IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-1905-2016(O&M)

The Oriental Insurance Company Ltd.

...Appellant

Versus

Suresh Garg and others

...Respondents

(2) FAO-1907-2016(O&M)

The Oriental Insurance Company Ltd.

...Appellant

Versus

Suresh Garg and others

...Respondents

(3) FAO-2054-2016(O&M)

Suresh Garg and another

...Appellants

Versus

General Manager, Haryana Roadways and others

...Respondents

(4) FAO-2145-2016(O&M)

Suresh Garg and another

...Appellants

Versus

General Manager, Haryana Roadways and others

...Respondents

Date of Decision:-24.11.2022

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Raj Kumar Bashamboo, Advocate
for the appellant in FAO-1905-2016 and
FAO-1907-2016 and for respondent No.5 in
FAO-2054-2016 and FAO-2145-2016.

Mr.Karamveer Singh Banyana, Advocate
for the appellants in FAO-2054-2016 and FAO-2145-2016 and respondents No.1 and 2 in FAO-1905-2016 and FAO-1907-2016.

Mr.Sanjay Verma, Advocate
for the respondent No.4 in FAO-2054-2016.

Mr.Karan Jindal, AAG, Haryana.

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H.S. MADAAN, J.

1. By this order, I shall dispose of four FAOs i.e. FAO-1905-2016 and FAO-1907-2016 filed on behalf of insurance company and FAO-2054-2016 and FAO-2145-2016 filed on behalf of the claimants, which have arisen out of the same accident.

2. Briefly summed up the facts of the case are that in a road side accident, which took place on 7.6.2015 at about 4:00 p.m., a young couple got perished i.e. Vikas Garg and his wife Rashmi Garg. The parents of Vikas Garg, namely, Sh.Suresh Garg - father and Smt.Sheela Garg – mother had brought claim petitions under Section 166, 140 and 141 of the Motor Vehicles Act, 1988 bearing MACP No.262 of 2015 and MACP No.263 of 2015 against respondents i.e. General Manager, Haryana Roadways, Kurukshetra, State of Haryana through Secretary, State of Haryana through Collector, Kurukshetra – owners of bus bearing

registration No.HR-65-7125 (hereinafter referred to as the offending bus), Kashmir Singh – driver of the offending bus and Oriental Insurance Company - insurer of the offending bus. The claimants further impleaded Anju Singla, Monika Singla and Ashwini Garg siblings of deceased Ms.Rashmi Garg as proforma respondents in the claim petitions.

3. Both the claim petitions were tried together since those related to the same accident.

4. As per version of the claimants on the fateful day at about 4:00 p.m., the offending bus being driven by respondent No.4 – Kashmir Singh in a rash and negligent manner without blowing horn and in violation of traffic rules came from Pipli side and hit a Scorpio vehicle bearing registration No.HR05AK-1305, which was crossing the road; resultantly the Scorpio went towards culvert (PULIA) on Karnal-Kurukshetra GT Road; in the meanwhile a car bearing registration No.HR-07U-4225 came from Karnal side; the offending bus after hitting the Scorpio vehicle, then hit the ill-fated car bearing No.HR-07U-4225 by going on the wrong side; the car went under the bus and bus dragged the car to ditches; although the passengers travelling in the Scorpio vehicle had a miraculous escape but occupants of the car, namely, Vikas Garg and Rashmi Garg suffered multiple injuries and died at the spot; Kashmir Singh driver of the offending bus fled from that place after the mishap; the accident was witnessed by Rajeev Saini, running a Tea stall at a distance of half kilometer towards Karnal at Umri Chowk, who was standing outside his said tea stall at that time.

5. FIR No.267 dated 7.6.2015 for the offences under Sections 279, 337 and 304-A IPC was registered against Kashmir Singh, bus driver at Police Station Sadar, Thanesar.

6. Notice of the claim petitions was given to respondents, who put in appearance and filed separate written statements contesting the assertions in the claim petitions.

7. In the separate but similar joint written statement filed on behalf of respondents 1 to 3, they had taken various legal objections, on merits contending that the accident had in fact taken place due to rash and negligent driving of Scorpio vehicle as its driver was under the influence of liquor; as a matter of fact on 7.6.2015 the offending bus driven by respondent No.4 – Kashmir Singh was plying on Ludhiana – Delhi route; when the bus reached Umri fly-over, then suddenly a white Scorpio came from Umri village side and hit the bus from the conductor side; respondent No.4 turned his bus towards driver side to save the Scorpio vehicle and in the process applied the brakes, however, suddenly a car came from Delhi side and struck the bus. According to respondents No.1 to 3, the bus driver was not at fault in happening of the accident and rather the Scorpio driver is squarely to be blamed for causing the accident. Such respondents had sought dismissal of the claim petitions against them.

