IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-3880-2016(O&M)

TATA AIG General Insurance Company Ltd.

...Appellant

Versus

Bikkar Singh and others

...Respondents

(2) FAO-3883-2016(O&M)

TATA AIG General Insurance Company Ltd.

...Appellant

Versus

Inderjeet Singh and others

...Respondents

(3) FAO-5412-2016(O&M)

Inderjeet Singh and another

...Appellants

Versus

Birdavinder Singh and another

...Respondents

(4) FAO-6222-2016(O&M)

Bikkar Singh and another

...Appellants

Versus

Birdavinder Singh and others

...Respondents

Reserved on:4.7.2023
Date of Pronouncement:-12.7.2023

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

Present: Mr.Rajesh K.Sharma, Advocate
for the appellant in FAO-3880-2016 and FAO-3883-2016
and for respondent No.2 in FAO-5412-2016 and
FAO-6222-2016.

Mr.K.B.S. Mann, Advocate
for the appellants in FAO-5412-2016 and
FAO-6222-2016 and for respondents No.1 and 2 in
FAO-3880-2016 and FAO-3883-2016.

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H.S. MADAAN, J.

1. By this order, I shall dispose of four FAOs i.e. FAO-3880-2016 and FAO-3883-2016 filed on behalf of insurance company and FAO-5412-2016 and FAO-6222-2016 filed on behalf of the claimants, which have arisen out of the same award.

2. Briefly stated, facts of the case are that deceased Sukhdeep Singh @ Seep and Jagsir Singh after performing their duty in the factory were returning to their village on a bicycle; they were being followed by their fathers Bikkar Singh and Inderjit Singh, respectively on another bicycle; at about 10:45 p.m., when they had reached near petrol pump on Goniana Bajakhana Main GT Road within jurisdiction of Police Station Nehianwala, then a car bearing registration No.PB-08-BN-0616 (hereinafter referred to as the offending car) being driven by respondent No.1 Birdavinder Singh at a high speed in a rash and negligent manner

without blowing horn came from behind and after crossing bicycle of Bikkar Singh and Inderjit Singh, hit bicycle of Sukhdeep Singh @ Seep and Jagsir Singh from behind, as a result both of them fell on the ground and suffered multiple injuries; Sukhdeep Singh @ Seep had died at the spot, whereas Jagsir Singh was rushed to Civil Hospital, Goniana from where he was referred to Adesh Institute of Medical Sciences and Research, Bhucho Kalan, District Bathinda, where he died on 12.2.2013. Formal FIR with regard to the accident was recorded at Police Station Nehianwala.

3. The legal representatives of deceased Sukhdeep Singh @ Seep, namely his father – Bikkar Singh, aged 70 years, mother Simar Kaur, aged 65 years, brother Pritam Singh, aged 36 years and another brother Sukhmander Singh aged 30 years, all residents of village Jida, Tehsil and District Bathinda had filed a claim petition bearing MACT File No.04 of 10.1.2014 under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Birdavinder Singh – driver-cum-owner and Tata AIG, General Insurance Company Ltd., Moga – insurer of the offending car, claiming compensation.

4. The legal representatives of Jagsir Singh, namely, his father – Inderjeet Singh, aged 52 years and mother Jaswinder Kaur, aged 48 years had also brought a claim petition bearing MACT File No.03 of 10.1.2014 under Section 166 of the Act against those very respondents, claiming compensation.

5. In the said claim petitions, the claimants had contended that

Sukhdeep Singh @ Seep was aged about 22 years at the time of accident working in Sportking Industries, Jida, getting Rs.8,000/- per month as salary. Whereas Jagsir Singh was aged about 20 years working in that very factory getting salary of Rs.8,000/- per month.

6. On notice, the respondents had put in appearance in both the cases and offered a contest.

7. Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence in support of their respective claims.

8. After hearing arguments, the Motor Accidents Claims Tribunal, Bathinda (hereinafter referred to as the Tribunal) allowed the claim petitions vide separate awards dated 20.1.2016 and compensation of Rs.5,90,000/- with interest @ 9% per annum from the date of the claim petition till realization, in favour of claimant No.2 was awarded in claim petition bearing MACT File No.04 of 10.1.2014 and respondent No.2 was directed to deposit the amount within a period of two months from the date of award and then the claimant shall be entitled to have interest on this amount of Rs.5,90,000/- @ 6% per annum from the date of application till realization.

