

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-1-

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

(1) FAO-1616-1994(O&M)

The New India Assurance Company Ltd. and others
Versus
K.K.A.Toor and others
...Appellants
...Respondents

(2) FAO-1617-1994(O&M)

The New India Assurance Company Ltd. and others
Versus
Harsharan Kaur
...Appellants
...Respondent

(3) FAO-1618-1994(O&M)

The New India Assurance Company Ltd. and others
Versus
Prem Parkash Singh Toor and others
...Appellants
...Respondents

(4) FAO-1619-1994(O&M)

The New India Assurance Company Ltd. and others
Versus
Smt.Inderjit Kaur Virk
...Appellants
...Respondent

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-2-

(5) FAO-1620-1994(O&M)

The New India Assurance Company Ltd. and others

...Appellants

Versus

Smt.Inderjit Kaur Virk

...Respondent

Reserved on:-15.5.2023

Date of Pronouncement:-24.5.2023

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

Present: Mr.Vinod Gupta, Advocate
for the appellant - New India Assurance Company Ltd.
in all the appeals.

Mr.Lalit Garg, Advocate
for respondent No.6 in FAO-1616-1994 and
for respondent No.3 in FAO-1618-1994

H.S. MADAAN, J.

1. By this order, I shall dispose of five FAOs i.e. FAO-1616-1994(O&M), FAO-1617-1994(O&M), FAO-1618-1994(O&M), FAO-1619-1994(O&M) and FAO-1620-1994(O&M) filed on behalf of appellants – New India Assurance Company Ltd. and others, which have arisen out of the same award.

2. Briefly stated, facts of the case are that on 5.8.1990 one Tej Parkash Singh Toor along with Joginder Singh Virk and his family members, were travelling in Gypsy/Jeep bearing registration

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-3-

No.DAE/1345 (hereinafter referred to as the ill-fated jeep) going from Patiala to Delhi; the ill-fated jeep was being driven by Joginder Singh Virk at normal speed on its correct side of the road; Tej Parkash Singh Toor was sitting on the front seat; at about 11:30 p.m. when the ill-fated jeep reached near Sanjay Gandhi Eye Hospital, Siwah on G.T. Raod, then a truck bearing registration No.CHW/6997(hereinafter referred to as the offending truck) was going ahead of the ill-fated jeep being driven at a very high speed in a rash and negligent manner by respondent No.1 – Sukhdev Singh; that truck tried to overtake another truck, which was loaded with wheat-husk; the offending truck could not get the requisite space for overtaking; therefore, Sukhdev Singh, truck driver suddenly applied the brakes without giving any indication; resultantly the ill-fated jeep in question struck against the offending truck from behind and occupants of the ill-fated jeep sustained grievous injuries; Joginder Singh Virk, who was driving the ill-fated jeep and Tej Parkash Singh Toor had succumbed to the injuries at the spot, whereas remaining occupants, namely, K.K.A Toor – widow, Paul Jawand Singh Toor and Prem Parkash Singh Toor sons and Maya Lena Milap Kaur – daughter of Tej Parkash Singh Toor had sustained injuries.

3. The matter with regard to the accident was reported to the police and an FIR No.353 dated 6.8.1990 for the offences under Sections 279, 337 and 304-A IPC was registered against respondent No.1 Sukhdev Singh at Police Station Sadar, Panipat.

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-4-

4. Petitioner Smt.Harsharan Kaur, widow of late Sh. Tej Parkash Singh Toor had filed a claim petition i.e. MACT Case No.213 of 1992 (Old MACT Case 50/90), claiming compensation on account of death of her husband Tej Parkash Singh Toor in a motor vehicular accident.

5. Whereas KKA Toor, second wife of Tej Parkash Singh Toor and her children i.e. sons - Paul Jawand Singh Toor, Prem Parkash Singh Toor and daughter – Maya Lena Milap Kaur had filed MACT Case No.214 of 1992 (Old Case No.52/1990) for grant of compensation on account of death of Tej Parkash Singh Toor.

