

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237/7

FAO-1884-1994 (O&M)
Date of decision : 07.11.2023

National Insurance Company Limited and another

.....Appellants

Versus

Manju Gupta and others

..... Respondents

FAO-1885-1994 (O&M)

National Insurance Company Limited and another

.....Appellants

Versus

Manju Gupta and others

..... Respondents

FAO-1886-1994 (O&M)

National Insurance Company Limited and another

.....Appellants

Versus

Sangeeta Garg and others

..... Respondents

FAO-1217-1994 (O&M)

United India Insurance Company Limited

.....Appellant

Versus

Sangeeta Garg and others

..... Respondents
FAO-1357-1994 (O&M)

Manju Gupta and others

.....Appellants

Versus

Onkar Singh and others

..... Respondents

FAO-2459-1994 (O&M)

Manju Gupta and others

.....Appellants

Versus

Onkar Singh and others

..... Respondents

FAO-2460-1994 (O&M)

Sangeeta Garg and others

.....Appellants

Versus

Onkar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: None for the claimants

Mr. Deepak Suri, Advocate and
Mr. Brij Sharma, Advocate,
for the National Insurance Co. Ltd.

Mr. Shrenik Jain, Advocate,
for the appellants in FAO-1217-1994 and
for respondent No.10 in FAO-2460-1994 and
for respondent No.11 in FAO-1886-1991.

AMAN CHAUDHARY, J.

1. The aforesaid appeals are being decided together as they arise
out of the same award.
2. These are reconstructed cases, as the original files were burnt in
the fire that broke out in the concerned branch. Since the cases are pending

for the last more than 29 years, the counsel appearing for the parties have no objection, if the same are decided on basis of the available record.

3. It has been stated in the grounds of FAO-1357-1994, deceased Surinder Kumar, aged 42/43 years, was the husband of appellant No.1 and father of appellant Nos. 2 and 3. He was a Director in the Firm M/s Delhi Express Travels and M/s Orient Carpets, Panipat and his monthly earning was Rs.15,000/-, however, his income was assessed as Rs.2,000/- per month. The compensation granted is on the lower side and nothing has been awarded towards future prospects of increase in income, loss of consortium, loss of love & affection and funeral expenses.

4. In FAO-2460-1994, it has been averred that the claimants are the father, widow and son of the deceased Rakesh Kumar, aged 28 years, a partner in M/s Davesh Woolen Mills, M/s Adhunik Woolen and M/s Orient Carpets and earning Rs.10,000/- per month, however, the Tribunal wrongly assessed his income as Rs.5,000/- per month. The compensation granted is on the lower side and nothing has been awarded towards future prospects of increase in income, loss of consortium, loss of love & affection and funeral expenses. The deduction of Rs.2,000/- is also on the higher side.

5. It has been averred in FAO-2459-1994, that the deceased Dalip Singh, aged 80 years, was the father-in-law of the appellant No.1 and grandfather of appellant Nos.2&3. He belonged to a business-class family, however, the learned Tribunal without considering the same, granted a meagre amount of Rs.25,000/- under 'no fault liability' which is incorrect.

6. On the other hand, learned counsel for the Insurance Company, the insurer of the offending truck submits that it was a case of composite negligence, as drivers of both the vehicles i.e. truck and the Maruti car,

insured with United India Insurance Company Ltd., were though held equally liable, however, in the relief clause, the learned Tribunal did not specify regarding the apportionment of compensation to be paid by each. Even otherwise, the multiplier of 20 that was applied is on the higher side. Therefore, compensation awarded to the claimants be not enhanced.

7. Learned counsel for the United India Insurance Company which had insured the Maruti car submits that the driver of the car was not holding a licence and it was a third party insurance claim, therefore, the company was not liable for fulfilling the award.

8. Heard and perused.

9. Admittedly, on 29.07.1988 in a roadside accident, Surinder Kumar, Rakesh, Dalip Singh and driver-Meharban, who were in the Maruti car, had died.

