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

Reserved on 08.07.2022
Pronounced on : 03.08.2022

**FAO-3810-2014 (O&M) and
X-Objec.-39-CII-2015 (O&M)**

National Insurance Co. Ltd. ...... Appellant

Versus

Janak and others ...... Respondents

**FAO-3846-2014 (O&M) and
X-Objec.-41-CII-2015(O&M)**

National Insurance Co. Ltd. ...... Appellant

Versus

Lakhvir Kaur and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. S.K.Arora, Advocate
for the appellant.

Mr. A.S.Gill, Advocate
for claimants-cross-objectors
No.1, 3 to 5 in X-Objc-39-CII-2015 and
cross-objectors No.1 to 3 in X-Objc.-41-CII-2015.

Mr. Tarun Sharma, Advocate for Mr. R.S.Bajaj, Advocate
for respondent No.1 in FAO No.3810 of 2014 and
for respondent No.4 in FAO No.3846 of 2014.

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Manjari Nehru Kaul, J.

CM-5974-CII-2015 in X-Objec.-39-CII-2015

Application is allowed as prayed for and delay of 50 days in filing the cross-objections are condoned.

CM-6022-CII-2015 in X-Objec.-41-CII-2015

Application is allowed as prayed for and delay of 188 days in filing the cross-objections is condoned.

Main case

This order shall dispose of two appeals i.e. FAO No.3810 and 3846 of 2014 and two cross-objections bearing No.39-CII and 41-CII of 2015 as they have been filed against the same award dated 28.10.2013 passed by the Motor Accident Claims Tribunal, Jalandhar. Brief facts of the case are being taken from FAO No.3810 of 2014.

The appellant-Insurance Company is in appeal against the award dated 28.10.2013 passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter called as 'the Tribunal') wherein the following compensation was awarded in FAO No.3810 of 2014 and in FAO No.3849 of 2014 in respect of the deaths of Gurmail Singh and Gobind Ram respectively, who died in a motor vehicular accident on 17.04.2012:

Compensation awarded for the death of Gurmail Singh

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.13,797/- (rounded of to Rs.14,000/-
2	Annual income (Rs.14,000 x 12)	Rs.1,68,000/-
3	Deduction towards personal expenses (1/3)	Rs.4,667/-
4	Annual Dependency (Rs.1,68,000-Rs.56,000)	Rs.1,12,000/-
5	Multiplier	11
6	Total amount (Rs.1,12,000 x 11)	Rs.12,32,000/-
7	Loss of estate	Rs.5,000/-
8	Loss of consortium	Rs.5,000/-
9	Funeral expenses	Rs.5,000/-
	Total compensation	Rs.12,47,000/-

Compensation awarded for the death of Gobind Ram

Sr. No.	*Head*	*Amount*
1	Monthly income	Rs.5,000/-
2	Annual income (Rs.5,000 x 12)	Rs.60,000/-
3	Deduction towards personal expenses (1/3)	Rs.1,667/-
4	Annual Dependency (Rs.60,000-Rs.20,000)	Rs.40,000/-
5	Multiplier	9
6	Total amount (Rs.40,000 x 9)	Rs.3,60,000/-
7	Loss of estate	Rs.5,000/-
8	Loss of consortium	Rs.5,000/-
9	Funeral expenses	Rs.5,000/-
	Total compensation	Rs.3,75,000/-

The amount of compensation along with interest @ 7% p.a. was ordered to be paid jointly and severally by respondents No.1 and 2.

As per the pleaded case of the claimants, deceased Gurmail Singh was riding his motorcycle bearing registration No.PB-08-BR-1859 while deceased Gobind Ram was pillion riding behind him on the fateful day when the accident in question took place. When the deceased reached near Avtar Regency, a Bolero Maxi Truck bearing registration No. PB-08-BM-9030 (hereinafter referred to as 'the offending vehicle') came in a rash and negligent manner driven by respondent No.1 and struck against the motorcycle of the deceased. Due to the collision, the motorcycle of the deceased Gurmail Singh struck against the house of one Balvir Singh @ Bira. Deceased Gurmail Singh received serious injuries on his head after hitting a pillar at the spot while deceased Gobind Ram fell on a pile of bricks, which was lying at the spot. The offending vehicle, which was being driven in a very rash and negligent manner also rammed into the wall of the house of Balvir Singh @ Bira and overturned.

The people, who were travelling in the offending vehicle, sustained serious injuries. The helmet which deceased Gurmail Singh was wearing at the time of accident broke into pieces due to the impact. Harbilas Singh, brother of deceased Gurmail singh, who was following him on his motorcycle witnessed the accident and immediately removed the deceased Gurmail Singh to the Civil Hospital where he was declared brought dead. The other injured persons including deceased Gobind Ram were taken to a hospital at Jalandhar in an ambulance. Deceased Gobind Ram succumbed to his injuries at Johal Hospital, Jalandhar. FIR No.34 dated 17.04.2012 under Sections 304-A, 279, 337, 338 and 427 IPC was registered against respondent No.1, who was driver-cum-owner of the offending vehicle.

