IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Order Reserved on:19.05.2023
Order Pronounced on:06.06.2023

1. FAO No. 1803 of 2016 (O&M)

New India Assurance Company Ltd. .... Appellant

Versus

Raj Rani alias Vidhu Singla and others ...... Respondents

2. FAO No. 1782 of 2016 (O&M)

New India Assurance Company Ltd. .... Appellant

Versus

Kamlesh Rani and others ...... Respondents

3. FAO No. 5360 of 2016 (O&M)

Raj Rani alias Vidhu Singla and others ...... Appellants

Versus

Gurnaib Singh alias Amni and others ….. Respondents

4. FAO No. 5621 of 2016 (O&M)

Kamlesh Rani and others ...... Appellants

Versus

Gurnaib Singh alias Amni and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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Present: Mr. Ashwani Talwar, Advocate for the appellant(s)
in FAO Nos. 1782 and 1803 of 2016 and
and for respondent No.3 in FAO-5360 and 5621 of 2016.

Mr. Vishal Goyal, Advocate for the appellant(s)
in FAO Nos. 5360 and 5621 of 2016
and for respondents No. 1 to 3 in FAO Nos. 1782 and
for respondents No. 1 to 4 in FAO No.1803 of 2016.

Mr.Kashish Garg, Advocate
for Mr.Bir Davinder Singh, Advocate
for respondent No.2 in FAO Nos. 5360 and 5621 of 2016 and
for respondent No. 6 in FAO Nos. 1782 and 1803 of 2016.

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HARPREET SINGH BRAR, J.

CM-8682-CII-2017 in FAO-1782-2016

For the reasons recorded in the application, delay of 169 days in filing the application for recalling the order dated 19.09.2016 is allowed.

The order dated 19.09.2016 is recalled.

Main Appeals

1. The aforementioned four appeals have been filed against two awards, both dated 23.12.2015 passed by learned Motor Accident Claims Tribunal, Barnala (hereinafter referred to as 'the Tribunal' for short) in two claim petitions. FAO Nos. 1803 and 1782 of 2016 have been filed by the insurance company for setting aside the said award whereas FAO Nos. 5360 and 5621 of 2016 have been filed by the claimants for enhancement of compensation awarded by the learned Tribunal. Since all of them have arisen out of the same incident which led to passing of both the awards dated 23.12.2015, the same are being disposed of by this common

judgment.

FACTUAL BACKGROUND

2. Brief facts of the case are that deceased Bal Krishan Singla along with Krishan Kumar son of Ruldu Ram, resident of Sardar Nagar, Moga was coming back from Ludhiana in a Swift car bearing No. DL-9CS-7441 which was owned by respondent No.6- Kunal Arora and was being driven by Bindu son of Biru, resident of Barnala. The said car in which deceased was travelling, was being followed by Rajinder Kumar son of Birbal Dass, resident of Band Gali, Barnala in another car (Figo) bearing No. PB-19-F-6077. On 13.10.2013, at about 9.00 p.m. when the said car in which the deceased was travelling, reached main Barnala-Raikot road near bus stand of village Gangohar, a trolley overloaded with sand was wrongly parked in the middle of the road leading towards village Mahalkalan without any reflectors on it. The swift car struck against the said trolley at the back and got entangled thereunder. As a result of the impact, the occupants of the car received multiple injuries. On seeing the accident, Rajinder Kumar with the help of others pulled out the swift car from beneath the trolley and found that Bindu and Krishan Kumar had died on the spot. Bal Kishan, who had been seriously injured, was rushed to Civil Hospital, Barnala in an ambulance but he died on the way.

3. The learned Tribunal awarded an amount of Rs. 11,81,000/- each to the claimant/respondents in their respective claim petitions along with interest at the rate of 9% p.a. from the date of filing of the claim petitions till actual realisation.

4. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues for adjudication in claim petition filed by Raj

Rani etc.:-

1. Whether Bal Krishan son of Harbans Lal died in a motor vehicular accident which took place on 13.10.2013 at about 9.00 p.m. due to wrong parking of tractor trolley bearing No. PB-03-AA/7895 owned by respondent No.1?OPP

2. If issue no.1 is proved, whether the claimants are entitled to compensation? If so, from which of the respondents and the manner of recovery?OPP

3. Whether the claimants have got no locus standi or cause of action to file present claim petition?OPR

4. Whether the petition is bad for non-joinder and misjoinder of necessary parties?OPR

5. Whether driver of tractor trolley No. PB-03-AA/7895 and Motor Car No. DL-9CS-7441 were not holding valid driving licence at the time of alleged accident?OPR

6. Whether owners of tractor trolley No.PB-03-AA/7895 and Motor car No. DL-9CS-7441 were not holding valid registration certificate, route permit and valid insurance at the time of alleged accident?OPR

7. Relief.

5. The following issues were framed in the claim petition filed by Kamlesh Rani etc.:-

1. Whether Krishan Kumar son of ruldu Ram died in a motor vehicular accident which took place on 13.10.2013 at about 9.00 p.m. due to wrong parking of tractor trolley bearing No. PB-03-AA/7895 owned by respondent No.1?OPP

2. If issue no.1 is proved, whether the claimants are entitled to compensation? If so, from which of the respondents and the manner of recovery?OPP

3. Whether the claimants have got no locus standi or cause of action to file present claim petition?OPR

4. Whether the petition is bad for non-joinder and misjoinder of necessary parties?OPR

5. Whether driver of tractor trolley No. PB-03-AA/7895 and Motor car No. DL-9CS-7441 were not holding valid driving licence at the time of alleged accident?OPR

6. Whether owners of tractor trolley No.PB-03-AA/7895 and Motor car No. DL-9CS-7441 were not holding valid registration certificate, route permit and valid insurance at the time of alleged accident?OPR

7. Relief.

CONTENTIONS

6. The learned counsel for the insurance company has submitted that it is the case of the claimants that accident took place due to the negligence on account of wrong parking of the tractor trolley (offending vehicle) in the middle of the road but the learned Tribunal has failed to appreciate that the FIR was lodged only against the driver of the tractor trolley and the driver of the car namely Bindu has not been impleaded as a party respondent. He further submitted that it is a case of composite negligence insofar as the occupants of the car (deceased) are concerned and the amount of compensation is liable to be recovered from the driver of any vehicle and since the driver of the Swift car was not impleaded, the liability should have been fastened only against respondent No.5-Sh.Gurnaib Singh i.e. owner of the tractor trolley.

Learned counsel for the insurance company has further assailed the award on the ground that driver - Bindu of Swift car was not holding a valid driving licence and findings on issue No.5 are liable to be reversed and recovery rights should be granted to the insurance company. The rate of interest of 9% p.a. as awarded by the learned Tribunal, is on the higher side and is liable to be reduced in view of the settled law.

7. In **FAO 5621 of 2016**, learned counsel for the claimants has assailed the award dated 23.12.2015 on the ground that the learned Tribunal has assessed the income of the deceased as Rs. 12,000/- per month by completely ignoring the income tax returns for the year 2012-2013 which were duly placed on record as Ex.A1. The Tribunal has also erred in applying the multiplier of 11, whereas the multiplier of 13 should have been applied as the age of the deceased was duly proved by producing his PAN Card as Ex.P9 to be 50 years. Similarly the learned Tribunal has erred while making deductions of the personal living expenses to the extent of 1/3rd whereas the number of dependents are four. Therefore, the deduction should have been to the extent of 1/4th. He further argues that even the future prospects have not been awarded. No amount was awarded under the heads of pain and sufferings and loss of love and affection.

Learned counsel for the claimants in **FAO-5360-2016** has assailed the award on the ground that the income of deceased Bal Krishan was assessed at Rs. 12,000/- per month by completely ignoring the income tax returns for the year 2011-12 to 2014-15 which were duly proved as Ex.P5 to P7 and Ex.P10. The Tribunal has also erred in applying the multiplier of 11, whereas the multiplier of 13 should have been applied as the age of the deceased was duly proved to be 50 years by producing his PAN Card as Ex.P9. Similarly the learned Tribunal has erred while making deductions of the personal living expenses to the extent of 1/3rd whereas the number of dependents are four. Therefore, the deduction should have been to the extent of 1/4th. He further argues that even the future prospects have not been awarded and the same should have been awarded to the extent of 30%. As per him, no amount was awarded under the heads of pain and sufferings and loss of love and affection.