9. Whereas compensation of Rs.4,82,000/- with interest @ 9% per annum from the date of the claim petition till realization, in favour of claimant No.2 was awarded in claim petition bearing MACT File No.03 of 10.1.2014 and respondent No.2 was directed to deposit the amount within a period of two months from the date of award and then the

claimant shall be entitled to have interest on this amount of Rs.4,82,000/- @ 6% per annum from the date of application till realization.

10. The claimants/petitioners in both the petitions being dissatisfied with the compensation awarded to them and insurance company being dissatisfied with the award with respect to quantum of compensation granted in both the claim petitions have filed separate appeals before this Court.

11. Notices of the appeals were issued to the respective respondents, who put in appearance through counsel.

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

13. Learned counsel appearing for the appellant – insurance company has attacked the impugned awards stating that involvement of the car in question was not established inasmuch as in the FIR neither the particulars of the vehicle causing the accident have been mentioned nor the name of the driver given. Furthermore, the police has prepared a cancellation report in the matter and respondent No.1 has not been sent up to face trial. However, the Tribunal ignoring all these facts has wrongly come to the conclusion that accident in question had taken place on account of rash and negligent driving of the car in question by respondent No.1.

14. Whereas, learned counsel appearing for the respondents/claimants has vehemently rebutted those contentions stating that considering the facts and circumstances of the case and evidence

available on the record, the Tribunal was justified in coming to the conclusion that the accident had been caused by respondent No.1- Birdavinder Singh by driving the offending car in a rash and negligent manner.

15. After considering the rival contentions, I do not find any merit in the submissions made by learned counsel for the appellant – insurance company.

16. But then FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime.

17. In this case, even if it is taken that the police after carrying out the investigation has prepared a cancellation report, which has been approved by Superintendent of Police but then there is nothing to show that such report has been filed in the Court of Illaqa Magistrate and has been accepted as such. Unless the cancellation report is accepted by the Court of competent jurisdiction not much reliance can be placed upon such proceedings. When such report is filed in the Court of Magistrate, notice is required to be given to the complainant, who may file a protest petition and seek holding of further investigation. The Court may order the same if deemed proper. Even if, the report is accepted, the

complainant has got remedy of filing revision petition against that order before the High Court and can bring a private complaint even. The eye-witness of the accident having appeared before the Tribunal had fully supported the case of claimants remaining unshattered in the cross examination. The depositions are to be given due weightage and cannot be discarded in a light manner. The Tribunal has considered all those aspects and has rightly decided issue No.1 in favour of the claimants against respondents finding involvement of the car in question in the accident and its rash and negligent driving and respondent No.1 Birdavinder Singh to be responsible for happening of the accident in which Sukhdeep Singh @ Seep and Jagsir Singh had suffered injuries and had died.

18. No other argument was advanced by learned counsel for the appellant – insurance company.

19. Now coming to the appeals filed on behalf of the appellants/respondents/claimants i.e. FAO-5412-2016 and FAO-6222-2016.

20. Learned counsel for the claimants sought enhancement of compensation mainly for two reasons. Firstly that no addition has been made to the income of the deceased on account of future prospects and secondly with regard to the compensation under the conventional heads.

21. Learned counsel for the insurance company could not rebut such contentions put forward by learned counsel for the appellants/claimants.

22. First coming to the case relating to the death of Sukhdeep

Singh @ Seep. The Tribunal considering the testimony of CW2 Shiv Charan Singh, Deputy Manager, HR, Sportking Industry, who had brought the summoned record stating that Sukhdeep Singh @ Seep was entered at Serial No.1046 with Employee Code D-1987 proving his salary certificate as Ex.C1 and extract of salary register Ex.C2 showing the salary of Sukhdeep Singh @ Seep as Rs.5,460/- with deduction of Rs.501, has taken the net income of the deceased Sukhdeep Singh @ Seep as Rs.4959/- per month.