It was claimed that the deceased Gurmail Singh was 55 years old retired defence personnel. Besides drawing pension from the Army, he was also working in a factory at Jalandhar from where he was earning Rs.5,000/- per month as salary and was being provided other benefits by the company. The claimant i.e. widow of deceased Gurmail Singh claimed that after the death of her husband, she had lost sole bread-earner of her family.

It was claimed that deceased Gobind Ram was 52 years of age at the time of his death. It was claimed that he was employed in Max Switchgears Pvt. Ltd, Jalandhar from where he was drawing a monthly salary of Rs.4,270/- per month besides getting other benefits provided by the company. The claimants i.e. widow and three children including one minor son claimed that on account of the untimely death of Gobind Ram, they had not only been deprived of their sole bread-earner but also his love and affection.

Learned counsel for the appellant-Insurance Company has vehemently argued that the offending vehicle was admittedly a goods carrying commercial vehicle but was being used for ferrying passengers. Learned counsel submits that it stood proved during the cross-examination of PW-2 Harbalas Singh that there were as many as 10 persons travelling in the offending vehicle at the time of accident. He submits that as per the Registration Certificate of the offending vehicle, only three persons were permitted to travel in it. Learned counsel thus, submits that while passing the impugned award, the Tribunal erred in ignoring not only this fact that there had been violation of the insurance policy conditions but also erred in fastening the entire liability on the company to indemnify the insured. In support of his submissions, learned counsel has placed reliance upon ***National Insurance Co. Ltd.Vs. Challa Bharathamma and others (2004)8 SCC 517.*** A prayer has been made that the impugned award passed by the Tribunal be set aside and the insurance company be exonerated of its liability to indemnify the insured or in the alternative recovery rights be given to the appellant-company.

Per contra, learned counsel appearing for the driver-cum-owner of the offending vehicle while opposing the prayer and submissions made by counsel for the appellant-company submits that it was a matter of record that on the date of the accident in question, the offending vehicle was duly insured with the insurance company. While drawing the attention of this Court to the affidavit Ex.RW-1/A tendered by RW-1 S.K.Gupta along with the insurance policy Ex.RW-1/1, terms and conditions of the policy Ex.RW-1/2 and a letter Ex.R-1/3, it is submitted that assuming for the sake of arguments though not admitted that there were indeed more than three persons travelling in the offending vehicle at the time of accident, it could not in any way be said to have any bearing on the accident because it was certainly not the case of the insurance company or even the claimants that the accident in question had occurred on account of the offending vehicle being overloaded with passengers.

In the cross-objections, claimants have impugned the award passed by the Tribunal by urging that the compensation awarded by the Tribunal is inadequate and not in consonance with the settled law in ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270 and Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333*** and hence, it deserves to be reassessed and modified accordingly. It has also been argued that under the conventional heads the compensation awarded is inadequate and not in consonance with the various pronouncements of the Hon'ble Supreme Court.

Heard learned counsel for the parties and perused the case file.

Admittedly, the offending vehicle, which was registered as a Goods Carrying Vehicle, was ferrying more than three persons at the time of accident. Therefore, the question which requires consideration of this Court is as to whether on account of the fact that there were more than three persons travelling in the offending vehicle, would it amount to a breach of the insurance policy?

Hon'ble Supreme Court in ***B.V.Nagaraju vs. Oriental Insurance Co. Ltd. Divisional Officer, Hassan, 1996(3) RCR (Civil) 304*** has held as follows:

> *"It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was not carrying. Here it is nobody's case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the oncoming vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a persons or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident."*

Adverting to the case in hand, as per the claimants including the testimony of eyewitness, who stepped into the witness box as PW-2 Harbilas Singh and Kuldeep Singh, the offending vehicle was being driven by respondent No.1 in a rash and negligent manner and it struck against the motorcycle of the deceased Gurmail Singh, which resulted in the deaths of both Gurmail Singh and Gobind Ram. It is nobody's case, much less the case of the appellant-Insurance Company or for that matter even the claimants or the eyewitnesses that the offending vehicle being overloaded with passengers, was causing hindrance to the driver of the offending vehicle as a result of which he lost control over the vehicle and ended colliding with the vehicle of the deceased. If at all there had been any breach or violation by the driver-cum-owner of the offending vehicle it was only a violation of the provisions of Section 177 of the Motor Vehicles Act (hereinafter referred to as 'Act'). Mere violation of the provisions of Section 177 of the Act, at best, would invite punishment/penalty under the Act, for commission of a traffic offence. The effect of such a breach would certainly not absolve the Insurance Company of its liability to indemnify the insured. As already observed, the appellant-insurance company did not even produce or lead any evidence before the Tribunal from which it could be remotely inferred that the accident in question had taken place on account of the offending vehicle carrying persons beyond the permissible capacity of three persons.

