248 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) FAO-5876-2018 (O&M)
Date of decision: 30.05.2022

The New India Assurance Company Ltd. ....Appellant

versus

Jasbir Singh and others ....Respondents

2) FAO-5877-2018 (O&M)

The New India Assurance Company Ltd. ....Appellant

versus

Yaad Ram and others ....Respondents

3) FAO-5878-2018 (O&M)

The New India Assurance Company Ltd. ....Appellant

versus

Seema Rani and others ....Respondents

4) FAO-15945-2018 (O&M)

Jasbir Singh and another ....Appellants

versus

Gurlal and another ....Respondents

5) FAO-15939-2018 (O&M)

Seema Rani and others ....Appellants

versus

Gurlal and another ....Respondents

6) FAO-15948-2018 (O&M)

Yaad Ram and another ....Appellants

versus

Gurlal and another ....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Neeraj Khanna, Advocate
for the appellant-Insurance Company
(in FAO-5876-2018; FAO-5877-2018 &
FAO-5878-2018).

Mr. J.S. Saini, Advocate
for the appellants (in FAO-15945-2018;
FAO-15939-2018 & FAO-15948-2018).

FATEH DEEP SINGH, J.

The above detailed appeals (bearing Nos. FAO-15945-2018 titled as *'Jasbir Singh and another versus Gurlal and another',* FAO-15939-2018 *'Seema Rani and others versus Gurlal and another'* and FAO-15948-2018 titled as *'Yaad*

Ram and another versus Gurlal and another') are by the claimants seeking enhancement of the compensation, whereas, appeals bearing Nos. FAO-5876-2018 titled as '*The New India Assurance Company Ltd. Versus Jasbir Singh and others*', FAO-5877-2018 titled as *'The New India Assurance Company Ltd. Versus Yaad Ram and others*' and FAO-5878-2018 titled as *'The New India Assurance Company Ltd. versus Seema Rani and others',* are by the Insurance Company, the insurer of the vehicle involved and in all these matters, the challenge is to a common award of the learned Motor Accidents Claims Tribunal, Kurukshetra dated 16.05.2018. Keeping in view the matters being inter-connected and could be disposed off together to prevent repetition and expression of divergent opinions, are being disposed off through this common judgment.

The brief facts that needs to be recapitulated are that on 17.12.2015, a Canter vehicle bearing No. PB-11AM-9466 (in short 'the offending vehicle') came being driven rashly and negligently at a high speed by Gurlal-respondent had hit tractor-trolley and dragged it and thus, in the process, crushing another vehicle bearing No.HR-41F-2564 resulting in this multiple collisions, death of three persons, namely, Dev Singh @ Baldev Singh aged around 60 years who was running a dairy farm, Narender, an unmarried person carrying on a private avocation, aged around 22 years and Krishan Kumar @ Krishan Pal aged around 30 years shopkeeper running a dairy farm. FIR No.177 dated 18.12.2015 under Sections 279/304-A of the Indian Penal Code was registered with Police Station Ismailabad, Haryana. The claimants happened to be the dependents of the deceased and having been robbed of their dependency had sought compensation from the driver-cum-owner of the offending vehicle as well as insurer of the same.

The unison stand in all these claim petitions by the respondents is of total denial claiming that a false case has been registered and the story of the claimants was totally false and untenable. The insurer besides usual preliminary objections has taken the plea that the driver of the offending vehicle was not having legal, valid and effective driving license and the vehicle was being driven in contravention of the provisions of law terming that the deceased were triple riding the same motorcycle and, thus, the insurer was not liable to pay compensation.

The Tribunal has framed the following issues:-

1. Whether the accident in question had taken place due to rash and negligent driving of the vehicle bearing registration No.PB-11AM-9466 by the respondent No.1? OPP

2. Whether deceased Dev Singh had died due to injuries suffered by him in the accident, if so to what amount of compensatio claimants in petition No.79 of 2016 are entitled to? OPP
3. Whether deceased Narender had died due to injuries suffered by him in the accident, if so to what amount of compensation claimant in petition No.117 of 2016 are entitled to? OPP
4. Whether deceased Krishan Kumar @ Krishan Pal had died due to injuries suffered by him in the accident, if so to what amount of compensation claimants in petition No.118 of 2016 are entitled to?OPP
5. Whether there was violation of the terms and conditions of the insurance policy and respondent No.2 is not liable to pay any compensation?OPP
6. Relief.