OBSERVATION AND ANALYSIS

8. Having heard learned counsel for the parties and perusing the record of the case with their able assistance, this Court is of the opinion that the amount of compensation needs to be redetermined as per the judgments of the Hon'ble Supreme Court in **National Insurance Company vs. Pranay Sethi, (2017) 16 SCC 680** and **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another**, **2009(6) SCC 121**.

9. The contention of learned counsel for the insurance company that the driver of Swift car namely Bindu was not having a valid driving licence on the date of accident, has been dealt with by the Tribunal by placing reliance upon the testimony of Kunal Arora and also by relying on the decision of this Court in **New India Assurance Company Ltd. vs. Shanti Devi and others 2006(1) RCR (Civil) 664** wherein it has been held by this Court that when fatal motor accident was caused due to rash and negligent driving of truck and the driver of the truck had a fake and invalid licence, the Insurance Company cannot be absolved from its liability to indemnify the insured on account of an invalid or fake driving licence because the insurance company has not led any evidence to prove that the insured was guilty of any negligence and regarding use of vehicles by a duly

licensed driver.

10. The Hon'ble Supreme Court in **Helen C. Rebello (Mrs.) and Others vs. Maharashtra State Road Transport Corporation and Another, 1999(1) SCC 90**, held that the Act is a beneficial piece of legislation and hence the object of the Courts ought to be to assist the injured/deceased. Further, the Hon'ble Supreme Court in **Shivaji Dhyanu Patil vs. Smt.Vatschala Uttam More, 1991(3) SCC (Cri.) 865**, has categorically held that compensation can be granted under the Motor Vehicles Act even if accident is caused by a standing vehicle. Their lordships held that even when the motor vehicle is stationary due to a break down, the death of deceased falls within the scope of the expression 'use of motor vehicle.'

11. A three Judge Bench of the Hon'ble Supreme Court in **Mukund Dewangan v. Oriental Insurance Company Limited 2014 (4) RCR(Civil) 111,** speaking through Justice Arun Mishra held that:

> *"32. XXX*
> *It has been laid down that the insurer has also to satisfy the tribunal or the court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it had not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability.* ***In National Insurance Co. Ltd. v. Swaran Singh &Ors.*** *2004(2) RCR (Civil) 114 : (2004) 3 SCC 297, this Court has laid down that to avoid its liability towards the insured, the insurer has to prove that the former was guilty of negligence and failed to exercise reasonable care in the*

matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or by one who was not qualified to drive at the relevant time. The insurer must prove that the breach was on the part of the owner of the vehicle and burden to prove would be on them. The tribunals in interpreting the policy conditions would apply "the rule of the main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act. Whether the owner has taken reasonable care, has to be found out in each case. Swaran Singh (supra) had been referred to in ***Oriental Insurance Co. Ltd. v. Zaharulnisha*** *2008(2) RCR (Civil) 913 : (2008) 12 SCC* ***385*** *and it has been observed that if a person who has been given a licence for a particular type of vehicle, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of a different type. As for example, when a person is granted a licence to drive a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately. In Zaharulnisha case (supra), this Court has laid down thus:*

> *"18. A three-Judge Bench of this Court in National Insurance Co. Ltd. v. Swaran Singh (2004) 3 SCC 297 has extensively dealt with the meaning, application and interpretation of various provisions, including Sections 3(2), 4(3), 10(2) and 149 of the MV Act. In para 47 of the judgment, the learned Judges have held that if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately...."*

CONCLUSION

12. Accordingly, after careful consideration of arguments of both the parties and perusal of the record, the amount of compensation is reassessed in the following terms:-

13. This Court is of the opinion that the income assessed by the learned Tribunal with regard to both the deceased at Rs. 12,000/- per month is correct and the finding of the learned Tribunal in this regard is affirmed. Further, keeping in view the age of the deceased to be 50 years, future prospects of 25% are awarded in respect of both the deceased, in view of **Pranay Sethi (supra).** In light of the decision of **Sarla Verma** (supra), a deduction of $1/4^{th}$ to be made in both the cases and a multiplier of '13' would be applicable.

