IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-4256-2016(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Smt.Gudiya and others

...Respondents

(2) FAO-5984-2016(O&M)

Smt.Gudiya and others

...Appellants

Versus

Sunil Kumar and others

...Respondents

Date of Decision:-17.2.2023

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

Present: Brig.B.S. Taunque, Advocate
for the appellant in **FAO-4256-2016** and
for respondent No.3 in **FAO-5984-2016**.

Mr.Rakesh Dhiman, Advocate
for the appellants in **FAO-5984-2016** and
for respondents No.1 to 7 in **FAO-4256-2016**.

Mr.Neeraj Yadav, Advocate
for respondent No.8 in **FAO-4256-2016** and
for respondent No.1 in **FAO-5984-2016.**

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H.S. MADAAN, J.

**CM-14592-CII-2016 in
FAO-4256-2016 and
CM-20424-CII-2016 in
FAO-5984-2016**

1. For the reasons mentioned in the applications, the same are allowed and delay of 32 days in filing FAO-4256-2016 and delay of 20 days in filing FAO-5984-2016 stand condoned.

FAO-4256-2016(O&M) and
FAO-5984-2016(O&M)

2. By this order, I shall dispose of two FAOs i.e. **FAO-4256-2016** filed on behalf of United India Insurance Company and **FAO-5984-2016** filed on behalf of the claimants, which have arisen out of the same award.

3. Briefly stated, facts of the case are that Petitioners/claimants Gudiya – wife, Baby Kirti – minor daughter aged about 12 years, Master Arun and Master Anuj – minor sons, aged about 10 years and 8 years respectively, Sh.Sunder Lal – father, aged about 62 years, Smt.Shiv Pati – mother, aged about 52 years and Ms.Sushma – sister aged about 17 years have brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Sunil Kumar – driver, Dharam Pal Tanwar – owner and United India Insurance Company Ltd. - insurer of Toyota Innova Car bearing registration No.DL-1ZZ-2396 (hereinafter referred to as the offending car), claiming compensation on account of death of Sh.Kuldeep in a motor vehicular accident.

4. As per the case of the petitioners/claimants, on 17.5.2015 at about 1:00 a.m., Kuldeep (since deceased) was going from Shanker Chowk to Delhi side on his bicycle; in the meanwhile, the offending car of silver colour came from Shanker Chowk side being driven by respondent No.1 – Sunil Kumar in a rash and negligent manner and it hit

the bicycle of the deceased from backside, resultantly, Kuldeep fell down on the road and suffered multiple injuries; his bicycle was fully damaged; the accident was witnessed by Sandeep Singh son of Puran Singh, resident of Hasupura, who was working as a Ticket Collector at MCD Sirhol Border, Toll Plaza, Gurgaon; he had noted down the registration number of the offending car; Sandeep and his colleagues tried to intercept the offending car but respondent No.1 Sunil Kumar managed to flee away towards Delhi side; Kuldeep had died at the spot; in the meanwhile a PCR came; the police called the ambulance and dead body of Kuldeep was shifted to Civil Hospital, Gurgaon.

FIR No.210 dated 17.5.2015 for the offences under Sections 279 and 304-A IPC was registered at Police Station Udyog Vihar against respondent No.1 – Sunil Kumar.

5. It is the case of the petitioners/claimants that the deceased was aged about 35 years and was having good health and bright future; he was working with Magsons Exports at Plot No.41-42, Udyog Vihar, Phase-4, Gurgaon, earning Rs.8,100/- per month i.e. Rs.270/- per day; the petitioners/claimants were solely dependent upon his earnings and with death of Kuldeep, the petitioners/claimants had been deprived of their financial support.

6. Notice of the claim petition was given to the respondents. All the three respondents appeared and contested the claim petition.

7. Respondents No.1 and 2 had filed a joint written statement taking preliminary objections that the petitioners/claimants had no locus standi to file the claim petition; no cause of action had arisen to

petitioners/claimants to bring the petition; a false FIR was got registered against respondent No.1 wrongly involving the car of respondent No.2; no such accident had taken place. Furthermore, it was pleaded that respondent No.1 was holding a genuine licence. On merits, these very assertions were reiterated while praying for dismissal of the claim petition.

8. In the separate written statement filed by respondent No.3 – insurance company, it took various preliminary objections with regard to non-compliance of Section134(c) of the Motor Vehicles Act for not giving information with regard to the accident and non-submission of documents by owner of the vehicle. It challenged the locus standi of the petitioners/claimants in bringing the claim petition stating that no cause of action arose to them to file the claim petition and further respondent No.1 was not holding a valid and effective driving licence at the relevant time; the terms and conditions of the insurance policy had been violated by respondents No.1 and 2. On merits all the allegations of petitioners/claimants were denied and entitlement of petitioners/claimants to compensation was also challenged. Such respondent also prayed for dismissal of the claim petition.

