IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:19.09.2022

DATE OF DECISION: **27.09.2022**

1. FAO-2227-2013 (O&M)

Sahabuddin .... Appellant

Versus

Shriram General Insurance Co. Ltd. and ors. .... Respondents

2. **FAO-3359-2013(O&M)**

Hakiman and another …..Appellants

Versus

Sahabuddin and ors. …..Respondents

3. **FAO-5255-2013(O&M)**

Shri Ram General insurance Company Ltd. …..Appellant

Versus

Sohil Khan and ors. …..Respondents

4. **FAO-5261-2013(O&M)**

Shri Ram General insurance Company Ltd. …..Appellant

Versus

Hakiman and another …..Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Rajesh Lamba, Advocate for the appellant in FAO 2227-2013 and for respondent No.4 in FAO-5261-2013, for respondent no.3 in FAO-5255-2013 and for respondent No.1 in FAO-3359-2013.
Mr. Ashish Gupta, Advocate for the claimants/appellants in FAO-3359-2013 and counsel for respondents No.1 & 2 in FAO-561-2013, respondents No.3 & 4 in FAO-2227-2013 and for respondent No.1 in FAO-5255-2013.
Mr.Tejinder Joshi, Advocate for Insurance Company.

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HARKESH MANUJA, J.

This order of mine shall dispose of the following four appeals arising out of the common award dated 29.01.2013 passed by learned Motor Accident Claims Tribunal, Nuh, (for short 'the Tribunal'):-

i) FAO No.2227-2013 titled as **Sahabuddin Vs. Shriram General Insurance Co. Ltd. and ors.** (filed by registered owner of vehicle against the recovery rights given to the insurance company),

ii) FAO-3359-2013 titled as **Hakiman and another Vs. Sahabuddin and ors.** (filed by claimants/parents for enhancement of the compensation on account of death of their son Tarif);

iii) FAO-5255-2013 titled as **Shri Ram General Insurance Company Ltd. Vs. Sohil Khan and ors**. (for reducing compensation awarded to injured Sohil Khan-respondent No.1 as well as fastening of liability)

iv) FAO-5261-2013 titled as **Shri Ram General Insurance Company Ltd. Vs. Hakiman and ors.** (filed by the insurance Company for fastening the liability on the owner of the vehicle and for reducing the compensation amount).

A perusal of all these appeals shows that common questions of law and facts are involved which can be divided in 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 (insurance company or the owner of the vehicle). The second question is regarding the quantum of compensation 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.5255, 5261 & 2227-2013 and therefore, qua this aspect all these appeals are being decided together.

Brief facts of the case as delineated in FAO-5261-2013 are that an accident took place on 17.07.2010, wherein the son and daughter-in-law of respondents No.1 & 2, namely, Tarif and Ayeesha received serious injuries and later died thereof. The deceased were going to Village Malokhra from Village Kaliyaka in Maruti Car bearing registration No.HR-52-A-9312, while they were hit by the offending vehicle i.e. dumper bearing registration No.HR-55-H-1694, being driven by respondent No.3 in a rash and negligent manner. Respondents No.1 & 2 being the parents of deceased Tarif, filed a claim petition which was partly allowed by the learned Tribunal vide impugned order dated 29.01.2013 granting a sum of Rs.4,37,000/- as compensation along with interest at the rate of 6% per annum from the date of filing of claim petition, till its realization.

On the issue of liability, the learned Tribunal directed the Insurance Company to pay the compensation at first instance, but after holding that as respondent No.3-Driver was not possessing a valid driving license, therefore, granted recovery rights in favour of the appellant-Insurance Company. Thus, the primary question to be decided here is that on which shoulder shall lie the responsibility to pay the compensation.

It has been contended on behalf of the insurance company that once the Driver of the offending vehicle was not possessing a valid Driving License and a finding in this regard was recorded by the learned Tribunal, the appellant Insurance Company could not have been directed to deposit the amount of compensation at the first instance by granting them the recovery rights from the owner.

On the other hand, it has been argued on behalf of learned counsel for the owner-respondent No.4 that there was no fault on the part of the learned Tribunal for directing the appellant Insurance Company to deposit the amount of compensation. He rather submits that once it was proved on record by way of evidence of RW-1 i.e. the owner that the Driver- respondent No.3 was employed after due verification of his Driving Licence and even a copy of the said Driving Licence was also kept in record, even the direction issued for grant of recovery rights in favour of the appellant Insurance Company was also uncalled-for and should be set aside.

Having heard learned counsel for the parties and after gone through the paper-book as well as lower Courts records, I find no force in the arguments raised on behalf of the appellant Insurance Company. In the present case, respondent No.4-owner appeared as RW1 and tendered his affidavit. Relevant paragraph No.2 of his affidavit is reproduced hereunder:-

> *"2. That I have appointed the driver Juber son of Ali Mohd after due verification of the D.L. of the said Juber and a photocopy of the said D.L. was also kept in my record. I have full valid documents qua the said vehicle. Photocopy of DL, RC, Permit, fitness and Insurance are Ex.RW1/B to RW1/F attached herewith."*

A perusal of the aforesaid contents show that reasonable verification was done by respondent No.4 before appointing respondent No.3 as his Driver and even a copy of his driving license was also kept by him in his record. Once all due precautions were taken by the owner while employing respondent No.3 as his Driver, no liability could have been fastened upon him and it was the appellant Insurance Company which was under an obligation to indemnify the owner-insured. Further the fact alone that the Driving Licence of the Driver was fake will not help the case of the Insurance Company as they were required to prove that the said fact was in the knowledge of respondent No.4/owner and despite the awareness, he still allowed the Driver to ply the vehicle. In my considered opinion, even the right of recovery granted to the appellant Insurance Company is also against the law laid down by the Hon'ble Supreme Court in case titled as **Rishi Pal Singh Vs. New India Assurance Company Limited**, 2022 ACJ 1868, and relevant para Nos.10 & 11 of the same are reproduced hereunder for reference:-

> *"10. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is*

satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver.

