IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

228 **FAO No.1758 of 2014 (O&M)**
Date of Decision : 02.08.2022

National Insurance Company Limited ....Appellant

VERSUS

Seema Devi and Others ....Respondents

228-A **FAO No.9091 of 2014 (O&M)**

Seema Devi and Others ....Appellants

VERSUS

Ram Lal and Another ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amarinder Singh Sidhu, Advocate
for the appellant in FAO-1758-2014 and
for respondent no.2 in FAO-9091-2014.

Mr. J.S. Thind, Advocate
for the appellants in FAO-9091-2014 and
for respondent nos.1 to 4 in FAO-1758-2014.

Mr. Dheeraj Narula, Advocate
for respondent no.4 in FAO-1758-2014 and
for respondent no.1 in FAO-9091-2014.

ALKA SARIN, J. (Oral)

By this common judgement, the above-captioned two appeals are being disposed off.

The appeal being FAO-1758-2014 has been preferred by the Insurance Company against the award passed by the Motor Accident Claims Tribunal, Sirsa (later referred to as the 'Tribunal') while the appeal being FAO-9091-2014 has been filed by the claimants seeking enhancement of the compensation awarded to them on account of death of Pappu Ram (hereinafter referred to as the 'deceased') in a motor accident with the

Tractor bearing registration no.HR-23-A-2995 (later referred to as the 'offending vehicle'). For the sake of brevity, the facts are being extracted from FAO No.1758 of 2014 and parties are being referred to as per their status in the said appeal.

The brief facts relevant to the present *lis* are that on 21.10.2012 the deceased was going on his motorcycle bearing registration no.PB-08-S-9166 from village Bacher to village Vaidwala to see his brother Jagdish. The deceased was driving his motorcycle at a moderate speed and on the left side of the road and when he reached near village Kharekan, the offending vehicle, which was being driven by respondent no.5, Ram Lal, in a rash and negligent manner, hit the motorcycle of the deceased as a result of which the deceased fell on the road and received serious and grievous injuries and eventually succumbed to his injuries. The matter was reported to the police and on the statement of Sunil Kumar, FIR No.176 dated 22.10.2012 was registered at Police Station Sadar Sirsa. The claim petition was contested by the driver and owner of the offending vehicle and the Insurance Company. Based on the pleadings of the parties and evidence on the record, the Tribunal came to the conclusion that the accident took place due to the rash and negligent driving of the offending vehicle by its driver and awarded the compensation as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	5000
2	Dependency of the claimants after deduction of 1/3rd	[5000 - 1667] = Rs.3333
3	Annual dependency of the claimants	[3333 x 12] = Rs. 39996

4	Multiplier of 13	[39996 x 13] = Rs.5,19,948
5	Loss of Love and Affection	Rs.10000
6	Funeral Expenses	Rs.2000
7	Expenses towards transportation	Rs.2500
8	Loss of Estate	Rs.2500
9	Loss of Love and Affection to claimant nos.2 to 4 @ Rs.10000/- each	[10000 x 3] = Rs.30000
	Total Compensation	**Rs.5,66,948 rounded off to Rs.5,67,000**

Learned counsel for the Insurance Company has contended that the factum of the accident itself is not proved inasmuch as in a criminal case the driver of the offending vehicle was acquitted. It is further the contention that there was no eye-witness to the accident.

Per contra, Mr. J.S. Thind, Advocate, counsel for the claimants, has contended that the accident stood duly proved and that PW-2, Sunil Kumar, has stepped into the witness-box and his testimony could not be shaken in cross-examination. He has further contended that the offending vehicle with which the accident took place was found at the spot of accident and taken on *sapurdari.* It has further been contended that the compensation awarded to the claimants is on the lower side and no amount has been awarded towards loss of future prospects. Even the amount awarded under the conventional heads is also on the lower side.

I have heard learned counsel for the parties.

In the present case merely because the driver of the offending vehicle has been acquitted in a criminal case cannot be a reason to hold that the accident did not stand proved. In the case of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [2020(13) SCC 486]** it has been held as under :

> *"It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."*

In the case of **N.K.V. Bros (P) Ltd. Vs. M. Karumai Ammal [1980(3) SCC 457]** the case set up was that since the criminal case in relation to the accident had ended in acquittal, hence, the claim under the Motor Vehicles Act, 1988 should also be rejected. The Supreme Court negated the said argument and held as under :

> *"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier*

in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the *enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."*

In **Krishan Vs. Tarawati [2011(3) PLR 29]** it was held :

"It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court."

In **Harjinder Kaur & Ors. Vs. Pushpinder Kumar & Ors. [2017(4) ACC 395]** this Court held that *"It is settled law that the Tribunal decides the claim cases on the basis of preponderance of probabilities and strict Rules of evidence are not applicable. It is further settled beyond any doubt that the outcome of a criminal trial is not binding on the Tribunal"*.

The testimony of PW2, Sunil Kumar, could not be shaken in cross-examination. Additionally, the offending vehicle admittedly was found at the spot of accident and was later taken on *sapurdari*. It is trite that the Tribunal has to decide the cases on the basis of preponderance of probabilities and strict rules of evidence will not be applicable. That being so, the manner of accident cannot be doubted.

Perusal of the award reveals that the compensation has not been awarded as per the law laid down in cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [2017(4) RCR (Civil) 1009]; Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [2009(6) SCC 121]** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [2018(18) SCC 130]**. Accordingly, the claimants would be entitled to an addition of 25% towards loss of future prospects. In view of the settled law, the claimants, who are the wife and children of the deceased, would also be entitled to compensation under the head of consortium. They are also entitled to 10% increase under the conventional heads as well as under the head consortium as per the law laid down in **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**. The modified compensation is re-worked as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[5000 x 12] = Rs.60000
2	Annual dependency of the claimants after deduction of 1/3rd	[60000 - 20000] = Rs.40000
3	Future Prospects @ 25%	[40000 + 10000] = Rs.50000
4	Multiplier of 13	[50000 x 13] = Rs.6,50,000
5	Loss of Estate	Rs.16,500
6	Funeral Expenses	Rs.16,500
7	Loss of Consortium (i) Parental (3 children) (ii) Spousal	 Rs.132000 (44000 x 3) Rs.44,000 (Total Rs.1,76,000)
	Total Compensation	**Rs.8,59,000**
	Enhanced Compensation	**Rs.2,92,000**

The amount of enhanced compensation of Rs 2,92,000/-, over and above the amount awarded by the Tribunal, shall also attract interest @ 7.5% from the date of the filing of the claim petition till realization of the entire amount. The amount shall be apportioned between the claimants as directed by the Tribunal.

In view of the above discussion, the appeal being FAO-1758-2014 filed by the Insurance Company stands dismissed while the appeal being FAO-9091-2014 filed by the claimants is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

02.08.2022
jk

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO