

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

1) FAO-6455-2016
Reserved on: 19.05.2023
Date of Pronouncement: 06.06.2023

New India Assurance Company Ltd.Appellant

Versus

Gurdeep Kaur and othersRespondents

2) FAO-344-2017

Gurdeep Kaur and othersAppellant

Versus

Swaran Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajneesh Malhotra, Advocate
for appellant (in FAO-6455-2016) and
for respondent No.4 (in FAO-344-2017).

Mr. Amit Jaiswal, Advocate
for the appellants (in FAO-344-2017) and
for respondents No.1 to 3 (in FAO-6455-2016).

HARPREET SINGH BRAR, J.

1. The above referred two appeals have arisen out of a common award dated 14.07.2016 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal' for short) and the same are being disposed of by this common judgment.

2. The case bearing FAO No.6455 of 2016 has been filed by the Insurance Company for setting aside the aforesaid award of the Tribunal whereas

FAO No.344 of 2017 has been filed by the claimants seeking enhancement of compensation awarded to them.

FACTUAL BACKGROUND

3. Facts are being taken from FAO-6455-2016 for ready reference:-

4. Succinctly, the facts of the case are that on 20.04.2015, Harjit Singh Dhandi (since deceased) had visited his native place i.e. Village Tasoli for filling sand at his ancestral home for which purpose he had asked for a tractor-trolley from his friend namely Prem Singh (respondent No.6) to lift sand from his fields. Since Prem Singh was unwell, he sent Swaran Singh-respondent No.4 to lift the sand. At about 10:30 A.M., Swaran Singh was reversing the tractor-trolley to dump the laden sand in the house of the deceased in a rash and negligent manner and at a fast speed. The persons present at the spot objected to his driving in such a rash manner but he did not pay any heed and struck his tractor-trolley against Harjit Singh who was standing on the side of the gate of his house. Due to the impact, Harjit Singh sustained multiple grievous injuries. After the incident, Swaran Singh fled from the scene along with the tractor-trolley. Harjit Singh was taken to PGIMER, Chandigarh in a private vehicle by Amrinder Singh and Jasvir Singh where he was declared dead.

5. Deceased Harjit Singh was 40 years of age at the time of his death. He was the director of M/s Dhandi Builders Ltd., having its registered office at Chandigarh and was getting a monthly salary of Rs.52,000/- along with Rs. 10,000/- as conveyance allowance and Rs. 20,000/- from the investments made by him in the company. As such, the deceased was claimed to have been earning Rs. 82,000/- per month and was an income tax payee.

6. Taking into account the income tax returns filed by the deceased, the Tribunal assessed his income at Rs. 25,000/- per month. Keeping in view

the age of the deceased to be more than 40 years but below 41 years, an addition of 30% was made in his income. Thus, the annual income of the deceased was assessed at Rs. 4,00,008/-. One third of the total income was deducted towards his personal expenses and a multiplier of '15' was applied. In this way, the total amount of compensation, including both pecuniary and non-pecuniary damages, of Rs. 41,75,080/- was awarded to the appellant/claimants in this claim petition along with interest of 9% per annum from the date of accident i.e. 20.04.2015 to be paid by the appellant-Insurance Company. It was further directed that in case the insurance company paid the amount within a period of one month, then interest at the rate of 7.5% per annum would accrue.

CONTENTIONS

7. Learned counsel for the Insurance Company has vigorously assailed the impugned award on the ground that the driver of the offending vehicle was not holding any valid license to drive the said vehicle or even a Light Motor Vehicle(LMV). He was driving a tractor-trolley while his driving license only permitted him to drive scooter/car/jeep/motorcycle. The learned Tribunal has erred in ignoring the fact that the driving license of the driver was not valid for driving the tractor-trolley or even an LMV. Further, learned counsel argued that the vehicle in question was a transport vehicle and was being used as a commercial vehicle. Thus, there was a breach of the terms and conditions of the Insurance Policy and reference in this regard was made to the judgment of this Court in ***National Insurance Company Limited Vs. Shinder Kaur 1998 (1) PLR 369*** along with the judgment of the Hon'ble Supreme Court in ***M/s Natwar Parikh and Co. Ltd. Vs. State of Karnataka 2005 (4) RCR (Civil) 61***. He further relied upon ***Pula Ram and others Vs. State of Haryana and others 2014(39) RCR (Civil) 176***; ***Subhash Chand Vs. Satya Rani 2013 (4) PLR***

329; *The New India Assurance Company Limited Vs. Sohan Lal and others* 2013 (1) PLR 706 and *Amrit Paul Singh and another Vs. TATA AIG General Insurance Co.* 2018 (7) SCC 558.

8. He further contended that the accident has occurred due to the fault of the deceased himself, as he was standing behind the tractor-trolley when the same was reversing. It was due to his lack of attention that the accident had taken place. The learned Tribunal has wrongly relied upon the contents of the FIR to come to the conclusion that the accident in question occurred with the insured vehicle and that mere lodging of the FIR is not a conclusive proof of the negligence of respondent No.4/driver-Swaran Singh (in FAO-6455-2016). On the basis of the above contentions, the learned counsel for the Insurance Company has sought modification of the award and prayed that recovery rights be granted to the Insurance Company.

9. Learned counsel for the claimants has assailed that the impugned award on the ground that the Tribunal has ignored the latest Income Tax Return (ITR) without any valid reason. The Form-16 containing the salary of the deceased as well as the Tax Deducted at Source (TDS) for the assessment year 2014-15 was duly proved as Ex.P-21. The unfortunate fatal accident had taken place on 20.04.2015, therefore, once the consistent and reliable evidence to prove the salary of the deceased for the relevant year was available on record, the Tribunal, without any cogent reason, had ignored the same. He further submitted that the HRA and DA ought to have been included by the Tribunal while assessing the compensation. The learned counsel for the claimant has placed reliance upon the ***Kanishka Narang and another Vs. Harbhajan Singh and others* 2022 (3) RCR (Civil) 644; *Bharat Axa General Insurance Company***

Limited Vs. Baby and others* 2021 (3) PLR 541 and *Raghuvir Singh Matolya

and others Vs. Hari Singh Malviya and others 2009 (5) SCC (Civil) 631 to support his contentions. He also contended that the amount granted under different heads is not in consonance with the settled law.

OBSREVATIONS & ANALYSIS

10. Having heard 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 Limited vs. Pranay Sethi and others, (2017)16 SCC 680** and **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (6) SCC 121**.

11. The Insurance Company has not led any evidence to substantiate their claim that tractor-trolley is a commercial vehicle and the driver of the offending vehicle was not having a valid license to drive the commercial vehicle at the time of the accident, and the same was considered and rejected while hearing the present appeal.

This Court on 22.10.2016 had observed the following:-

"...It has not been shown as to whether the tractor in question was being used on a public road and prima facie at least, it is difficult to accept that simply because it was delivering sand in the trailer carried behind it, to the residential house of a person living in a village, a public road had been used, in the absence of any evidence led in that regard, as it is equally possible that sand could have been picked up from any field within the revenue estate of the village itself, brought to the house in the village "abadi" or wherever the house was located in the revenue estate..."

12. 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...."

13. A perusal of the policy premium schedule (Ex.R-3) shows that premium was being charged for third party coverage for the tractor as well as the trailer attached, which covers any damages or loss suffered by a third party in case of an accident. Once the Insurance Company has charged premium from the insured on account of coverage of third party, the ratio of the judgment in *Surinder Kaur Vs. Smt. Rano Devi and others*, 2016 SCC Online P&H 8111 as well as *Amrit Lal Sood and another Vs. Kaushalaya Devi Thapar and others* (1998) 3 SCC 744 would be applicable.

14. In a two Judge Bench of the Hon'ble Supreme Court in ***Rani Gupta and others Vs. United India Insurance Company Limited and others*** AIR 2009 (SC) 3226, speaking through Justice S.B. Sinha has while dismissing the appeal has upheld the ratio of law laid down by the Delhi High Court and following observations were made:-

"5. The first respondent preferred an appeal there against. The question raised before the High Court was as to whether the deceased having been travelling as a gratuitous passenger in a private car would fall within the meaning of 'third party' and, thus, would be covered by the statutory policy under Section 147 of the Act. The learned Judge noticed that the policy was "Private Car Package Policy" as notified by the Tariff Advisory Committee with effect from 1.7.2002 the terms and conditions whereof are:

"Section II - Liability To Third Party

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of:

(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(ii) Damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured."

It was furthermore opined that the object and purpose of Sections 146 and 147 is that policy of insurance should cover liability in respect of death or bodily injury of a person including the owner of the goods or his authorized representative who may be carried in a goods vehicle/carriage as defined in Section 2 (14) of the Act."

15. Once the Insurance Company has deducted premium for third party, it cannot escape its liability. In view of the facts and circumstances of the case and the ratio laid down in the aforementioned decisions, this Court is of the considered opinion that the Insurance Company is liable to pay the compensation to the claimants.

16. On the issue of including DA and HRA to the salary and computation of compensation, a two Judge Bench of the Hon'ble Supreme

Court in **Raghuvir Singh Matolya (supra)**, speaking through Justice S.B. Sinha, made the following observations:-

“8. We, therefore, are of the opinion that ‘Dearness Allowance’ and ‘House Rent Allowance’ payable to the deceased should have been included for determining the income of the deceased and consequently, the amount of compensation.”

17. A two Judge Bench of the Hon’ble Supreme Court in **Bimla Devi and others vs. Himachal Road Transport Corporation and others, 2009 (13) SCC 530**, had conclusively held that standard of proof beyond reasonable doubt cannot be applied in such matters. Speaking through Justice A.K.Ganguly, it was held as follows:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

18. 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 person. Furthermore, 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’.

CONCLUSION

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

20. This Court deems it proper to assess the salary of the deceased at Rs.5,04,240/- as per the ITR for the assessment year 2014-15. An amount of Rs.18046/- is deducted as tax. There is no material available on record to indicate receipt of HRA over and above the gross salary. As far as DA is concerned, it always forms a part of the salary. Further, since the age of the deceased was 40 years, in accordance with *Pranay Sethi (supra)*, future prospects of 25% are granted. In light of the fact that the deceased was married and had three dependents (wife and two minor children), deduction of 1/3rd is to be made and a multiplier of 14 is to be applied in view of the law laid down in *Sarla Verma (supra)*.

21. In addition to the above, Rs.16,500/- is awarded for funeral expenses Rs.16,500/- for loss of estate and Rs.44000/- to each of the claimants for loss of consortium, in view of *Pranay Sethi (supra)*. An amount of Rs.25,000/- is granted as litigation expenses.

Sr. No.	Head	Amount
1.	Annual Income	Rs.5,04,240/-
2.	Tax	Rs.18,046/-
3.	Income after deduction of Tax (Rs.5,04,240 – Rs.18,046)	Rs.4,86,194/-
4.	Future Prospects (25%)	25 /100 x 4,86,194 = Rs.1,21,549/-
5.	Loss of Future Income (Rs.4,86,194 + Rs.1,21,549)	Rs.6,07,743/-
6.	Deduction (1/3)	1/3 x 6,07,743/- = 2,02,581/-
7.	Loss of Dependency (Rs.607743 – Rs.202581)	Rs.4,05,162/-

8.	Multiplier (14) (Rs.4,05,162/- x 14)	Rs.56,72,268/-
9.	Loss of Estate	Rs.16,500/-
10.	Funeral Expenses	Rs.16,500/-
11.	Loss of Consortium	Rs.44,000/- x 3 = Rs.1,32,000/-
12.	Litigation Expenses	Rs.25,000/-
13.	Total Amount of Compensation	Rs.58,62,268/-

22. Consequently, the appeal filed by the claimants i.e. FAO No.344 of 2017 is allowed and the appeal filed by the Insurance Company i.e. FAO NO.6455 of 2016 is dismissed. The Insurance Company is directed to pay the redetermined compensation of Rs.58,62,268/- within a period of two months from the date of passing of this order along with an interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. In case any amount is paid towards the compensation by the Insurance Company, the same shall be deducted from the redetermined amount of compensation.

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

24. Registry is directed to send a copy of this order to learned Motor Accident Claims Tribunal, Chandigarh/Executing Court for compliance of the same.

(HARPREET SINGH BRAR)
JUDGE

06.06.2023

Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No