6. As per the case of the claimants, Tej Parkash Singh Toor was aged 59 years as pleaded in case No.213 of 1992, whereas he was aged 55 years as asserted in MACT Case No.52/1990. He was an Engineer employed as Professor in Northern College Hailebury Ontario, Canada; he was teaching the subject of Metallurgy relating to Mining and was getting \$5,000/- per month as salary, which was equivalent to Rs.75,000/- per month in Indian currency at that time. Whereas in terms of the pleadings in case No.213 of 1992, his such earning in Indian rupee was Rs.1,00,000/- per month. It was alleged that the deceased had landed property in India also and he used to earn Rs.15,000/- per month from the said property. The deceased was in the process of setting up a Agro Project In India and had entered negotiations with Punjab Agro Industries Corporation. The deceased was hale and hearty at the time of accident.

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-5-

7. With regard to second deceased, namely, Joginder Singh Virk, his widow – Inderjit Kaur, daughter – Gurparamjit Kaur, Master Aman Pal Singh Virk and Master Tirathinder Singh Virk had filed a claim petition bearing MACT Case No.218 of 1992 (Old Case No.70/1990), claiming compensation on account of death of Joginder Singh Virk in a motor vehicular accident. According to such petitioners/claimants, Joginder Singh Virk was aged about 45 years and posted as Commandant in CRPF, 29th Battalion, in that way he was in employment of Union of India and was getting salary of Rs.7,000/- per month.

8. Smt.Inderjit Kaur - widow of Joginder Singh Virk had filed a separate claim petition bearing MACT Case No.219 of 1992 (Old Case No.69/1990) for grant of compensation on account of suffering injuries in that very accident. According to her version, she was also travelling in the ill-fated jeep at the relevant time and due to the accident had sustained multiple grievous injuries on her person including fracture of left arm, fracture of 8 ribs on both sides and 8 stitches on right hand. She had got treatment from Government Hospital, Panipat as well as Gandhi Hospital, Tehsil Road, Panipat besides from Dr.N.D. Aggarwal of Patiala where she was operated upon and nail was placed in her bones. According to such claimant, she had incurred expenditure of Rs.40,000/- on her treatment.

9. Petitioner Prem Parkash Singh Toor had also filed a separate claim petition bearing MACT Case No.215 of 1992(Old Case No.51/1990) claiming compensation on account of injuries suffered by

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-6-

him in that very accident since he was travelling in the ill-fated jeep at the relevant time. According to such petitioner, he had suffered multiple injuries on his body and was admitted in Civil Hospital, Panipat from where he was referred to Gandhi Hospital, Panipat and then to Rajindra Hospital, Patiala where he was operated upon. According to such claimant, he had spent about 10,000/- on his medical treatment.

10. Since all the five claim petitions had arisen out of the same accident, those were consolidated with main case i.e. MACT Case No.213 of 1992 (Old MACT Case No.50 of 1990) vide order dated 21.8.1991.

11. On being given notice in all the five claim petitions, respondents No.1 and 2 had filed joint written statements denying any liability to pay compensation contending that the truck driver was not at fault in happening of the accident; as a matter of fact the ill-fated jeep was being driven by Joginder Singh Virk at a very high speed in a rash and negligent manner; it was going from Patiala to Delhi Airport to catch flight at 2:00 a.m. for going to Canada; the driver of the truck was driving it at normal speed and when the truck had reached near Sanjay Gandhi Hospital, Sewah, GT Road, then the driver of the ill-fated jeep tried to overtake the truck, then all of a sudden another truck No.317 came from Delhi side; the driver of the ill-fated jeep did not apply the brakes due to high speed and struck it behind the truck; the accident had taken place solely on account of rash and negligent driving of the ill-fated jeep by its driver Joginder Singh Virk and respondent No.1 Sukhdev Singh driving

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-7-

the truck was not at fault. Therefore, the answering respondents are not liable to pay any amount to the claimants.