10. The learned Tribunal while deciding the issue regarding the negligence, due to which the accident had taken place, had recorded as under:

“21. Therefore, from the above evidence, it is proved that some iron sheets were lying on the road in the area of village Patti Kalyana which had fallen or had been off loaded from truck No.DEG 1849 and the said truck was also lying on the side of the road. Respondent No.4 (Jora Singh RS-2) driver of truck No.DEG 1849 had not filed any written statement and on the other hand the owner of the truck had filed written statement. In the said written statement, no such plea was taken that the driver of truck No.DEG 1849 had placed bricks round the iron sheets and had also lit fire to indicate the presence of the sheets on the road. It is in evidence of RW1 Onkar Singh respondent No.1 driver of truck No.HPK 8872 and PW.2 Rattan Lal conductor of Haryana Roadways Bus No.HYM 5868 that the driver of truck No.DEG 1849 had not placed any bricks round the sheets and had not put anything on the road to indicate the presence of the iron sheets on the road and the parking of the truck and even the lights of the truck were not on the their on sheets were lying scattered on the road upto a sufficient distance

i.e. according to RW1. Onkar Singh upto an area of 10 to 12' which were of the height of 9" to 10" from the ground. Therefore, certainly the driver of truck No.DEG 1849 was negligent as he had placed iron sheets on the road in a dangerous position. Admittedly the driver of the Maruti Car had died in the accident. It appears that the Maruti Car bearing No.HNK 8000 was also being driven in a rash and negligent manner. It was his duty to drive the car carefully and to observe before hand whether there was any obstruction on the road. If he had driven the Maruti Car carefully then he would have noticed the presence of iron sheets on the road. The very fact that the car had climbed over the iron sheets and then went towards right side and struck against incoming truck No.HPK 8872 shows that he was also negligent. The driver of the truck No.HPK 8872 namely Onkar Singh was not at all negligent. It is in evidence of PW2 Rattan Lal that Onkar Singh was not driving the truck in a zig zag manner. If Maruti Car had struck against truck No.HPK 8872 after going towards right side, then certainly the driver of the truck is not at all fault. In such circumstances I hold that the accident in question had taken place due to the composite negligence of Jora Singh respondent No.4 driver of truck No. DEG 1849 and Meharban (now deceased) driver of Maruti Car No. HPK 8000 in which both are equally liable."

11. The Tribunal has examined the evidence and no glaring error in the findings was committed while arriving at the conclusion, which may have resulted in flagrant miscarriage of justice.

FAO-1357-1994

12. There being no documentary evidence produced by the claimant-appellants with regard to income of the deceased, the Tribunal has rightly assessed the same as Rs.2000/- per month. With regard to the enhancement of the compensation, this Court can rightly rely on the law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009(3) RCR (Civil) 77, **National Insurance Company Limited vs. Pranay Sethi and others** 2017(4) RCR (Civil) 1009 and **Janabai vs. ICICI Lambord Insurance Co. Ltd.**, (2022) 10 SCC 512 and accordingly hold the appellants entitled to grant of future prospects to the extent of 25%,

the deceased being self employed and also for compensation under the conventional heads i.e. funeral expenses Rs.15,000/-; loss of estate Rs.15,000/-; loss of consortium to widow Rs.40,000/- and love and affection to the children Rs.80,000/-(40,000x2). However, since the deceased was 42/43 years, the multiple of 14 should be applied.

13. As a necessary corollary, the total compensation comes to Rs.5,70,000/- (2000+25% (towards future prospectus)- x 12 x 14 (multiplier), + Rs.1,50,000/- (conventional heads). Thus, the enhanced compensation of Rs.90,000/-, over and above the amount of Rs.4,80,000/- already awarded, alongwith interest at the rate of 7.5% per annum from the date of filing of the present appeal, till its realization shall be paid to the claimant-appellants by the respondents, as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment. Failing which, the amount shall accrue an interest as awarded by the Tribunal.

