

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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1. FAO-6588-2010(O&M)
Date of Order: 25.03.2022

UNITED INDIA INSURANCE COMP. LTD

..Appellant

Versus

KANTA DEVI AND ORS

..Respondents

2. FAO-39-2011(O&M)

KANTA DEVI AND ORS

..Appellants

Versus

DARSHAN SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V. Ramswaroop, Advocate
for the appellant.

Mr. Amit Jain, Sr. Advocate
with Mr. Dhruv Mittal, Advocate
for respondent No.1 to 4.

ANIL KSHETARPAL, J(Oral)

These two cross-appeals have come up for disposal.

The FAO-6588-2010, has been filed by the Insurance Company,
whereas, FAO-39-2011, has been filed by the claimants.

The correctness of the findings of the trial with respect to the
manner in which the accident took place and the findings of the Tribunal
with regard to the rash and negligent driving of driver Darshan Singh are not
questioned. The accident took place on 12.08.2008, at about 08:00 p.m.,
when a road roller which was parked on the road without any indicator or
parking lights contributed in the happening of the accident. The Tribunal

after appreciating the evidence assessed the amount of compensation to the tune of Rs.27,70,000/-. The deceased late Sh. Rishi Pal died on 12.08.2008, while leaving behind aged mother, widow and two minor children.

The learned counsel representing the Insurance Company while drawing the attention of the Court to the Insurance Policy Ex.R-1 submits that ONE VIBRATORY ROLLER (SOIL COMPACTOR) MODER EC5256 MAKE ESCORT was insured but the liability of the Insurance Company was limited to Rs.7,90,500/-. He submits that the Insurance Company cannot be made liable to pay the amount over and above the same. In other words, he claims that the liability of the Insurance Company is limited.

Per contra, the learned counsel representing the claimants has drawn the attention of the Court to the endorsements to the insurance policy at page 201 of the record which reads as under:-

“THIRD PARTY LIABILITY

In consideration of the payment of the additional premium of Rs.1,358.00 it is hereby agreed and declared that notwithstanding anything to the contrary stated in this policy, the Company will indemnify the insured:

- a) against legal liability for the accidental loss or damage caused to the property of other persons.*
- b) against legal liability (liability under contract excepted) for fatal or non-fatal injury to any persons other than the insured or his own employees or employee of the owner of the works/site/premises/location or employees of the other firms/connected with any other work site/premises/location or members of the family of the insured or any of the aforesaid.”*

He contends that in view of the aforesaid endorsements, the Insurance Company on receipt of the additional premium of Rs.1,358/-, had agreed to indemnify the insured against legal liability for the accidental loss or damage caused to the person or property. He submits that clause (b) of the

endorsement specifically includes legal liability for fatal or non-fatal injury to any person other than the insured. He submits that the Tribunal has correctly interpreted the provision of the aforesaid policy.

In FAO-39-2011, the learned Senior counsel appearing for the claimants submit that as per the Income Tax Return of the deceased for the assessment year 2008-2009, which has been produced in additional evidence, the yearly income was Rs.3,43,593/-. This return was filed on 30.08.2008. He submits that the Court erred in relying upon the Income Tax Return for the assessment year 2007-2008, which was filed on 19.10.2007. It may be noted here that an application for permission to lead additional evidence was filed in this Court on 03.08.2011, and notice of the application was issued to the Insurance Company on 20.11.2012, but no reply to the application has been filed. It is evident that there is acknowledgment of filing Income Tax Return for the assessment year 2008-2009, dated 30.07.2008. The gross total income of the deceased has been recorded at Rs.3,43,593/-.

It has further been brought to the notice of the Court that the Tribunal did not grant increase in the income on account of the future prospects as well as appropriate amount for loss of consortium was not granted by the Tribunal.

Per contra, the learned counsel representing the Insurance Company submits that the additional evidence should not be allowed.

A copy of the acknowledgment is a document which has some authenticity particularly when its receipt is acknowledged by the Income Tax Department. The return has been filed before the date of death of the

deceased. Hence, chances of checking of the income are low.

Hence, the application for permission to lead additional evidence is allowed and the Income Tax Return is taken on record.

Now, this bench proceeds to analyse the argument of the learned counsel representing the Insurance Company. From the careful reading of the endorsements, it is evident that the Insurance Company on payment of the additional premium had agreed to reimburse the insured against legal liability over fatal or non-fatal injury to any person other than the insured or his employees. The deceased was a third party because he was never employed by the company. It is not even the case of the Insurance Company that late Sh. Rishi Pal falls within the definition of insured or its employee.

In view thereof, the Insurance Company has insured the construction company on receipt of the additional premium, hence it would not be appropriate to hold that the liability of the Insurance Company is limited qua third party. Hence, there is no substance in the appeal filed by the Insurance Company.

Now, the focus shifts to the amount of compensation granted to the appellants/(claimants). From the Income Tax Return, it is evident that as per the Income Tax Return for the assessment year 2008-2009, the deceased had declared his annual income for the previous year to the tune of Rs.3,43,593/-. He has left behind him four dependants. In other words, there were five members in the family, in total. Hence, the deduction of 1/4th is considered appropriate. Consequently, the yearly income comes to Rs.2,57,695/-. The deceased was 33 years old.

The income is required to be increased by 40% on account of future prospects as per the judgment passed by the Five Judge Bench in *National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC Online SC 1270.*

The Tribunal has correctly applied the multiplier of 16 to assess the compensation.

Qua the loss of consortium, filial, spousal and parental, each claimant is entitled to Rs.40,000/- in view of the judgment passed by the Hon'ble Supreme Court in *Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333* which has been reiterated by another Division Bench in *New India Assurance Co. Ltd. vs. Somwati and others, Civil Appeal No.3093 No.2020, decided on 07.09.2020*, and by a three Judge Bench in *United India Insurance Company Ltd. Vs. Satinder Kaur @ Satwinder Kaur and others, (2020) SCC Online 410*, in which it has been approved that each parent is entitled to Rs.40,000/- as consortium.

Apart from that, the claimants shall be entitled to Rs.30,000/- towards loss of estate and last rites i.e funeral expenses.

Hence, the amount of compensation is re-calculated as under:-

Heads	Amount awarded by the Motor Accidents Claims Tribunal (MACT).	Amount awarded by the High Court
Annual income	Rs.4,60,000/-	Rs.3,43,593/-
Future prospects	-NIL-	40% Rs.3,43,593 + Rs.1,37,437 = Rs.4,81,030/-
Dependency	1/4 th Rs.4,60,000 – Rs.1,50,000 = Rs.3,45,000/-	1/4 th Rs.4,81,030 – Rs.1,20,257 = Rs.3,60,773/-
Annual income	Rs.3,45,000 X 16 =	Rs.3,60,773 X 16 =

X Multiplier	Rs.55,20,000/-	Rs.57,72,368/-
Loss of estate	-NIL-	Rs.15,000/-
Funeral expenses	Rs.10,000/-	Rs.15,000/-
Parental/Spousal/Filial consortium	Rs.10,000/-	Rs.40,000 X 4 = Rs.1,60,000/-
Total amount awarded (Award)	Rs.27,70,000/- (Reduced by half due to income by capital gains)	Rs.59,62,368/-

Consequently, the appeal filed by the Insurance Company is dismissed and the appeal filed by the claimants is allowed.

The enhanced compensation shall be payable along with the interest at the rate of 7.5% from the date of filing of the claim petition till its realization.

With all these observations, the both the appeals are disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

March 25th, 2022

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned

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Yes/No

Whether reportable

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Yes/No