12. Respondent No.3 – insurance company had filed separate sets of written statements raising various legal objections with regard to the maintainability of the claim petitions; the petitions being bad for mis-joinder and non-joinder of necessary parties; the claim of the claimants being barred by limitation. With regard to the manner of accident, respondent No.3 had taken up the same version as pleaded by respondents No.1 and 2 in their written statement. Such respondent denied any liability to pay compensation to the claimants.

13. All the respondents prayed for dismissal of the claim petitions.

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

1. Whether the accident dated 5.8.1990 in the area of G.T. Road near village Siwah was caused due to rash and negligent driving of Truck No.CHW/6997 by its driver? OPP.
2. Whether the claimant Harsharan Kaur or K.K. Toor etc. are entitled to any compensation on account of death of Dr.T.P. Toor and if so, to how much and from whom? OPP.
3. Whether the claimant Prem Parkash is entitled to any compensation on account of his injuries, if so to how much and from whom? OPP.
4. Whether the claimants Inderjit Kaur etc. are entitled to any

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-8-

compensation on account of the death of Joginder Singh, if so to how much and from whom? OPP.

5. Whether the claimant Inderjit Kaur is entitled to any compensation on account of her own injuries, if so, to how much and from whom? OPP.

6. Whether the claim petitions do not disclose any cause of action? OPR.

7. Whether the petitions are bad for mis-joinder and non-joinder of necessary parties? OPR.

8. Whether the petitioners have no locus standi to file the petitions? OPR.

9. Whether the offending vehicle was being driven by unauthorised person? OPR.

10. Relief.

15. Both the parties led evidence in support of their respective claims.

16. After hearing arguments, the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as the Tribunal) accepted all the five claim petitions with costs vide award dated 28.2.1994. Para No.72 of the impugned award is quite relevant and for ready reference, the same is being reproduced as under:

72. *In the light of aforesaid reasons and in view of the finding on*

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-9-

the various issues, all the claim petitions are accepted with costs.

Counsel fee is assessed Rs.500/- in each case. It is held as under:-

- (i) The pecuniary loss to the dependents/claimants of the deceased Tej Parkash Singh Toor and loss to his estate, has been assessed Rs.31,15,575/- as indicate above. The claimants/dependents of Tej Parkash Singh Toor in both MACT Case No.213 of 1992 (Old MACT Case No.50 of 1990 titled as Harsaran Kaur Vs. Sukhdev Singh and others and MACT Case No.214 of 1992 (Old MACT Case No.52 of 1990) titled as KKA Toor and others Vs. Sukhdev Singh and others, would be entitled to the apportionment as held in para No.43 of my judgment.*
- (ii)Pecuniary loss t the dependents/claimants of deceased Joginder Singh Virk in MACT Case No.218 of 1992 (Old MACT Case No.70 of 1990) titled as Smt.Inderjit Kaur and others Vs. Sukhdev Singh and others is assessed Rs.6,72,000/- which would be equally shared by all the petitioners. However, it is directed that the share of the awarded amount of the minors be deposited in some beneficial scheme in some Nationalised Bank, which they would get after attaining the majority or prior to with the leave of the Court.*
- (iii)Petitioner Inderjit Kaur shall also be entitled to a total compensation of Rs.30,000/- on account of her injuries etc. detailed in Para No.61 of my judgment.*
- (iv)Sequelly, Prem Parkash Singh Toor shall also be entitled to a total*

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-10-

*compensation of Rs.50,000/- on account of his injuries etc. detailed
in Para No.69 of my judgment.*

In all the claim petitions, interest @ 15% per annum was awarded on the compensation amount granted from the date of institution of the claim petitions till actual realisation.