FAO-2460-1994

14. The monthly dependency of the deceased was rightly assessed by the Tribunal as Rs.3,000/-, in the absence of any evidence. As per the law laid down referred to in the foregoing paragraph, the appellants are held entitled to grant of future prospects to the extent of 40%, the deceased being self employed and also for compensation under the conventional heads i.e. funeral expenses Rs.15,000/-; loss of estate Rs.15,000/-; loss of consortium to widow Rs.40,000/- and love and affection to the child and father Rs.80,000/-(40,000x2).

15. Accordingly, the total compensation comes to Rs.10,06,800/- (3000+40% (towards future prospectus) x 12 x 17 (multiplier), +

Rs.1,50,000/- (conventional heads). Thus, the enhanced compensation of Rs.2,86,800/-, over and above the amount of Rs.7,20,000/- already awarded, alongwith interest at the rate of 7.5% per annum from the date of filing of the present appeal, till its realization shall be paid to the claimant-appellants by the respondents, as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment. Failing which, the amount shall accrue an interest as awarded by the Tribunal.

FAO-2459-1994

16. The claimants are daughter-in-law and grandchildren of deceased Dalip Singh, who was 80 years old. He was stated to be a partner in M/s Mam Raj Mal Dalip Singh. In the accident, unfortunately, the claimants had lost both earning members of the family. The Tribunal has fallen in grave error in granting only an amount of Rs.25,000/- on account of liability, whereas the claimants of the other deceased, travelling in the same car, have been granted compensation under Section 166 of MV Act. In view of facts and circumstances of the case, the said finding of the Tribunal is set aside and considering the age of the deceased, only compensation under the head of love and affection towards the grandchildren and daughter-in-law (40,000x3) can be granted, as such, the ends of justice would be adequately met by enhancing the amount of Rs.25,000/- awarded by the Tribunal, to Rs.1,45,000/- payable to each claimant in equal share. Ordered accordingly. Thus, the enhanced compensation of Rs.1,20,000/-, over and above the amount of Rs.25,000/- already awarded, alongwith interest at the rate of 7.5% per annum from the date of filing of the present appeal, till its realization shall be paid to the claimant-appellants by the respondents, as ordered by the Tribunal, within a period of 2 months from the date of receipt

of a certified copy of this judgment. Failing which, the amount shall accrue an interest as awarded by the Tribunal.

17. As regards the contention of the learned counsel for United India Insurance Company is concerned, the Tribunal had returned the following finding, a perusal whereof reveals there to be no infirmity in the same:

“Counsel for respondent No.10 (United India Insurance Co.) Sh.I.M.Malik, stated that Meharban (now deceased) driver of Car No.HNK 8000 had no driving licence to drive the vehicle and as such the Insurance Co. was not liable. No such plea had been taken in the written statement which was filed on 25.8.1989. No effort was made by the Insurance Co. to summon the driving licence from the legal heirs of the deceased Meharban. However, an application was moved asking the petitioners to produce the driving licence of deceased Meharban. Certainly the driving licence of Meharban could not be in the possession of the petitioners. ...On the other hand, it was pleaded in para no.3 of the preliminary objections of the written statement that the car in question at the relevant time was being driven by a person other than the authorised driver. However, respondent No.10 has not led any evidence to this effect...”

18. This Court finds that the Tribunal had meticulously sifted through the evidence and recorded the aforesaid in the correct perspective, which requires no interference. Furthermore, it was incumbent upon the Insurance Company, in order to absolve itself of the liability, to have also raised an objection of the non-impleading of the owner of the Maruti car or in alternative, furnished his details, as he was the one to have got the insurance cover of the vehicle.

19. Since, in para 21 of the Award, it has been held that it is a case of composite negligence of the driver of the truck No.DEG 1849 and Maruti car and as such both are equally liable, it is clarified that the insurance

company of both the vehicles would be liable to pay the compensation in the ratio of 50:50 to the claimants.

20. Modifying the award to the aforesaid extent, the present appeals are disposed of.

21. Registry is directed to send a copy of the judgment to the concerned Tribunal for necessary compliance.

22. Photocopy of the judgment be placed on the files of the connected cases.

07.11.2023
gsv/Ankur

(AMAN CHAUDHARY)
JUDGE

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