

FAO-4536-2013(O&M);
FAO-4537-2013(O&M); and
FAO-4538-2013(O&M)

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

(1) FAO-4536-2013(O&M)

National Insurance Company Ltd.

...Appellant

Versus

Smt.Santosh Kumari and others

...Respondents

(2) FAO-4537-2013(O&M)

National Insurance Company Ltd.

...Appellant

Versus

Muneshwar Dayal alias Ravi and others

...Respondents

(3) FAO-4538-2013(O&M)

National Insurance Company Ltd.

...Appellant

Versus

Smt.Maya Devi and others

...Respondents

Date of Decision:-19.1.2023

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

Present: Mr.Ravinder Arora, Advocate with
Mr.Neeraj Khanna, Advocate
for the appellant in all the appeals.

Mr.Rampal Kaushik, Advocate for
Mr.Karan Singh, Advocate and
Mr.Nitish Garg, Advocate (Legal Aid Counsel)
for respondents No.1 to 3 in FAO No.4536 of 2013 and

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for respondents No.1 and 2 in FAO No.4538 of 2013.

Mr.Gaurav Vir Singh Behl and
Mr.S.S. Behl, Advocate
for respondent No.5 in FAO-4536 – 2013
for respondent No.3 in FAO-4537-2013 and
for respondent No.4 in FAO-4538-2013.

H.S. MADAAN, J.

1. By this order, I shall dispose of three FAOs i.e. FAO-4536-2013, FAO-4537-2013 and FAO-4538-2013 filed on behalf of appellant – National Insurance Company Ltd., which have arisen out of the same award.

2. Briefly stated, facts of the case are that on 17.8.2012 Balkesh Kumar, Pardeep Kumar and Muneshwar Dayal were going from Delhi to Shimla in a canter bearing registration No.PB-65-N-2522 (hereinafter referred to as the ill-fated canter), which was loaded with goods; the canter was being driven by Balkesh Kumar on left hand side of the road at a moderate speed; it was being followed by Vipin Kumar, the owner of the goods along with his friend Mahesh Kumar in his car bearing registration No.HR33B-0004; on 18.8.2012 at about 2:00 a.m., when the canter reached in the area of village Dinarpur on Saha-Shahbad road and proceeded towards Saha side, a truck bearing registration No.HP-12-D-5929 (hereinafter referred to as the offending truck) came from the opposite side being driven in a rash and negligent manner and also in a zig-zag way, at high speed by respondent No.1 Laxman Singh and such truck by going on extreme left side of the road hit the ill-fated canter in

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question on front side; as a result Balkesh Kumar and Pardeep Kumar died on the spot, whereas Muneshwar Dayal suffered multiple simple and grievous injuries. After the accident, respondent No.1 Laxman Singh ran away from the spot leaving his truck behind; the accident was witnessed by Mahesh Kumar and Vipin Kumar.

FIR No.100 dated 18.8.2012 for the offences under Sections 279, 337 and 304-A IPC was registered with Police Station Saha against respondent No.1 Laxman Singh.

3. The legal representatives of deceased Sh.Balkesh Kumar namely Smt.Santosh Kumari – wife, Pooja Sharma – minor daughter and Vikrant Sharma – minor son, all residents of village Patta, Police Station Badsar, District Hamirpur (Himachal Pradesh) had brought a claim petition bearing No.MACP No.136 of 2012 under Section 166 of the Motor Vehicles Act against the respondents i.e. Laxman Singh – driver, Rajesh Kumar – owner and National Insurance Company Ltd., Ropar - insurer of the offending vehicle, claiming compensation.

4. Similarly parents of deceased Pardep Kumar i.e. Maya Devi aged about 40 years – mother and Jagdish alias Guddu, aged about 45 years - father, had also brought a claim petition bearing MACP No.137 of 2012 under Section 166 of the Motor Vehicles Act against the above-said respondents, claiming compensation.

5. Injured – Muneshwar Dayal alias Ravi had also brought the third claim petition bearing MACP No.138 of 2012 against the aforesaid respondents claiming compensation on account of injuries suffered by him

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in the accident.