8. Whereas respondent No.4 bus driver also came up with a similar version.

9. The stand taken by respondent No.5 insurance company in the written statements to the claim petitions was also on those very lines

as that of respondents No.1 to 3 and respondent No.4. However, such insurance company had alleged that the claimants had filed the claim petitions in collusion with other respondents and police in order to extract compensation from respondent – insurance company; respondent No.4 was not having a valid and effective driving licence at the time of accident and terms and conditions of the insurance policy were breached by respondents No.1 to 3 etc. The insurance company had denied the allegations made in the petitions coming up with a plea that no such accident had taken place and deceased had not suffered any injuries in the alleged road side accident; that respondent No.4 was not at fault in causing the accident and he has been falsely challaned. In alternative, the plea raised by respondent No.5 was that it was a case of contributory negligence on the part of deceased driver of the car and respondent No.4 bus driver. The insurance company sought dismissal of the claim petitions.

10. Proforma respondents No.6 to 8 in the written statement filed by them had admitted the claim of the claimants contending that they had no objection, if the claim petitions were allowed in favour of the claimants.

11. On the pleadings of the parties, following issues were framed:

1. *Whether Rashmi Garg and Vikas Garg died due to injuries suffered in the accident caused on 7.6.2015 by rash and negligent driving of Bus bearing registration No.HR-65-7125 by the respondent No.4 as*

alleged? OPP.

2. *Whether the claimants in both the claim petitions are entitled compensation, if so how much and from whom? OPP.*
3. *Whether the respondent No.4 did not have valid and effective driving licence at the time of the accident, if so to what effect? OPR-5.*
4. *Whether the respondent No.1 has violated the terms and conditions of the insurance policy, if so to what effect? OPR-5.*
5. *Relief.*

12. During the course of evidence of claimants, claimant Sh.Suresh Garg got his statement recorded as PW1. In addition to that claimants examined Amar Bahadur as PW2 and Rajeev Saini as PW3 and proved in evidence documents Ex.P1 to Ex.P29.

13. In rebuttal the respondents No.1 to 3 produced documents Ex.R3 to R6 and closed their evidence; Respondent No.4 Kashmir Singh got his own statement recorded as RW1 and produced documents Ex.R1 and Ex.R2. Respondent No.5 produced document Ex.R7 and closed evidence. No evidence was adduced on behalf of respondents No.6 to 8.

14. After hearing arguments, the Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as the Tribunal) decided issues No.1 and 2 in favour of the claimants and against respondents No.1 to 5, issues No.3 and 4 against the respondent No.5 and in favour of respondents No.1 to 4. As a result of findings on issues, both the claim

petitions were accepted and compensation of Rs.29,75,400/- was awarded to both the claimants in equal shares in claim petition bearing MACP No.262 of 2015 on account of death of Rashmi Garg and compensation of Rs.36,98,640/- was awarded to both the claimants in equal shares in claim petition bearing MACP No.263 of 2015 on account of death of Vikas Garg in a motor vehicular accident. The compensation was awarded with interest @ 9% per annum from the date of filing of the claim petitions till actual realization. The liability of respondents No.1 to 5 to pay the compensation amount was found to be joint and several.

15. The insurance company in both the petitions being of the view that the compensation granted was on higher side, whereas claimants/petitioners being dissatisfied with the compensation awarded to them considering that to be on lesser side have filed separate appeals before this Court.

16. Notice of the appeals was issued to the respective respondents, who put in appearance through counsel.

17. I have heard learned counsel for the parties besides going through the record.

18. Firstly taking up the appeals i.e. FAO-1905-2016 and FAO-1907-2016 filed by the insurance company.

19. The main thrust of attack by learned counsel for the appellants was that the bus driver was not at fault in happening of the accident and as a matter of fact the Scorpio driver, who was under influence of liquor was solely responsible for happening of the accident.

The police instead of registering FIR against Scorpio driver and challaning him wrongly registered FIR against bus driver and thereafter challaned him and as a matter of fact if the site plan of the place of accident is perused, then it becomes clear that the bus was going on the main road, whereas the Scorpio was to enter the main road from the link road, as such Scorpio driver should have been cautious and careful to see that there was no traffic nearby before proceeding straightway. He is not shown to have exercised that care and caution, resultantly it hit the bus and the bus driver in order to avoid any damage to the passengers travelling in the Scorpio vehicle had turned the bus away and suddenly applied brakes resultantly the car of the deceased had hit the bus. Therefore, neither the bus driver nor the owners of the bus or insurer of the bus, namely, appellant insurance company can be fastened with any liability. But the Tribunal has wrongly made all of them liable to pay compensation to the claimants.

