deserved to be enhanced.

Learned counsel representing the owner and driver of the offending vehicle as well as the insurance company have however, vehemently opposed the prayer for enhancement of the amount of compensation, by urging that it was adequate and just, and hence did not warrant any interference.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court finds force in the submissions made by the learned counsel for the appellant owner and has no hesitation in observing that the insurance company failed to discharge its onus to prove negligence on the part of owner of the offending vehicle in failing to verify or satisfy himself qua the authenticity of the driving license of his employee i.e. appellant No.2 driver. Neither any pleading to the said effect was made nor any evidence led by the insurance company. Merely because the driving license of the driver may have been found to be fake, would not be a sufficient ground by itself to absolve the insurance company of its liability to indemnify the insured. Admittedly, the driving license of appellant No.2 had been periodically renewed from the concerned transport department. In the circumstances, it can be safely inferred that appellant No.1 owner while employing appellant No.2 driver, had not only satisfied himself about his driving skills but also qua the validity of his driving license. The owner could not be expected to carry out a roving enquiry into the authenticity of the driving license of his driver by visiting the issuing authorities, more so, when it is a matter of record that the driving license in question had been regularly renewed.

This Court, in the absence of any material on record, has no hesitation in holding that the appeal of the owner and driver of the offending vehicle deserves to be allowed as the insurance company has failed to bring to the notice of this Court any material from which it could be inferred that appellant No.1 had wilfully breached the terms and conditions of the insurance policy or had been negligent while employing appellant No.2 as his driver. In the circumstances, the insurance company is held liable to indemnify the insured and pay the amount of compensation to the claimants.

Coming to the appeal preferred by the claimants, this Court concurs with the submissions made by learned counsel for the appellant/claimants that the compensation awarded is inadequate and deserves to be enhanced in consonance with the settled law. As per the salary register Ex.PW3/B, the gross salary of the deceased was ₹15,299/- per month, hence the Tribunal erred in taking his salary to be ₹6,000/- per month as only deduction towards income tax is permissible from the gross salary for the purpose of computation of income of the deceased. The trial Court also erred in making a deduction to the extent of 50% instead of 1/3rd and by applying multiplier of 12 instead of 14 as admittedly the age of the deceased was 43 years. The claimants are entitled to an addition of 30 % towards future prospects qua the income of the deceased in terms of the ratio of law laid down by the Hon'ble Supreme Court in **'National Insurance Co. vs. Pranay Sethi' 2017 SCC 270**. Accordingly, the compensation awarded by the Tribunal is modified and reassessed as under:

Sr. No.	Head	Amount
1.	Monthly income (₹ 15,290/-, rounded off to ₹ 15,300/-)	₹ 15,300/-
2.	Annual income 12 x 15,300/-	₹ 1,83,600/-
3.	Income tax deduction (5,000 + 20% of amt. beyond 1,50,000 i.e. 6,720)	₹ 11,720/-
4.	Future prospects @ 30 % of 1,71,880	₹ 51,564/-
5.	Total annual income	₹ 2,23,444/-
6.	Deduction towards personal expenses @ 1/3	₹ 74,481/-
7.	Annual dependency (2,23,444 - 74,481)	₹ 1,48,963/-
8.	Multiplier	14
9.	Total amount	₹ 20,85,482/-
10.	Loss of consortium (filial, spousal & parental)	₹ 1,76,000/-
11.	Loss of estate	₹ 16,500/-
12.	Funeral expenses	₹ 16,500/-
	Total compensation	**₹ 22,94,482/-**

The claimants are therefore entitled to a total compensation of ₹ 22,94,482/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount. Out of the total amount of compensation, claimants No.1 and 2 (father and mother of the deceased) shall be entitled to ₹2.50 lacs each, claimant No.3

(widow) shall be entitled to ₹ 10.00 lacs and claimant No.4 (son) shall be given ₹ 7,94,482/-.

With these modifications, the appeal filed by the claimants (FAO No. 6214 of 2010) stands disposed of whereas the appeal preferred by the owner and driver (FAO No. 4579 of 2010) stands allowed.

(MANJARI NEHRU KAUL)
JUDGE

October 28, 2022
rps

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