The claimants examined PW-1-Seema Rani, PW-2-Jasbir Singh, PW-3-Yaad Ram, PW-4-Karam Chand and proved on record copies of documents as Ex.P-1 to Ex.P-8.

On the other hand, defendants tendered documents as Ex.R-1 to Ex.R-28.

The learned counsel for the Insurance Company has raised sole grounds that since, the deceased were triple riding on a single two-wheeler, therefore, the claimants were not entitled to compensation being violation of the provisions of the Motor Vehicles Act, 1988, the same is sought to be refuted with much force and vehemence on behalf of the respondents.

Appreciating the submissions of the two sides, the factum of accident having taken place is well established from the documentary evidence and the eye-witness-PW-4-Karam Chand. No evidence to rebut the same is led by the respondents. Together with the factum of the owner-cum-driver of the offending vehicle having been charge sheeted through Ex.P-2 by the Criminal Court, the copies of the post mortem reports of Narender-Ex.P-3, Krishan Kumar-Ex.P-4, Baldev Singh-Ex.P-5 further established irrefutably the factum of the accident resulting in these three deaths. It is there in the evidence of the eyewitness that the offending vehicle was being driven rashly and negligently at a high speed and had come on the wrong side of the road and hit the tractor trolley resulting in further crushing a motorcyclist. There is no tangible evidence led on the record that all the three were triple riding the ill fatted motorcycle. Since, this plea has been taken by the Insurance Company, the burden to prove the same as per Sections 101 to 106 of the Indian Evidence Act lies upon them. No doubt, three deaths have occurred in this accident does not *ipso facto* establish that all the three were riding the same very motorcycle. A mere misconstruing of the evidence as is sought to be made by the counsel for the Insurance Company does not suffices the purpose in view of the overwhelming evidence on the other side. Thus, it is clearly held that the accident in question took place due to rash and negligent driving of the offending canter by its driver-cum-owner-Gurlal and the fact that all the three Dev Singh @ Baldev Singh, Narender and Krishan Kumar @ Krishan Pal died in this accident due to the driving by the canter vehicle in a rash and negligent manner.

The remnant arguments that have sought to be raised by the two sides is over the very quantum of compensation, admittedly and so is established from the post mortem reports that the deceased-Dev Singh @ Baldev Singh was aged around 60 years, Narender aged around 22 years and Krishan Kumar @ Krishan Pal aged around 30 years. Except Narender, both the other deceased were married with wife, children and family to support. Though, there is no documentary proof of the earnings of the deceased, however, it is not displaced by any of the sides during the trial of the claim petitions that Dev Singh @ Baldev Singh was not running a small dairy, Narender, carrying on a private avocation or Krishan Kumar @ Krishan Pal running a sweet shop and, therefore, as is matter of common knowledge in semi rural areas people hardly keep documentation of their avocation, especially, in the remote villages of State of Haryana. Keeping in view the very object of the Act which is for the betterment of the claimants and, therefore, needs to be given a wider interpretation for the betterment of the dependents for which the Act has been carved out. It is fairly established by the testimonies of the witnesses PW-1, PW-2 and PW-3 that the deceased were carrying on the avocations so detailed above.

The deceased-Dev Singh @ Baldev Singh was aged around 60 years and a multiplier of 5 has been applied when it ought to have been 9 as per the '***Sarla Verma and others versus DTC and another'*** **(2009) 6 SCC 121** judgment and similarly, 10% future prospects needs to be awarded and after deducting 1/3 of the earnings, which is on the lower side keeping in view the number of dependents of the deceased and to the mind of this Court, at the time when the accident took place, Rs.11,220/- and even the deduction of 1/3rd certainly is on the higher side. Keeping in view that at the time of the accident by all rational means, the earnings of the deceased can be taken easily to be Rs.15,000/- (though, claimed to be Rs.25,000/- by the claimants), therefore, total compensation comes to Rs.1,80,000/- (15,000 x 12). Keeping in view the age of the deceased, multiplier of 9 is the most appropriate under the law besides and besides, awarding 10% future prospects, a total compensation in respect of death of Comes to Rs.17,82,000/-.