6. Since all the three claim petitions had arisen out of the same accident, MACP No.137 of 2012 and MACP No.138 of 2012 were consolidated with MACP No.136 of 2012 vide order dated 30.1.2013.

7. Notice of the claim petitions were given to the respondents, who put in appearance and filed written replies in all the three cases although on similar lines.

Respondents No.1 and 2 had filed a joint written reply raising various objections challenging the maintainability of the claim petitions contending that no accident had taken place with the truck in question and claim petitions were bad for misjoinder and non-joinder of necessary parties. On merits, the plea taken that the truck in question was not involved in the accident was reiterated submitting that the claimants in all the three petitions were not entitled to get any compensation from answering respondents. They had prayed for dismissal of the claim petitions.

Whereas in the written replies filed on behalf of respondent No.3 insurance company it also came up with various legal objections further contending that the truck in question was not insured with it on the date of accident and the claim petitions have been filed in collusion with respondents No.1 and 2; respondent No.1 was not having a valid driving licence and the truck was being driven in violation of the terms and conditions of the insurance policy.

All the three respondents craved for dismissal of the claim

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petitions.

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

1. Whether Balkesh Kumar and Pardeep Kumar died and Muneshwar Dyal claimant suffered injuries in the accident caused on 18.8.2012 by rash and negligent driving of truck bearing registration No.HR-12D-5929 by the respondent No.1 Laxman Singh, as alleged? OPP.
2. Whether the claimants in all the claim petitions are entitled to compensation, if so how much and from whom? OPP.
3. Whether the respondent NO.1 did not have valid and effective driving licence at the time of accident, if so to what effect? OPR3.
4. Whether respondent No.1 has violated the terms and conditions of the insurance policy, if so to what effect? OPR3.
5. Relief.

However, vide order dated 26.3.2013 issue No.1 was amended/alterd as under:

1. Whether Balkesh Kumar and Pardeep Kumar died and Muneshwar Dayal claimant suffered injuries in the accident caused on 18.8.2012 by rash and negligent driving of truck bearing registration No.HP-12D-5929 by the respondent No.1 Laxman Singh, as alleged? OPP.

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

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To prove their cases the petitioners examined Santosh Kumari as PW1, Jadish alias Guddu as PW2, Jaswinder Pal, Ahlmad as PW3, Joginder Singh as PW4, Muneshwar Dayal alias Ravi as PW5 and produced documents Ex.P1 to Ex.P15 and closed their evidence.

In rebuttal, the respondent No.1 had produced documents Ex.R7 to Ex.R9 and closed their evidence. Respondent No.3 had produced documents photocopies of driving licence of Balkesh Kumar as Ex.R1, rukkas Ex.R2 to Ex.R5, calendra Ex.R6 and certified copy of insurance policy as Ex.R10 and closed its evidence.

10. After hearing arguments, the Tribunal accepted all the three claim petitions with costs. In MACP No.136 of 2012, compensation of Rs.29,51,944 was awarded to the claimants, out of which amount of Rs.9,51,944 payable to the claimant No.1 and amount of Rs.10 lakhs each payable to the claimants No.2 and 3. In MACP No.137 of 2012, compensation of Rs.7,32,000/- was awarded to the claimant No.1 Maya Devi and in MACP No.138 of 2012, compensation of Rs.22,500/- was awarded to the claimant Muneshwar Dayal, payable by all the respondents jointly and severally with costs and simple interest at the rate of 8% per annum from the date of institution of the petitions till realization.

11. Being dissatisfied with the Award passed by the Tribunal, respondent No.3 – Insurance company has filed separate appeals before this Court.