17. Finding the compensation awarded by the Tribunal to be on higher side, respondent No.3 insurance company has approached this Court Court by way of filing appeals, notice of which was given to respondents. Respondents/claimants had earlier put in appearance through counsel but subsequently such counsel stopped putting in appearance. However, respondent – Oriental Insurance Company Limited (respondent No.6 in FAO-1616-1994 and respondent No.3 in FAO-1618-1994) had put in appearance through counsel.

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

19. In this case, the Tribunal on analysis of the evidence brought before it in the form of statement of PW2 Inderjit Kaur, PW7 Prem Parkash Singh Toor, who were travelling in the ill-fated jeep and had suffered injuries coupled with the fact that a criminal case has been registered against Sukhdev Singh vide FIR No.353 dated 6.8.1990 under Sections 279, 337, 304-A with Police Station Sadar, Panipat, Sukhdev Singh was challaned and was facing trial as deposed by PW1 Sunil Kumar, Ahlmad to the Court of ACJM, Panipat and finding testimony of

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-11-

RW1 Sukhdev Singh not worthy of reliance has come to the conclusion that the accident in question had taken place due to rash and negligent driving of the offending truck by respondent No.1 Sukhdev Singh. It being so, respondent No.1 – Sukhdev Singh as driver, Smt.Raj Devi – owner and New India Assurance Company Ltd., Patiala insurer of the offending truck were found liable to pay compensation to the claimants.

20. Learned counsel for the appellant – insurance company has confined his arguments on the quantum of compensation only. The first submission made by him was with regard to the case of Tej Parkash Singh Toor.

21. According to learned counsel for the appellant, the Tribunal has fallen in error in calculating his income in American currency and income tax deduction to the extent of 25% as per Indian law. According to the learned counsel for the appellant, the income of the deceased should be taken keeping in view the income drawn by such like Professors teaching in colleges, university, college/school of India and not as per the income of the deceased in American currency after converting that into rupees.

22. However, I do not find any merit in such submissions. We are to see the income of the deceased wherever he was working. While he was working as a Professor in Northern College Hailebury Ontario, Canada, teaching the subject of Metallurgy relating to Mining getting \$5,000/- per month as salary, which is equivalent to Rs.75,000/- as per Indian

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-12-

currency. His income cannot be reduced for the reason that his income while doing the same job in India is to be considered. That could not possibly be done. The Tribunal was justified in taking the income of the deceased to be \$ 5,000/- per month equivalent to Rs.75,000/- per month in Indian currency relying upon salary certificate Ex.P70 duly proved by PW4 KKA Toor widow of Tej Parkash Singh Toor, who had identified signatures of the person issuing that certificate.

23. With regard to the Tribunal deducting income tax of deceased @ 25%, no fault can be found with such approach of the Tribunal. There is nothing on record to show that the rate of income tax in Canada at the relevant time was more than 25%. Therefore, no fault can be found with such approach of the Tribunal. Therefore, such submissions made by counsel for the insurance company are rejected. As such the annual income after deduction of 25% tax comes out to \$41541 i.e. Rs.6,23,115/-.

24. Another plea raised on behalf of the appellant – insurance company was with regard to the multiplier used by the Tribunal. The Tribunal has referred to documents Ex.P72 and Ex.P73 showing date of birth of deceased Tej Parkash Singh Toor as 15.5.1931. The accident had taken place on 5.8.1990, in that way the deceased Tej Parkash Singh Toor was aged a little more than 59 years at the time of accident and Tribunal has taken his age as such.

25. However, the Tribunal has not made any addition towards future prospects. In terms of the judgment **National Insurance Company**

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-13-

Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009, when the deceased had a permanent job and was between the age group of 50 to 60 years, an addition of 15% of the actual salary is to be made towards future prospects. Doing that the annual income of the deceased comes out to Rs.7,16,582/-(623115 + 93467).

26. The Tribunal has deducted an amount of 1/3rd towards personal and living expenses of the deceased Tej Parkash Singh Toor. Whereas in terms of judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and another, 2009(3) RCR(Civil)77**, when the dependent family members are 4 to 6, the deduction should be 1/4th. Doing that, the annual dependency of the claimants comes out to Rs.5,37,437 (7,16,582 – 179145).