20. On the other hand, learned counsel for the claimants has contended that from the facts and circumstances of the case and evidence brought on file by the parties, it becomes ample clear that respondent No.4 – Kashmir Singh was author of the accident by his rash and negligent driving of the offending bus. In that regard, he has drawn attention of the Court to the FIR lodged by the complainant Rajeev Saini with regard to the accident in which registration number of the offending bus, the same belonging to Haryana Roadways, Kurukshetra are clearly mentioned and it is stated that the accident had taken place on account of

rash and negligent driving of the bus, though the name of the bus driver is not mentioned in the FIR but it is not disputed by respondents No.1 to 5 that it was being driven by respondent No.4 – Kashmir Singh at that time.

21. The complainant had no reason to lodge a false report against the bus driver and to let off the Scorpio driver. A perusal of the file goes to show that the bus driver had been sent up to face trial with regard to the accident in question. The claimants had examined Sh.Rajeev Saini, complainant as PW3, who in his affidavit Ex.PW3/A had fully supported the case of the claimants on material aspects. He was cross-examined on behalf of the respondents but he stuck to his guns and could not be shattered on any material point. No reason has been suggested or proved prompted by which he might have deposed falsely against the bus driver. The claimants had tendered in evidence copy of report under Section 173 Cr.P.C. as Ex.P23, statement of Rajeev Saini under Section 161 Cr.P.C. as Ex.P24, site plan as Ex.P25, mechanical report of ill-fated car as Ex.P26, mechanical report of the offending bus as Ex.P27, postmortem report of Rashmi Garg as Ex.P28, attested copy of PAN card of Rashmi Garg as Ex.P29. As against that respondent No.4 – Kashmir Singh had appeared as RW1. Though in his affidavit Ex.RW1/A, he repeated on oath his case as given in the written statement. He also proved on record copy of his driving licence as Ex.R1 and copy of application as Ex.R2. In his cross-examination, he admitted that he was facing trial in a criminal case feigning ignorance whether any criminal case was registered against the driver of the Scorpio vehicle. He conceded that the car bearing HR07U-

4225 (car in which the deceased were travelling) was coming from Karnal side on its correct side and that his bus had gone towards other side i.e. Kurukshetra side.

22. The Tribunal by properly analysing the evidence in light of the settled judicial position, has come to the conclusion that the accident in question had taken place due to rash and negligent driving of the offending bus by Kashmir Singh – respondent No.4. I do not see any reason to differ with the Tribunal on that point. For assessing the rashness and negligence, the Court is required to consider all the facts and circumstances of the case and evidence brought on file by the parties. Such inference is not to be arrived at on the basis of conjectures and surmises, therefore learned counsel pointing out to the site plan of the place of incident in the summoned record and then saying that the accident had taken place due to fault of the Scorpio driver does not make much sense. There is nothing on record to show that the Scorpio driver was under the influence of liquor. In ordinary course if Scorpio driver had caused the accident, he would have been hauled up by the police for doing that. There is nothing on record to suggest that the Scorpio vehicle driver is so influential that he had made the local police screen him from punishment by attributing rash and negligent driver to the bus driver i.e. respondent No.4 – Kashmir Singh. Therefore, the argument so advanced by learned counsel for the insurance company is found to be without any merit and is rejected accordingly.

23. Learned counsel for the insurance company has argued that

claimants, who are parents-in-law of the deceased Rashmi Garg could not get compensation on account of her death in the motor vehicular accident.

24. Whereas learned counsel for the claimants had refuted the arguments stating that the deceased was residing with the claimants and serving them providing them various services, as such they have suffered loss on account of her death and furthermore, the legal heirs of the deceased instead of opposing the claim of the claimants had supported the same stating that they have no objection, if the compensation is awarded to the claimants exclusively.

25. After hearing the rival contentions, I find that this argument raised by learned counsel for the insurance company is not convincing. The claimants are definitely entitled to get compensation on account of death of their daughter-in-law in a motor vehicular accident. The Tribunal has dealt with this aspect in a proper and appropriate manner and rightly found the claimants entitled to get compensation.

26. However, his other contentions discussed hereunder appear to be carrying weight.

27. Learned counsel for the Appellant – Insurance Company has pointed out that the Tribunal fell in error in adding 50% of the income of deceased towards their future prospects when considering their ages, it could not have been done because in terms of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, by the Apex Court maximum of 40% of the monthly income could be added towards future prospects, considering that both of

them were below 40 years of age.

28. I find merit in this contention. In case of deceased Rashmi Garg, the Tribunal by closely scrutinizing the evidence and considering the settled legal position had taken the income of deceased Rashmi Garg, aged 35 years to be Rs.21,487/- per month in light of the income tax returns filed by her before her death. Then a fine distinction has been made that out of this income 2/3rd must be held to be attributable to the labour input and 1/3rd towards capital input. Several judgments have been cited in that regard. The assertion of the claimants that Rashmi Garg was earning Rs.30,000/- per month by carrying on tuition work was rightly rejected due to lack of oral or documentary evidence in that regard. The Tribunal having assessed the income of the deceased Rashmi Garg from her contribution to the business as Rs.14,325/- per month had wrongly made addition of 50% towards future prospects instead of 40% as per settled judicial position in light of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***. Therefore by undoing that wrong, the monthly income of the deceased is worked out to Rs.20,055(14325+5730).

