

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

283

(1)

FAO-4001-2018 (O&M)
Date of decision: 10.11.2022

National Insurance Company Limited

.....Appellant

Versus

Gian Kaur and others

.....Respondents

(2)

FAO-3914-2019 (O&M)

Gian Kaur and others

.....Appellants

Versus

Rajinder Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Amrinder Singh Sidhu, Advocate
for the appellant in FAO-4001-2018 and
for respondent No.2 in FAO-3914-2019.

Mr. Munish Puri, Advocate
for respondents No.1 to 3 in FAO-4001-2018 and
for the appellants in FAO-3914-2019.

Mr. Kushagra Mahajan, Advocate
for respondent No.4 in FAO-4001-2018 and
for respondent No.1 in FAO-3914-2019.

MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of the above referred two appeals as they arise out of the same impugned award dated 16.03.2018 passed by learned Motor Accidents Claims Tribunal, Amritsar (hereinafter referred to as 'the Tribunal').

FAO-4001-2018 has been preferred by the insurance company whereas FAO-3914-2019 has been filed by the claimants for enhancement of the compensation awarded to them.

The pleaded case of the claimants may be noticed as thus.

The deceased Sukhjinder Singh, aged 28 years, along with Mandeep

Singh was travelling in vehicle bearing registration No.PB10-ES-8712. When they reached near Morh Baba Bakala, they saw a vehicle of one of their acquaintances whose tyre had got punctured, parked on the other side of the road. The driver of that vehicle, Tinku, stopped the deceased and Mandeep Singh for help. After helping Tinku change the tyre of his car, the deceased and Mandeep Singh returned to their vehicle when car bearing registration No.PB02-7087 (hereinafter referred to as 'the offending vehicle') came in a rash and negligent manner being driven by its driver Rajinder Singh. The offending vehicle hit the deceased with such force that he was dragged to a considerable distance. Both Mandeep Singh and one Jodhvir Singh followed the offending vehicle. After travelling for some distance, they saw the offending vehicle parked on the left side of the road in a damaged condition with its bumper broken. The jacket of the deceased was lying in a torn condition next to the offending vehicle and a little distance ahead, dead body of the deceased was found lying. The deceased on account of the rash and negligent driving of the driver of the offending vehicle had sustained multiple injuries on various parts of the body including his head. Mandeep Singh immediately informed Balbir Singh and father of the deceased about the accident. However, when he returned back to the place of accident where the dead body of the deceased was lying, the offending vehicle was found missing. FIR No.09/2016 under Sections 304-A and 279 IPC was thereafter registered at Police Station Beas.

On the basis of material and other evidence led, the

Tribunal awarded the following compensation to the claimants:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.7,600/-
2.	Future Prospects (40%)	Rs.3,040/-
3.	Income after adding future prospects	Rs.10,640/-
4.	Deduction towards personal and living expenses (1/3 rd)	Rs.3,547/-
5.	Dependency	Rs.7,093/-
6.	Compensation after applying multiplier of '17'	Rs.7,093 x 17 x 12 = Rs.14,46,972/-
7.	Funeral expenses	Rs.15,000/-
8.	Loss of Estate	Rs.15,000/-
9.	Loss of consortium	Rs.40,000/-
10.	Costs	Rs.25,000/-
	Total compensation	Rs.15,41,972/-

Learned counsel appearing for the insurance company has challenged the impugned award mainly on the ground that involvement of the offending vehicle in the accident in question was highly suspect and the offending vehicle had been falsely planted to extract compensation from the insurance company. It has been submitted that the Tribunal gravely erred in discarding the testimony of two material witnesses RW-2 Sourabh Arora, Surveyor and Loss Assessor and RW-3 Satbir Singh who had deposed on similar lines. Learned counsel submits that RW-2 Sourabh Arora, after inspecting the offending vehicle gave a definite opinion that since there was no damage to its bonnet, the front wind screen of the vehicle was intact coupled with the fact that ground clearance of the offending vehicle was 170 mm and the bumper of the car was 0.56 foot above the ground level, it could not have been possible for the deceased to have got struck with the

offending vehicle and dragged for almost a kilometre. Learned counsel has argued that in fact the accident in question had occurred on account of the deceased himself hitting the footpath, alongside the fly over. Learned counsel has further invited the attention of this Court to the post mortem report of the deceased and submitted that had it been a case wherein after being hit by the offending vehicle the deceased had been dragged for almost a kilometre, as alleged, then at least some abrasions would have stood reflected on his body, however, there was no mention of any such abrasions on the person of the deceased which had also been admitted by RW-5 Dr. Naveen Khunger, who conducted the post mortem on the deceased. Learned counsel has still further argued that after the registration of the FIR in question, an enquiry was conducted by RW-7 Sohan Singh, DSP, Patti, District Tarn Taran and RW-8 ASI Sawinder Singh, who also found the driver-cum-owner of the offending vehicle innocent. He has submitted that RW-7 Sohan Singh, DSP, Patti, District Tarn Taran in his report, had concluded that the accident in question had occurred on account of the involvement of some heavy vehicle. It has been urged by learned counsel that both RW-7 Sohan Singh, DSP, Patti, District Tarn Taran and RW-8 ASI Sawinder Singh had recommended cancellation of the FIR which had been got registered subsequent to the accident in question. Learned counsel submits that the Tribunal thus gravely erred in relying upon the enquiry report of SP (HQ), Amritsar, Rural, who had prima facie found the involvement of Rajinder Singh, driver and owner of the offending vehicle in the accident in question.

