

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

411 (4 cases)

FAO-1819-2012

Date of Decision: 14.09.2022

Manjit Kaur @ Rajbir Kaur

..... Appellant

Versus

Krishan Kumar and another

..... Respondents

2.

FAO-1821-2012

Kanwaljit Kaur

..... Appellant

Versus

Krishan Kumar and another

..... Respondents

3.

FAO-1822-2012

Bhupinder Kaur and another

..... Appellants

Versus

Krishan Kumar and another

..... Respondents

4.

FAO-2347-2012

Reliance General Insurance Co.Ltd.

..... Appellant

Versus

Bhupinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. J.S.Cooner, Advocate
for the appellant in FAO Nos. 1819, 1821 & 1822 of 2012
and for respondents No.1 and 2 in FAO No.2347 of 2012.

Mr. T.K.Joshi, Advocate
for the Insurance Company.

Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma (Moudgil), Advocate
for respondent No.1 FAO Nos.1819, 1821 & 1822 of 2012
respondent No.3 in FAO No.2347 of 2012.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above said four appeals which are arising from the same accident and award dated 04.10.2011 passed by the Motor Accident Claims Tribunal, Tarn Taran (for short 'Tribunal') are hereby adjudicated.

2. Learned Tribunal has awarded compensation in the case of death of Jagroop Singh (FAO-1822-2012) whereas claim of Manjit Kaur @ Rajbir Kaur and Kanwaljit Kaur has been rejected holding that there was no rash and negligence on the part of driver of offending vehicle.

3. The insurer has filed FAO-2347-2012 seeking rejection of claim awarded to claimants of deceased Jagroop Singh.

4. The facts emerging from record and necessary for the adjudication of present appeal are that on 30.03.2009, Jagroop Singh along with Smt. Kamaljit Kaur, Robin Singh and Pawanjit Kaur was travelling in Maruti Zen Car bearing registration No.PB-02Q-4373. The said car was being driven by Sarabjit Singh. Harjinder

Singh along with his wife Bhupinder Kaur and their son Ramdeep Singh were travelling in another Indigo Car. Maruti Zen car met with an accident with a Indigo Car bearing registration No.PB-08-AT-7979 (offending vehicle). In the accident, Jagroop Singh died and other car occupants suffered injuries.

5. The family members of deceased Jagroop Singh filed claim petition under Section 163-A of Motor Vehicles Act, 1988 (for short '1988 Act') seeking compensation on account of death of Jagroop Singh. Kanwaljit Kaur and Manjit Kaur @ Rajbir Kaur filed claim petitions seeking compensation on account of injuries suffered by them. It is apt to mention here that petition qua death was filed under Section 163-A of 1988 Act whereas the petitions qua injuries were filed under Section 166 of 1988 Act.

6. Learned Tribunal after considering documentary as well as oral evidences concluded that claimants of deceased are entitled to compensation and accordingly, learned Tribunal awarded a sum of Rs.1,07,000/- along with interest @ 6% per annum. In the case of both injured, learned Tribunal concluded that there was no negligence on the part of offending vehicle, thus, claimants are not entitled to compensation accordingly dismissed their petition.

FAO Nos.1819 & 1821 of 2012

7. Learned counsel for appellant contended that learned Tribunal has wrongly rejected claim of the appellants. They had suffered injuries and were entitled to compensation.

FAO-1822-2012

8. Learned counsel for the appellants contended that appellants filed a claim petition under Section 163-A of 1988 Act and learned Tribunal was bound to grant compensation as per Second Schedule of 1988 Act. He further contended that income of deceased must have been assessed Rs.3300 per month whereas learned Tribunal has assessed annual income of deceased Rs.15000/-.

9. Per contra, learned counsel for insurer contended that there is no infirmity in the order of learned Tribunal qua both alleged injured though conceded that amount of compensation qua Jagroop Singh has not been calculated as per Second Schedule of 1988 Act. He further contended that if it is held that claimants of deceased had rightly filed claim petition under Section 163-A of 1988 Act, they are entitled to compensation in terms of Second Schedule to Section 163-A. He contended that claimants of deceased should have filed petition under Section 166 of 1988 Act instead of Section 163-A of 1988 Act. Thus, claim petition was not maintainable.