Keeping in view that the family has also spent money on the last rites and ceremonies and funeral expenses, the widow has lost her life companion, minor, a father, besides loss of love, care and protection of the family by this tragic death and under all these heads, a sum of Rs.1,00,000/- is assessed and, therefore, total award amount comes to Rs.18,82,000/- (17,82,000 + 1,00,000).

Besides this, the claimants are entitled to interest at the rate of 9% per annum from the date of filing of the claim petition till the disbursement of the total amount of award.

The deceased-Narender is admittedly aged around 22 years and was carrying on a private job. No doubt, the deceased was a bachelor and as per the stand of the claimants, he was the sole bread earner of the family, upon which all the claimants were dependent and that he was working with a private undertaking must in all likelihood at the time of the accident must be earning Rs.20,000/- per month . Keeping in view his proven avocation, it would not be inappropriate to assess his earnings around

Rs.20,000/- per month, upon which all the claimants were dependent, therefore, this Court is assessing the annual income of Rs.2,40,000/- (20,000 x 12).

Keeping in view the age of the deceased and the nature of his avocation future prospects is assessed as 40% and the same comes to Rs.96,000/- and, therefore, the income of the deceased for the purpose of assessing the compensation comes to Rs.3,36,000/- (2,40,000 + 96,000).

Further, considering that the deceased would be spending 1/2nd of his earnings towards the living and personal expenses of the deceased and dependency of the claimants, the annual income dependency comes to Rs.1,68,000/-.

Keeping in view the age of the deceased, the learned Tribunal had rightly applied the multiplier of 18 which is appropriate and the relative ages of the claimants and, therefore, the amount of compensation comes to Rs.30,24,000/- (1,68,000 x 18). Besides this, the family must have spent money on the last rites and ceremonies, besides being robbed of their future source of dependency and source of security, love and affection and under all these heads, a sum of Rs.1,00,000/- is assessed and, therefore, total award amount comes to Rs.31,24,000/- (30,24,000 +

1,00,000).

In a case of deceased-Krishan Kumar @ Krishan Pal, he is proven to be aged around 30 years, a married man with a wife and daughters and mother to support and was running a sweet shop. Though, no documentary evidence has come about factum of running the shop is not at all displaced. Though, no documentary evidence has come about keeping in view that the deceased was maintaining such a large family and upon his death, the family has lost sole bread earner and which is a rational amount to maintain such a number of family members and, therefore, this Court is assessing the annual income of Rs.2,40,000/- (20,000 x 12).

Further, considering that the deceased would be spending $1/4^{th}$ of his earnings towards the living and personal expenses of the deceased and dependency of the claimants, the annual income dependency comes to Rs.1,80,000/-.

Keeping in view the age of the deceased and the nature of his avocation future prospects is assessed as 40% which has never been considered by the Court below and the same comes to Rs.72,000/- and, therefore, the income of the deceased for the purpose of assessing the compensation comes to Rs.2,52,000/-

(1,80,000 + 72,000).

Keeping in view the age of the deceased, the learned Tribunal had rightly applied the multiplier of 17 which is appropriate and the relative ages of the claimants and, therefore, the amount of compensation comes to Rs.42,84,000/- (2,52,000 x 17). Besides this, the family must have spent money on the last rites and ceremonies, besides being denied of their future source of dependency and source of security, love and affection and under all these heads, a sum of Rs.1,00,000/- is assessed and, therefore, total award amount comes to Rs.43,84,000/- (42,84,000 + 1,00,000).

Since, the requirement of wife and two daughters are on the higher side, they are entitled to 30% each amount of compensation and claimant No.4-mother, shall be entitled to 10% of the amount of compensation keeping in view their age and requirement in life.

The claimants are also entitled to get interest @ 9% per annum on the said amount from the date of the award till the realization of the said amount to which all the claimants detailed above, are entitled to equal shares that is enumerated above except in case of Krishan Kumar @ Krishan Pal. All the respondents are jointly and severally held liable to pay the amount of compensation. Amount awarded by the Tribunal shall be deducted from the total compensation.

In view of the above, all the three appeals filed by the Insurance Company stand dismissed and other three filed by the claimants, are hereby allowed with the aforesaid modification.

(FATEH DEEP SINGH)
JUDGE

30.05.2022
Neha

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