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

10. After hearing arguments, the Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the Tribunal) vide award dated 18.3.2016 allowed the claim petition partly and compensation of

Rs.19,37,800/- with interest @ 7.5% per annum from the date of the claim petition till actual realization was awarded to the claimants, payable by all the three respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award. The details of the compensation so awarded are as follows:

	Date of accident	17.5.2015
Age of deceased	35 years	
Occupation	Operator	
Claimants	Widow, three minor children, parents and unmarried sister	
	Heads of claim	Tribunal
1.	Income	Rs.7,000/- per month
2.	Add, 50% of increase	50% of Rs.7,000/- + Rs.7,000/- = Rs.10,500/-
3.	Deduction	1/5th of 10,500/-= 2100/- (10,500 – 2100)=8400/-
4.	Multiplicand (annualized)	8400 x 12 = Rs.100800/-
5.	Multiplier	100800 x 16 – 1612800/-
6.	Loss of love, affection, care and guidance for minor son	Rs.1,00,000/-
7.	Loss of love and affection to parents	Rs.1,00,000/-
8.	Loss of consortium and estate	Rs.1,00,000/-
9.	Funeral Expenses	Rs.25,000/-
	Total	19,37,800/-

11. The claimants/petitioners in the petition being dissatisfied with the quantum of compensation awarded to them and insurance company being also aggrieved by the award have filed separate appeals before this Court.

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

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

14. The Tribunal on the basis of the pleadings of the parties and evidence before it, had taken the age of the deceased to be 35 years and his occupation as operator with monthly income to be Rs.7,000/- and number of dependent family members to be seven including his widow, three minor children, parents and an unmarried sister.

15. The first and foremost objection by learned counsel for the appellant insurance company is that the Tribunal has wrongly taken father and unmarried sister of the deceased to be dependent upon his earnings.

16. However, I am not convinced by the merit of such objection. Considering the facts and circumstances of the case and evidence available on record, it comes out that the father and unmarried sister of the deceased are to be taken as dependent upon earnings of the deceased.

17. The monthly income of the deceased taken to be Rs.7,000/- is quite reasonable, though the claimants had asserted that it was Rs.8,100/- per month. The Tribunal has added 50% of the amount towards future prospects. The Tribunal fell in error in doing so. In view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** considering the age of the deceased, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs. 7000 + 2800 = Rs.9,800/-.

18. The Tribunal had rightly deducted 1/5th of the monthly earning of the deceased towards his personal and living expenses. Doing that the dependency of claimants comes out to Rs.7840(9800 - 1960)/- per

month, annual dependency comes out to Rs. 7840 x 12 = Rs.94,080/-.

19. The Tribunal has used multiplier of 16, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 94,080 x 16 =15,05,280/-.

20. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love, affection, care and guidance for minor son; Rs.1,00,000/- towards loss of love and affection to parents, Rs.1,00,000/- towards loss of consortium and estate and Rs.25,000/- towards funeral expenses.

21. However, the legal position in that regard has been clarified in a judgment by the Apex Court i.e. ***Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333***, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***, which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded. It has been clarified that the amount should be enhanced on percentage basis in every three years. In that case the accident had taken place on 17.5.2015, about 7 years prior and making addition of 10% to such amounts under the head compensation on account of loss of consortium, claimants No.1 to 7 are entitled to sum of Rs.44,000/- each. Doing that the compensation comes out to be Rs.18,46,280(15,05,280+44000+44000+44000+44000+44000+44000 +44000 + 16500+16500).

22. The Tribunal has wrongly awarded compensation of Rs.19,37,800/-. The same is reduced to Rs.18,46,280/- payable by all the respondents jointly and severally. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. Other terms and conditions regarding apportionment in the original award shall remain the same. The share of the claimants shall be reduced proportionately.

23. With such modifications, FAO-4256-2016 filed on behalf of Insurance Company is allowed partly with costs.

24. If the amount of compensation has already been paid by the Insurance company, the claimants shall refund the excess amount received to the Insurance Company otherwise the Insurance Company shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Tribunal.

25. There is absolutely no reason to enhance the amount of compensation rather it has been reduced.

26. Consequently, FAO-5984-2016 filed on behalf of the appellants/claimants stands dismissed.

17.2.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No