27. The Tribunal has used multiplier of 10, which is incorrect. In terms of judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and another(supra)**, keeping in view the age of deceased Tej Parkash Singh Toor, the multiplier of 9 should be used. Doing that the compensation payable comes out to Rs. 5,37,437 x 9 = 48,36,933/-.

28. The Tribunal has not awarded any amount towards conventional heads. As per the latest judgment **Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]**, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-14-

funeral expenses and Rs.15,000/- for loss of estate.

29. Doing that the compensation comes out to be Rs.49,06,933/- (48,36,933 + 40,000 + 15,000 + 15,000). The Tribunal has awarded total compensation of Rs.31,15,575/-, which is less than this amount. However, since the claimants have neither filed any cross appeal nor cross-objections, the amount cannot be enhanced.

30. With regard to the claim petition filed by legal representatives of Joginder Singh Virk, the Tribunal considering statement of PW6 SI Amar Singh, who had brought the summoned record with regard to the employment of deceased and salary besides other emoluments being paid to him, he had proved salary certificate Ex.P86 showing that the deceased Joginder Singh Virk was drawing Rs.6,010/- per month salary and apart to that he was entitled to medical treatment. The age of the deceased was taken to be 45 years from his service record. The Tribunal had taken his monthly income as Rs.6,010/- per month in view of the statement made by PW6 SI Amar Singh and documents proved by him. However, no addition towards future prospects had been made. In terms of judgement **National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)**, when the deceased had a permanent job and was between the age group of 40 to 50 years, an addition of 30% of the actual salary is to be made towards future prospects. Doing that the monthly income of the deceased comes out to Rs.7813/-(6010 + 1803). The Tribunal has deducted an amount of 1/3rd

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-15-

towards personal and living expenses of the deceased Joginder Singh Virk. Whereas in terms of judgment *Smt.Sarla Verma and others Versus Delhi Transport Corporation and another(supra)*, when the dependent family members are 4 to 6, the deduction should be 1/4th. Doing that, the monthly dependency of the claimants comes out to Rs.5860 (7813 – 1953), annual dependency of the claimants comes out to be Rs.70320/- (5860 x 12). The Tribunal has rightly applied multiplier of 14. Doing that the compensation comes out to Rs.9,84,480/- and making addition of Rs.70,000/- towards conventional heads, the same worked out to Rs.10,54,480/-.

31. The Tribunal has awarded compensation of Rs.6,72,000/-. Thus there is no question of decreasing the compensation by way of acceptance of appeal. However, since the claimants have neither filed any cross appeal nor cross-objections, the amount cannot be enhanced.

32. Similarly, with regard to the compensation of Rs.30,000/- granted to claimant Inderjit Kaur and Rs.50,000/- granted to claimant Prem Parkash Singh Toor, who have suffered injuries in the accident, I find that the compensation is certainly not on high side, rather it is on lower side but considering the fact that they have not filed any cross appeal or cross-objections, the same cannot be increased.

33. However, I find force in the submission made by learned counsel for the appellant with regard to rate of interest granted on the compensation amount. The Tribunal has granted interest @ 15% per

FAO-1616-1994(O&M);
FAO-1617-1994(O&M);
FAO-1618-1994(O&M);
FAO-1619-1994(O&M); and
FAO-1620-1994(O&M)

-16-

annum, which I find to be on higher side and I find it proper and appropriate to grant interest @ 7.5% per annum on the compensation amount from the date of filing of the claim petitions till actual realization.

34. In that way, the appeals filed by the insurance company stands allowed partly as to the extent of interest part, the appeals filed by insurance company are accepted. However, with regard to the quantum of compensation, the same stand dismissed.

Since the main appeals are allowed partly, the miscellaneous application(s), if any, stand disposed of accordingly.

24.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No