29. In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the number of dependent family members are 2 to 3, deduction towards self-expenses is to be taken as 1/3rd . Doing that the dependency of claimants comes out to Rs.13,370/-(20055-6685) per month, annual dependency comes out to Rs.13,370 x 12 = Rs.1,60,440/-.

30. The Tribunal has used multiplier of 16, which keeping in view the age of the deceased Rashmi Garg has been properly used. Applying that the compensation payable comes out to Rs. 1,60,440 x 16 = 25,67,040/-.

31. Under the conventional heads, the Tribunal has awarded Rs.25,000/- towards transportation of the dead body, funeral and last rites of the deceased Rashmi Garg. The Tribunal has further awarded a sum of Rs.1,00,000/- to the claimants towards loss of estate and further awarded an amount of Rs.50,000/- each to the claimants towards loss of love and affection. However, the legal position in that regard has been clarified in subsequent judgment by the Apex Court i.e. ***Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333***, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***, which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded. It has been clarified that the amount should be enhanced on percentage basis in every three years. Doing that the compensation comes out to be Rs.26,88,040(25,67,040+44000+44000+16500+16500). The Tribunal has wrongly awarded compensation of Rs.29,75,400/-. The same is reduced to Rs.26,88,040/-. The difference comes out to Rs.2,87,360/-.

32. Deceased Vikas Garg has been found to be 38 years of age at the time of his death. The Tribunal in light of the income tax return filed by him before his death had taken his income to be 28,857/- per month from the business apportioning, the same as Rs.19,238/- towards labour input and Rs.9619 towards capital input. This has been done properly by the Tribunal. While fixing the income uncertainities and ups and down in the course of business on account of various factors have been taken into consideration. The assertions of the claimants that he was earning Rs.30,000/- per month by carrying on lab job was rejected due to lack of evidence brought on file by the claimants. The income of deceased Vikas Garg was taken as Rs.19,328/-.

33. The Tribunal again fell in error in adding 50% of this amount towards future prospects when in terms of the settled law referred above considering the age of the deceased Vikas Garg, it could be 40% only. Doing that the monthly income of the deceased comes out to Rs.27,059(19,328+7731).

34. After deduction of 1/3rd towards self-expenses in terms of the ratio of authority ***<u>Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr(supra),</u>*** the dependency of claimants comes out to Rs.18040/-(27,059-9019) per month, annual dependency comes out to Rs.18040 x 12 = Rs.2,16,480/-.

35. The Tribunal has used multiplier of 15, which keeping in view the age of the deceased Vikas Garg has been properly used. Doing that the compensation payable comes out to Rs. 2,16,480 x 15 =

32,47,200/-.

36. Under the conventional heads, the Tribunal has awarded Rs.25,000/- towards transportation of the dead body, funeral and last rites of the deceased Vikas Garg. The Tribunal has further awarded a sum of Rs.1,00,000/- to the claimants towards loss of estate and further awarded an amount of Rs.50,000/- each to the claimants towards loss of love and affection.

37. However, in view of judgement by the Apex Court i.e. Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors.(supra), an amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)*** , which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded. It has been clarified that the amount should be enhanced on percentage basis in every three years. Doing that the compensation comes out to be Rs.33,68,200(32,47,200+44000+44000+16500+16500). The Tribunal has wrongly awarded compensation of Rs.36,98,640/-. The same is reduced to Rs.33,68,200 /-. The difference comes out to Rs.3,30,440/-.

38. Other terms and conditions regarding apportionment in the original awards shall remain the same.

39. With such modifications, FAO-1905-2016 and FAO-1907-

2016 filed on behalf of Insurance Company are allowed partly with costs.

40. If the amount of compensation has already been paid by the Insurance company, it shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Motor Accidents Claims Tribunal, Kurukshetra.

41. In view of the detailed discussion above, there is absolutely no reason to enhance the amount of compensation rather it has been reduced in both the cases.

42. Consequently, FAO-2054-2016 and FAO-2145-2016 filed on behalf of the appellants/claimants stand dismissed with costs.

Since the FAO-1905-2016 and FAO-1907-2016 filed on behalf of Insurance Company are partly allowed and FAO-2054-2016 and FAO-2145-2016 filed on behalf of the appellants/claimants stand dismissed, miscellaneous applications, if any, stand disposed of accordingly.

24.11.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No