Learned counsel appearing for the claimants has, however, vehemently opposed the submissions made by the counsel for the insurance company. Learned counsel appearing for the claimants has submitted that the accident in question occurred in the presence of Mandeep Singh, who was accompanying the deceased at the time of accident. It was drizzling at that time and when the deceased was hit and dragged by the offending vehicle, both Mandeep Singh and Jodhvir Singh followed the offending vehicle in another car. The offending car was found parked not only in a damaged condition with the dead body of the deceased lying in its close vicinity but also the torn clothes of the deceased were found lying next to the offending vehicle. It has been submitted that no doubt RW-7 Sohan Singh, DSP and RW-8 ASI Swinder Singh found the driver and owner of the offending vehicle to be innocent, however, the report was rightly over ruled by SP (HQ), Amritsar, Rural. He has further submitted that it is also a matter of record and it stood duly proved that the offending vehicle bearing registration No.PB02-7087 (Swift Dezire) was sent to Jaycee Motors soon after the accident in question for repairs. He has further submitted that had it been a case wherein the offending vehicle had been damaged on account of hitting the fly over, the right side of that vehicle would have been intact. He has submitted that the photographs (Ex.RW-2/2 to RW-2/24) of the offending vehicle clearly reveal that the bumper as well as the right side of the offending vehicle had been badly damaged. Refuting the submissions made by the counsel for the insurance company that no abrasions were found on the body of the deceased and

hence the offending vehicle was not involved in the accident in question, Learned counsel has invited the attention of this Court to the post mortem report of the deceased. It has been submitted that multiple fractures of ribs, multiple laceration of both the lungs with blood in pleural cavity, lacerated wound, incised wound and fracture of pelvis with viscera coming out were noticed in the post mortem report which lent full corroboration to the deceased having been indeed hit with such force and dragged for a considerable distance by the offending vehicle. Learned counsel has further urged that the compensation awarded to the claimants required to be reassessed and modified as it was not in consonance with the ratio of law laid down by the Hon'ble Supreme Court in *National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270* and *Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333*. Learned counsel submits that the claimants are the mother, wife and minor daughter of the deceased and are thus entitled to compensation for loss of filial, spousal and parental consortium respectively, which has erroneously not been granted by the Tribunal.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court does not find any force in the submissions made by the learned counsel for the insurance company qua the false involvement of the offending vehicle. The Tribunal has rightly observed that had it been a case wherein the offending vehicle had been damaged on account of hitting the fly over from its left side, there

would have been no visible damage on the right side, however, the photographs which have been exhibited as Ex.RW-2/2 to Ex.RW-2/24 clearly reveal that the offending vehicle was damaged from the right side and even its front bumper had been damaged. The torn clothes of the deceased which were found next to the offending vehicle and still further, the dead body of the deceased which was also found in the same vicinity, leave no manner of doubt about the involvement of the offending vehicle in the accident in question.

This Court concurs with the submissions made by learned counsel for the claimants that claimants No.1 and 3, who are mother and minor daughter of the deceased respectively, have not been adequately compensated under the conventional heads for loss of filial, and parental consortium respectively. The Hon'ble Supreme Court in ***Pranay Sethi's case*** (*supra*) has held that the amount for loss of estate, funeral expenses and loss of consortium would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads as per the ratio laid down in ***Pranay Sethi's case*** (*supra*). Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants, who are mother, widow and minor daughter of the deceased, are entitled to Rs.44,000/- each, for loss of filial, spousal and parental consortium respectively.

The compensation thus payable to the claimants would be as follows:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.7,600/-
2.	Annual Income	Rs.7,600/- x 12 = Rs.91,200/-
3.	Future prospects (40%)	Rs.91,200/- x 40% = Rs.36,480/-
4.	Total annual income	Rs.91,200/- + Rs.36,480/- = Rs.1,27,680/-
5.	Deductions towards personal expenses (1/3 rd)	Rs.1,27,680/- (/) 3 = Rs.42,560/-
6.	Loss of annual future earnings	Rs.1,27,680/- (-) Rs.42,560/- = Rs.85,120/-
7.	Multiplier	17
8.	Loss of future earnings	Rs.85,120/- x 17 = Rs.14,47,040/-
9.	Loss of consortium	Rs.44,000/- x 3 = Rs.1,32,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.16,12,040/-

The claimants are, therefore, held entitled to a total sum of Rs.16,12,040/- as compensation along with interest @ 8% per annum, except for the delay period, from the date of filing of claim petition till its actual realization and would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

Accordingly, the appeal filed by the insurance company i.e. FAO-4001-2018 is dismissed and the appeal filed by the claimants i.e. FAO-3914-2019 stands disposed of in the above terms.

10.11.2022

Vinay

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No