In the circumstances, this Court has no hesitation in holding that the appellant-company cannot be allowed to evade its liability to indemnify the offending vehicle, which was insured with it. Further more, in their written statement the appellant-company no ground qua the alleged violation of the insurance policy was taken. Rather, it was for the first time during the evidence of RW-1 S.K.Gupta, Manager of the Company they took the aforementioned plea of violation of insurance policy. Still further, learned counsel while drawing the attention of this Court to the investigation report Ex.RW-2/1, tendered in his evidence, submitted that during his investigation it came to light that the vehicle was being used for commercial purposes, however, RW-2 Gurpal Singh, Assistant Investigator submitted that although he had accompanied the investigator but he admitted that report Ex.RW-2/1 had not been prepared by the investigator in his presence. Strangely, the said investigator B.S.Sharma was not even examined before the Tribunal. One Ram Singh as well as Kulwinder Kaur, who were stated to be travelling in the offending vehicle as passenger at the time of accident and whose statements were recorded by the investigator, were not even examined before the Tribunal.

This Court in the aforementioned facts and circumstances does not find any merit in the submissions made by the counsel for the insurance company that since there was a violation of the insurance policy, the appellant-insurance company should have been exonerated and not fastened with the liability to indemnify the insured. Accordingly, the appeals filed by the insurance company being devoid of any merit stand dismissed.

Coming next to the cross-objections filed by the claimants, this Court is of the opinion that the compensation awarded by the Tribunal requires to be modified and reassessed.

In the claim petitions filed by the claimant(s), the tribunal has rightly assessed the monthly income of both the deceased i.e. Gurmail Singh and Gobind Ram. The deceased Gurmail Singh being a 55 years old man and being a government pensioner, the claimant shall be entitled to 15% compensation towards future prospects. Claimants of deceased Gobind Ram too shall be entitled to 10% compensation towards future prospects as he was 57 years old. The Hon'ble Supreme Court in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*** has quantified the amount in the sum of Rs. 15,000/- each for loss of estate and funeral expenses. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants in both the appeals would be entitled to 10% enhancement qua the above-mentioned conventional heads. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimants, who are widow and children of the deceased are entitled to Rs.40,000/- each alongwith 10% enhancement, for loss of consortium and parental consortium respectively.

Resultantly, the compensation awarded by the Tribunal is reassessed as under:-

Compensation for the death of Gurmail Singh

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.13,797/- (rounded of to Rs.14,000/-
2	Future prospects (15%)	Rs.2,100/-
3	Annual income (Rs.14,000 +Rs.2,100 x 12)	Rs.1,93,200/-
4	Deduction towards personal expenses (1/3)	Rs.64,400/-
5	Annual Dependency (Rs.1,93,200-Rs.64,400)	Rs.1,28,800/-
6	Multiplier	11
7	Total amount (Rs.1,28,800 x 11)	Rs.14,16,800/-
8	Loss of estate	Rs.16,500/-
9	Funeral expenses	Rs.16,500/-
10	Loss of consortium (Rs.44,000 x 4)	Rs.1,76,000/-
	Total compensation	Rs.16,25,800/- (rounded off to Rs.16,26,000/-

Compensation for the death of Gobind Ram

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.5,000/-
2	Future prospectus (10%)	Rs.500/-

Sr. No.	*Head*	*Amount*
3	Annual income (Rs.5,000 + Rs.500 = 5,500x 12)	Rs.66,000/-
3	Deduction towards personal expenses (1/3)	Rs.22,000/-
4	Annual Dependency (Rs.66,000-Rs.22,000)	Rs.44,000/-
5	Multiplier	9
6	Total amount (Rs.81,900 x 17)	Rs.3,96,000/-
7	Loss of estate	Rs.16,500/-
8	Funeral expenses	Rs.16,500/-
9	Loss of consortium (Rs.44,000 x 4)	Rs.1,76,000/-
	Total compensation	Rs.6,05,000/-

In the circumstances, the claimants in FAO No.3810 of 2014 are entitled to afore-detailed enhanced compensation of Rs.3,79,000/- (Rs.16,26,000-12,47,000) and in FAO No.3846 of 2014, the claimants are entitled to enhanced compensation of Rs.2,30,000/- (Rs.6,05,000-3,75,000) along with interest at the rate of 9% per annum from the date of filing of the claim petition till its actual realization in the same ratio and terms as ordered by the Tribunal.

With the above modifications, cross-objections stand disposed of.

03.08.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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