14. No compensation has been granted by the learned Tribunal under the head of pain and suffering and loss of love and affection. The Hon'ble Supreme Court has held that no amount would be awarded to the dependants of the deceased under the head of 'pain and suffering' in the case of instantaneous death.

15. This Court deems it fit to grant Rs 16,500/- for funeral expenses, Rs 16,500/- for loss of estate and Rs 44,000/- per claimant in both cases for loss of consortium. Further, Rs 25,000/- is granted towards litigation expenses.

16. Accordingly, compensation under different heads is determined as under:-

Sr.No.	Compensation	FAO No. 5360 of 2016	FAO No.5621 of 2016
A	**Pecuniary**		
1.	Income	Rs.12,000/-p.m.	Rs.12,000/-p.m.
2.	Annual Income	Rs.1,44,000/-	Rs.1,44,000/-
3.	Future prospects (25%)	Rs.1,44,000 x 25/100= Rs.36,000/- (Rs.1,44,000 + Rs.36,000 = Rs.1,80,000/-)	Rs.1,44,000 x 25/100= Rs.36,000/- (Rs.1,44,000 + Rs.36,000= Rs.1,80,000/-)
4.	Deductions 1/4th	Rs. 1,80,000 x 1/4= Rs. 45,000/- (Rs. 1,80,000 - Rs.45,000= Rs.1,35,000/-)	Rs. 1,80,000 x 1/4= Rs. 45,000/- (Rs. 1,80,000-Rs.45,000= Rs.1,35,000/-)
5.	Multiplier of '13'	Rs.1,35,000 x 13= Rs.17,55,000	Rs.1,35,000 x 13= Rs.17,55,000
6.	**Total Column A**	**Rs. 17,55,000/-**	**Rs. 17,55,000/-**
B	**Non-pecuniary**		
1.	Cost of litigation	Rs. 25,000/-	Rs. 25,000/-
2.	Loss of Estate	Rs.16,500/-	Rs.16,500/-
3.	Loss of consortium	Rs. 44,000 x 4 = Rs.1,76,000	Rs. 44,000 x 4 = Rs.1,76,000
4.	Funeral expenses	Rs.16,500/-	Rs.16,500/-
	Total Column B	**Rs. 2,34,000**	**Rs. 2,34,000/-**
Total Amount of Compensation A + B		Rs.17,55,000/- + Rs.2,34,000/- = **Rs.19,89,000/-**	Rs.17,55,000/- + Rs.2,34,000/- = **Rs.19,89,000/-**

17. In view of judgment in **Pranay Sethi (supra)**, the rate of interest is granted at the rate of 7.5% p.a. which would be payable from the date of filing of the claim petition (s) till the date of actual payment. It is made clear that amount already paid would be deducted from redetermined

amount of compensation. The insurance company i.e. respondent No.3 (in FAOs 5621 and 5360 of 2016) is directed to make the payment of compensation within a period of two months from the date of passing of this order.

18. The management of compensation would also be as per the directions given in the award of the Tribunal.

19. The appeals filed by the insurance company i.e. FAO Nos.1803 and 1782 of 2016 are dismissed, whereas the appeals filed by the claimants i.e. FAO Nos. 5360 and 5621 of 2016 are allowed in the aforesaid terms.

20. Pending application(s), if any, shall also stand disposed of.

21. Registry is directed to send a copy of this order to the Motor Accidents Claim Tribunal, Barnala/Executing Court for compliance of the same.

(HARPREET SINGH BRAR)
JUDGE

06.06.2023
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Whether speaking/non speaking Yes/No
Whether reportable/non reportable Yes/No