11. In view of the said finding, the order passed by the High Court affirming the order of the Tribunal is set aside. Hence, liberty given to the Insurance Company to recover the amount from the appellant is also set aside."

Thus, in view of the aforesaid proposition of law, **FAO Nos.5261-2013 and 5255-2013** filed by the Insurance Company on the aspect of challenging the fastening of liability upon it with recovery rights are hereby **dismissed**. On the other hand, **FAO No.2227-2013** filed at the instance of owner of the offending vehicle challenging the grant of recovery rights to the insurance Company is hereby **allowed**.

B- QUANTUM OF COMPENSATION AMOUNT:

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-3359-2013 and 5261-2013

By way of FAO-3359-2013 the parents of deceased Tarif have claimed enhancement of compensation. While in FAO-5261-2013 Insurance company have prayed for reducing the same and therefore both these appeals qua the compensation amount are being discussed together.

Learned counsel for the appellants/claimants contends that the income of the deceased has been taken to be Rs.4000/- per month while it was pleaded and proved by oral evidence that the deceased was working as a Driver and earning Rs.8000/- per month. He further contends that at the relevant time, even the salary of an unskilled labour was Rs.4500/- p.m. He also contends that only Rs.5000/- has been awarded towards funeral expenses, which is extremely on lower side and no compensation has been awarded under other conventional heads. In addition, it has also been submitted that the learned Tribunal while awarding compensation fell into an error by applying deduction of ½ towards the self expenditure of deceased Tarif having considered him as Bachelor.

On the other hand, learned counsel for Insurance Company argues that in the absence of any documentary evidence, the learned Tribunal went wrong while taking the monthly income of the deceased to be Rs.4000 per month being on the higher side 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 appellants/claimants. It was the case of the appellants/ claimants that the deceased was working as a Driver; earning Rs.8000/- per month and his driving license was also brought on record as Ex.P18. In my considered opinion, even if it is assumed that the deceased was not earning Rs.8000/- per month; since he was working as a Driver, at least his income per month should have been taken equal to the salary of a skilled labour at the relevant time. At the time of accident, the salary of skilled labour was around Rs. 4600/- per month, therefore, the compensation should have been awarded according to this amount. As regards deduction of ½ having been made by the learned Tribunal, the same appears to be appropriate in the facts and circumstances of this case. I agree with the contention of learned counsel for claimants/ appellants that the deceased was married as a specific case has been set up in the claim petitions that Tarif was travelling along with his wife Ayeesha. This fact was even deposed by PW5-claimant while appearing as a witness, to which even no suggestion was put to him either by the Insurance Company or even by the owner/Driver to rebut the factum of marriage of Tarif with Ayeesha. Considering that the deceased was married, in view of the judgment of Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, deduction of 1/3rd would have been appropriate. However, in the facts and circumstances of the present case, considering specifically the fact that the wife of the deceased also expired in the same accident, dependency of ½ is appropriate.

Further in view of the principles of law laid down 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 40% future prospects and the multiplier of '18' is appropriate as the deceased was 23 years of age at the time of accident. 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 given hereunder:-

Sr.No.	***Particulars***	***Amount (Rs.)***
1.	*Annual Income of deceased (Rs.4600 x 12)*	*Rs.55,200/-*
2.	*Add 40% of Future prospects*	*Rs.22,080/-*
3.	*Total Income*	*Rs.77,280/-*
4.	*Deduction (1/2)*	*Rs.38,640/-*
5.	*Multiplier of 18 as per age of 23 years (Rs.38,640 x 18)*	*Rs.6,95,520/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (filinial) i.e. Rs.44000 x 2*	*Rs.88,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.8,16,520/-*
	Amount Awarded by the Tribunal	*Rs.4,37,000/-*
	Enhanced Amount	*Rs.3,79,520/-*

The grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

In view of the above, **FAO-3359-2013 and FAO-5261-2013,** on the aspect of compensation are **disposed of** in the aforesaid terms.

II- FAO-5255-2013

By way of present appeal the appellant Insurance Company has challenged the amount of compensation of Rs.50,000/- awarded in favour of injured respondent No.1-Sohil Khan.

It has been contended on behalf of appellant Insurance Company that respondent No.1 never got injured in the alleged accident and as such he was not entitled to award of any compensation.

On the other hand, it has been submitted on behalf of respondent No.1-claimant that at the time of accident, he was also travelling with his uncle Tarif and aunt-Ayeesha in Maruti Car bearing Registration No. HR-52-A-9312 and thus suffered injuries in the accident in question.

Having heard learned counsel for the parties and gone through the records, I do not find any merit in the arguments/ contentions raised on behalf of counsel for the appellant-Insurance Company. A conjoint reading of the documentary as well as oral evidence available on record, in particular, statement of PW1-Jatinder Kumar, Record Keeper, Guru Nanak Hospital, Palwal as well as PW-5 Hassan @ Hassanna, it has been proved beyond shadow of doubt that respondent No.1-claimant was travelling in the aforesaid car and sustained injuries in the accident and was even admitted to Hospital for a period of almost 06 days. Considering the aforesaid facts and circumstances, I do not find any ground to interfere in the meager amount of compensation of Rs.50000/- as awarded in favour of respondent No.1- claimant.

Accordingly, the present appeal filed at the instance of appellant Insurance Company is hereby dismissed.

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.

September 27, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

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