In my considered view the deduction of Rs.501/- from the salary of Sukhdeep Singh @ Seep was uncalled for and his gross salary is required to be taken into consideration i.e. Rs.5,460/-. Considering his age as 22 years, in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** 50% of the income is to be added towards future prospects. Doing that the monthly income of the deceased Sukhdeep Singh @ Seep is taken as Rs.8,190/- (5460 + 2730).

Since the deceased Sukhdeep Singh @ Seep was a bachelor, 50% of the amount is to be deducted towards personal and living expenses. Doing that the dependency of claimants comes out to be Rs.4,095/- per month, annual dependency comes out to be Rs.4,095 x 12 = Rs.49,140/-.

The Tribunal has rightly applied multiplier of 18. Doing that the compensation works out to be Rs.8,84,520/- (49140 x 18).

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 funeral expenses and Rs.15,000/- for loss of estate. The total compensation thus comes out to be Rs. 8,84,520 + 70,000 = Rs.9,54,520/-.

23. The Tribunal has awarded compensation of Rs.5,90,000/-.

24. In this way, the enhanced amount in MACT File No.04 of 10.1.2014 comes out to be Rs.3,64,520/- (9,54,520 – 5,90,000), payable with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. The Tribunal has granted compensation to the mother of the deceased Sukhdeep Singh @ Seep only while denying the same to the aged father and major brothers. As far as brothers of the deceased, who are having age of majority are concerned, one can understand the same but not with regard to aged father of the deceased, who deserved to be granted compensation. Therefore, the enhanced amount of compensation is ordered to be apportioned among Bikkar Singh – father and Simar Kaur – mother of the deceased Sukhdeep Singh @ Seep in equal proportions.

25. Now coming to the case relating to the death of Jagsir Singh. The Tribunal considering the testimony of CW3 Shiv Charan Singh, Deputy Manager, HR. Sportking Industry, who had brought the summoned record stating that Jagsir Singh was entered at Serial No.974 with Employee Code D-1828 proving his salary certificate as Ex.C1 and

extract of salary register Ex.C2 showing the salary of Jagsir Singh as Rs.4,440/- with deduction of Rs.405, has taken the net income of the deceased Jagsir Singh as Rs.4,035/- per month.

26. In my considered view the deduction of Rs.405/- from the salary of Jagsir Singh was uncalled for and his gross salary is taken into consideration i.e. Rs.4,440/-. Considering his age as 20 years, in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** 50% of the income is to be added towards future prospects. Doing that the monthly income of the deceased Jagsir Singh is taken as Rs.6660/-(4440 + 2220).

Since the deceased Jagsir Singh was a bachelor, 50% of the amount is to be deducted towards personal and living expenses. Doing that the dependency of claimants comes out to Rs.3330/- per month, annual dependency comes out to be Rs.3330 x 12 = Rs.39,960/-.

The Tribunal has rightly applied multiplier of 18. Doing that the compensation works out to be Rs.7,19,280/- (39,960 x 18).

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 funeral expenses and Rs.15,000/- for loss of estate. The total compensation thus comes out to Rs. 7,19,280 + 70,000 = 7,89,280/-.

27. The Tribunal has awarded compensation of Rs.4,82,000/-.

In this way, the enhanced amount in MACT File No.03 of 10.1.2014 comes out to be Rs.3,07,280/- (7,89,280 – 4,82,000), payable with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. The Tribunal has granted the entire compensation amount to mother of the deceased, namely, Jaswinder Kaur only while denying any part thereof to father of the deceased, namely Inderjeet Singh, who was aged more than 52 years at the time of filing of the claim petition on 10.1.2014. He also deserves to be granted a share in the compensation. Therefore, the enhanced amount of compensation is ordered to be apportioned among Inderjeet Singh – father and Jaswinder Kaur - mother of the deceased Jagsir Singh in equal proportions.

28. With these modifications, FAO-5412-2016 and FAO-6222-2016 filed on behalf of the claimants stand allowed partly.

29. Consequently, FAO-3880-2016 and FAO-3883-2016 filed on behalf of the insurance company stand dismissed.

Since FAO-5412-2016 and FAO-6222-2016 filed on behalf of the claimants stand allowed partly and FAO-3880-2016 and FAO-3883-2016 filed on behalf of the insurance company stand dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

12.7.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No