10. I have perused the record and heard arguments of both sides.

FAO Nos.1819 & 1821 of 2012

11. Learned Tribunal has returned identical findings in case of both appellants. For the sake of brevity and to avoid repetition, the findings qua Manjit Kaur @ Rajbir Kaur are reproduced as below :-

“The burden was upon the claimant to prove if

*this accident was due to rash and negligent driving of respondent no.1, the driver of the offending vehicle and in this regard, if the statement of AWI Manjit Kaur is perused, she has stated that whatever version has been given in the DDR no. 23 dated 30.3.2009, it was got registered pertaining to the accident. It is contended by AWI Manjit Kaur that the accident occurred due to the rash and negligent driving of the offending vehicle by respondent no.1 but if we go through the copy of the DDR Ex.A-57, it does not support the version of the claimant. In Ex.A57, it has been asserted that the **parents (sic)** vehicle was driven by Sarabjit Singh who has not been made a party in this claim petition. It is also mentioned in Ex.A57 which was got registered at the instance of Harjinder Singh, father of Jagroop Singh who died in the said accident that he was following the offending vehicle on his Indigo Car No.PB-020 1732 driven by him and that he has seen that Sarabjit Singh who was ahead of him, his vehicle. i.e the offending vehicle became uncontrolled and struck with the offending vehicle which was being driven by a clean shaven youth. As a result of this accident, the persons who were travelling in the parents vehicle suffered injuries including the claimant and out of this accident, Jagroop Singh has died.”*

12. On being confronted with afore-stated findings, learned counsel for appellant expressed his inability to controvert the findings of the learned Tribunal. I do not find any infirmity in the findings recorded by learned Tribunal, thus, both appeals are hereby dismissed.

FAO Nos. 1822 & 2347-2012

13. The appellants had filed petition under Section 163-A of

1988 Act on account of death of Jagroop Singh. Learned Tribunal has awarded a sum of Rs.1,07,000/-.

14. Learned counsel for insurer has pleaded that appellants should have filed petition under Section 166 of 1988 Act instead of 163-A of 1988 Act. I do not find force in the arguments of learned counsel for insurer and accordingly his argument is hereby rejected.

15. Learned counsel for appellants and insurer are at *ad-tandem* qua determination of compensation. The petition was filed under Section 163-A of 1988 Act and as per Second Schedule, the income of deceased must have been conceded Rs.3300/- per month. As per Schedule, deduction on account of personal expenses should be $\frac{1}{3}^{\text{rd}}$ and 16 multiplier should be applied. Learned Tribunal has awarded a sum of Rs.9500/- under conventional heads. As per judgements of Hon'ble Supreme Court and different Benches of this Court, the appellants are entitled to compensation under conventional heads. As per judgement of a Co-ordinate Bench of this Court in **Oriental Insurance Company Ltd. Vs. Gurdev Singh and others, 2013(2) RCR (Civil) 611** dependants of deceased are entitled to same amount of compensation under conventional heads as is awarded to claimants who filed petition under Section 166 of 1988 Act. Respectfully following judgements of Co-ordinate Bench of this Court and considering Second Schedule to 1988 Act, the amount of compensation is re-determined as below:-

Particulars	Income (in Rs.)
Annual income of the deceased	39,600
Deduction on account of personal expenses	1/3 rd
Assessed income	26400
Multiplier (16)	422400
Loss of estate	16500
Loss of consortium (44000X2)	88000
Funeral expenses	16500
Total	543400

16. Appeal of appellants-claimants (FAO-1822-2012) is allowed and appeal of insurer deserves to be dismissed and accordingly dismissed.

17. The appellants are entitled to interest @ 7.5% from the date of filing of claim petition till the date of actual payment. It is made clear that amount already paid would be deducted from claim determined hereinabove.

18. The respondent-Insurer is directed to make payment within a period of eight weeks from today.

(JAGMOHAN BANSAL)
JUDGE

14.09.2022
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>