12. Notices of the appeals were issued to the respondents. Respondents have put in appearance through counsel.

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

14. The Tribunal on the analysis of the evidence brought on file by the parties considering the totality of the circumstances had returned finding that respondent No.1 Laxman Singh was author of the accident by rash and negligent driving of the offending truck resulting in death of Balkesh Kumar and Pardeep Kumar and injuries to Muneshwar Dayal. Although respondents had denied the involvement of truck in question in the accident but PW5 Muneshwar Dayal, who had suffered injuries in the accident categorically stated that the accident had taken place on account of rash and negligent driving of the offending truck by Laxman Singh. He was cross-examined at length but he stuck to his guns and his credibility could not be shaken on any material point. He having suffered injuries in the accident is a stamped witness and his presence at the spot cannot be doubted. Further the fact that FIR with regard to the accident was registered against Laxman Singh and on completion of investigation, he has been sent up to face trial, as is evident from statement of PW3 Jaswinder Pal, Ahlamd and in view of mechanical inspection report Ex.P5, no doubt is left in the mind that the offending truck was involved in the accident and its rash and negligent driving by respondent No.1 was direct and proximate cause of mishap in which Balkesh Kumar and Pardeep Singh had lost their lives and Muneshwar Dayal had suffered injuries. Counsel for the insurance company tried to build up a case of contributory negligence submitting that since it was a case of head on

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collision, Balkesh Kumar driver of the ill-fated canter was also at fault, therefore liability to pay compensation should be reduced proportionately.

15. Whereas learned counsel for the respondents/claimants contended that FIR in question was registered against Laxman Singh driver of the offending truck; he has been challaned for causing the accident by rash and negligent driving of the truck; PW5 Muneshwar Dayal has categorically deposed in that regard in consonance with the case of claimants, whereas respondent No.1 did not summon courage to step into the witness box to state that he was not at fault in happening of the accident; respondent No.2 also did not appear to state that the truck belonging to him was not involved in the accident. Therefore, the evidence adduced by the claimants has gone un rebutted.

16. In *Girdhari Lal Versus Radhey Shyam and others, 1994(1) ACJ 168*, it was observed that when a driver is tried on account of rash driving that leads to a prima facie conclusion that the accident occurred due to rash and negligent driving.

17. There is no basis for the argument advanced by learned counsel for the appellant/insurance company that the finding recorded by the Tribunal that the truck was involved in the accident be reversed or at the most it be taken as a case of contributory negligence. Therefore, finding recorded by the Tribunal in that regard is affirmed.

18. Now coming to the compensation awarded on account of death of Balkesh Kumar. The Tribunal taking his income as Rs.20,000/- per month, age as 40 years had awarded compensation of Rs.29,51,994/-.

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If we see the evidence adduced by the claimants, it is found that the income so taken is not on higher side. Balkesh Kumar was owner cum driver of the canter in question also having agricultural land. It has come in the statement of PW1 Santosh Kumari that the deceased used to pay Rs.10,000/- per month towards EMI of his canter, Rs.10,000/- per month to cleaner and Rs.6,000/- per month to helper. PW4 Joginder Singh, Officer, Grade-III, Kangra Central Co-operative Bank, Branch Bijhari, Tehsil Balsar, District Hamirpur had stated that Balkesh Kumar had taken loan of Rs.4,50,000/- from their bank on 26.4.2011 and was regularly paying monthly installment of Rs.10,000/- having paid those up to July, 2012. The Tribunal taking notice of the fact that the installment was being paid after two months and on proper analysis assessed the income of the deceased to be Rs.20,000/- per month, which is certainly is not on higher side. Similarly, the addition towards future prospects, deduction on account of personal and living expenses of deceased and compensation awarded under conventional heads are adequate. The total compensation awarded cannot be said to be on higher side.

19. Similarly, with regard to other deceased Pardeep Kumar, the Tribunal has assessed his monthly income as Rs.5,000/- and addition towards future prospects has been made, deduction of 50% of the amount made considering the fact that he was a bachelor and then suitable multiplier has been applied granting compensation of Rs.7,32,000/- to claimant No.1 Maya Devi.

20. Whereas to injured Muneshwar Dayal, the compensation of

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Rs.22,500/- has been awarded, which cannot be said to be on higher side.

21. The compensation awarded is just and adequate and valid reasons have been given for arriving at the sum awarded.

22. The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

23. Finding no merit in the appeals, the same stand dismissed accordingly.

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

19.1.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No