

(1) FAO-2758-2020 (O&M)
Date of Pronouncement: 14.03.2023

...Appellant

Rajbala and others

...Respondents

Rajbala and others

...Appellants

Anil Kumar and others

...Respondents

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

Present: Mr. Varun Sharma, Advocate for
Mr. Ashwani Talwar, Advocate for the appellant
in FAO-2758-2020 and for respondent No.3
in FAO-562-2020.

Mr. Sushil Sheoran, Advocate for the appellants
in FAO-562-2020 and for respondents No.1 to 5
in FAO-2758-2020.

H.S. MADAAN, J.

This order of mine shall dispose of above mentioned two appeals being arising out of the same award.

Briefly stated facts of the case are that Smt. Raj Bala aged about 35 years widow, Jyoti aged 09 years minor daughter, Ashish aged 07 years minor son, Sarma Devi, aged 62 years mother and Ran Singh aged 67 years father of Suresh Singh, an unfortunate victim of a road side

accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondents i.e. Anil Kumar-driver, Vijay Kumar owner and L&T General Insurance Company Ltd., Mumbai-insurer of Sonalika tractor bearing registration No.HR-16Q-9918 (for brevity 'offending vehicle') claiming compensation.

2. As per case of petitioners/claimants, on 30.03.2016, Sudesh Singh was going from village Bagot to his village Malkosh in his Alto car bearing registration No.HR-19-C-2474, when he had crossed village Sanjarwas and had reached near a hotel, at about 11.00 pm, then a truck came from opposite side flashing lights as a result of which nothing was visible to Sudesh Singh, as such, he struck his alto car in trolley attached with the offending vehicle which was parked in middle of the road without any parking light indication. The accident was witnessed by one Jasbir son of Chander and Jai Bhagwan son of Sadhu Ram who were going on their motorcycle behind Alto car. Both of them took out Sudesh Singh injured from Alto car and called an ambulance and then he was taken to General Hospital, Charkhi Dadri where the doctors declared him dead. FIR No.50 dated 31.03.2016 for offences under Sections 283 and 304-A IPC was registered at Police Station Bond Kalan on the basis of statement of Jasbir against unknown driver of the offending vehicle. Subsequently, during investigation respondent No.1 Anil Kumar was found to be driver of the tractor. He was accordingly arrested in this case. The petitioners/claimants had brought the claim petition contending that they were dependent upon earnings of Sudesh Singh deceased and on

account of his death, they have been deprived of the earning member.

3. Notice of the claim petition was given to the respondents. All the three respondents appeared and contested the claim petition. Respondents No.1 and 2 filed a joint written statement whereas respondent No.3 came up with a separate written statement. In the joint written statement submitted by respondents No.1 & 2, they denied the allegations in the claim petition contending that even if the compensation was to be granted then respondent No.3-insurance company was liable to pay the same.

4. Respondent No.3-insurance company in a separate written statement filed by it while contesting the assertions in the claim petition contended that respondents No.1 & 2 had violated the terms and conditions of the insurance policy, therefore, respondent No.3 was not liable to pay the compensation.

5. From the pleadings of the parties, following issues were framed by the tribunal:-

1. Whether the accident in question causing death of Sudesh Singh took place on 30.03.2016, due to rash and negligent driving of Sonalika tractor bearing registration No.HR-16Q-9918 by respondent No.1, as alleged? OPP.
2. If issue No.1 is proved, whether the petitioners are entitled for compensation, if so to what amount and from whom? OPP.
3. Whether the claim petition is liable to be dismissed on the pleas, taken by the insurance company in its written statement? OPR-3.
4. Relief.

6. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Charkhi Dadri (for short 'the Tribunal') vide award dated 30.08.2019 accepted the claim petition and awarded compensation of Rs.33,56,500/-; to the claimants along with interest @ 7.5% p.a from the date of filing of claim petition till actual realization. The liability to pay this amount being joint and several of all the three respondents.

7. Feeling aggrieved by such award passed by the Tribunal, the insurance company has approached this Court by way of filing an appeal whereas the claimants have also filed a separate appeal seeking enhancement of compensation. Notice of both the appeals were given to the respective respondents who have put in appearance through counsel.

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

9. Learned counsel for the appellant-insurance company has argued that the deceased himself was at fault in happening of the accident inasmuch as he had hit his Alto car against trolley which was parked on the extreme left hand side of the road, therefore, the petitioners/claimants are not entitled to get any compensation. In support of his contentions, he has referred to judgment **Nishan Singh and Ors. Vs. Oriental Insurance Company Ltd.**, (2018) 6 SCC 765 whereas this argument is vehemently contested by learned counsel for the claimants.

10. After hearing the rival contentions, I find that the entire blame for the accident can certainly be not passed to the deceased. It has

to be kept in to view that the accident had taken place at night time. The tractor trolley standing on the road should have put some reflector light or given any indication, that it was parked on the road. In this case, nothing of that sort had been done rather case of the claimants is that the tractor trolley was parked in middle of the road. The petitioners/claimants have examined Jasbir at whose instance FIR was recorded to show that respondent No.1 driver of the tractor trolley was negligent in parking the tractor trolley in middle of the road. FIR with regard to the accident had been registered against Anil Kumar respondent No.1 which prima facie goes to show his rashness and negligence, nevertheless, the tribunal considering the facts and circumstances of the case and on analysis of the evidence adduced before it had returned the finding that though the accident in question had happened primarily due to negligence of respondent No.1, there is an element of contributory negligence to the accident of 30% on the part of the deceased as well. I find myself in agreement with such finding recorded by the tribunal and do not see any reason to set it aside.

11. With regard to quantum of compensation, the tribunal has taken into consideration the fact that deceased was aged 35-36 years and was an Ex.serviceman having retired from Army just a month prior to his death. Further it has come on record that he was getting pension of Rs.17,000/- per month. Thus considering the fact that he was an able bodied young person, capable of employment and he would have earned Rs.7000/- per month in addition to his pension of Rs. 17,000/-, therefore, his monthly income was rightly taken to be Rs.25,000/-, though it has not

come on record that he was actually doing job or deriving income there from. The monthly income taken is proper and appropriate. 40% enhancement has also been granted. Thereafter, 1/4th deduction made towards personal and living expenses of the deceased keeping in view that five persons, the claimants were dependent upon his earnings. Multiplier of 15 has rightly been applied. Thus compensation of Rs.47,25,000/- has been arrived. Compensation of Rs.15,000/- for loss of estate and further Rs.15,000/- on account of funeral expenses has rightly been granted. However, loss of consortium has been granted to the widow of the deceased whereas the other claimants are also entitled to get Rs.40,000/- each as filial consortium. Therefore, compensation of Rs.1,60,000/- more is required to be added. Thus, the total compensation comes out to Rs.49,55,000/-.

12. Deducting 30% towards contributory negligence, the compensation worked out to Rs.34,68,500/-. The claimants would be entitled to get interest on this amount @7.5% p.a., from the date of filing of claim petition till actual realization with costs throughout. The apportionment of compensation among the claimants and manner of payment shall remain the same as directed by the tribunal in its award.

13. Accordingly, the appeal filed by the insurance company i.e. FAO-2758-2020 stands dismissed, whereas, appeal filed by the claimants i.e. FAO -562-2020 stands partly allowed.

14.03.2023
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No