

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) FAO-9782-2014 (O&M)

Kailash and another
...Appellants

VERSUS

Usha Devi and others
...Respondents

(ii) FAO-1228-2015 (O&M)

Usha Devi and others
...Appellants

VERSUS

Kailash and others
...Respondents

Date of Decision: September 01, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.J.P.Sharma, Advocate,
 for the appellants (in FAO-9782-2014) and
 for respondents No.1 and 3 (in FAO-1228-2015).

Mr.Varun Gupta, Advocate
for the respondent No.4 (in FAO-9782-2014) and
for respondent No.2 (in FAO-1228-2015).

Mr.Manoj Chahal, Advocate
for the appellants (in FAO-1228-2015) and
for respondents No.1 to 3 (in FAO-9782-2014).

Mr.Suvir Dewan, Advocate
for respondent No.5 (in FAO-9782-2014) and
for respondent No.4 (in FAO-1228-2015).

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ARCHANA PURI, J.

These are two appeals, filed by the rival parties to assail the Award dated 29.08.2014 passed by learned Motor Accident Claims Tribunal (hereinafter referred to 'Tribunal'), whereby, compensation was granted, on account of death of Bajrang, in a motor vehicular accident, which took place on 24.06.2013.

For the convenience of the discussion, the parties are referred to as making appearance before the Tribunal.

On appraisal of the evidence, brought on record, learned Tribunal had granted compensation, to the extent of Rs.47,60,758/-, to the claimants. The liability was fastened only upon the driver and owner (respondents No.1 and 3) of offending vehicle bearing registration No.RJ-32PA-1734, jointly and severally. However, the insurance company was absolved from any liability.

Feeling aggrieved by the aforesaid Award, **FAO-9782-2014** has been filed by the driver and owner, namely Kailash and Parkash Chand, respectively, to challenge the findings of exoneration of the Insurance Company from making payment of the compensation, so worked upon. Besides the same also, the driver and owner have disputed the extent of compensation, so worked upon.

Claimants-appellants filed **FAO-1228-2015**, thereby, seeking enhancement of the compensation, so awarded by learned Tribunal.

So far as the fact of accident and the involvement of the offending vehicle is concerned, none of the parties to the lis have challenged the same. As such, the findings so arrived, qua the same by learned

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Tribunal, has since attained finality.

Firstly, let us consider the compensation, so granted to the claimants. The widow of the deceased namely Usha Devi, stepped into witness box as PW-2 and she has tendered into evidence, her affidavit Ex.PW2/A, wherein, she has deposed about her husband to be working as PTI Teacher in Government School, village Niyajalipur (Naya Gaon) and that he was earning Rs.30,000/- per month, as salary, besides the service benefits.

Further also, claimants had examined PW-1 Pankaj, Clerk, Govt. Middle School, Niyajalipur, who had brought the annual salary certificate of Bajrang, who was posted in their school. PW-4 Sandeep, Clerk, O/o Block Education Officer, had brought the record pertaining to service of Bajrang, who was working as PTI Teacher in GMS, Niyajalipur, Tehsil Narnaul, District Mahendergarh. He deposed that date of birth of Bajrang was 10.04.1984. He joined as PTI Teacher on 07.05.2010 and was to retire on 30.04.2042. He proved the attested copy of service book of Bajrang as Ex.P3. Thus, from the aforesaid evidence, coming on record, it stands established that in the month of May 2013, the salary of the deceased was Rs.27,727/-.

As per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, salary minus tax is to be taken into consideration to work upon the compensation. Considering the monthly salary of Rs.27,727/-, the annual salary of the deceased comes to be Rs.27,727x12=Rs.3,32,724/-. However, tax has to be deducted from the aforesaid extent of annual earnings.

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In the tax slab existing in the year 2013-2014, there was tax exemption upto the income of Rs.2,00,000/-. After deducting the same, the taxable income of the deceased comes to be Rs.1,32,724/-, upon which, 10% tax was liable and after deducting 10% i.e. Rs.13,272/-, the extent of earnings, as such, comes to be **Rs.3,32,734-13,272=Rs.3,19,452/-**.

Deceased Bajrang was a government employee and considering the date of birth of the deceased i.e. 10.04.1984, at the relevant time, he was 29 years old. Considering this age of deceased, addition of 50%, ought to be made, on the count of 'future prospects' in the case of government job. Thus, addition of Rs.1,59,726/- is to be made further and after making such addition, the annual earnings of the deceased, comes to be **Rs.3,19,452+1,59,726=Rs.4,79,178/-**.

Considering the number of dependents to be three, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the deduction of 1/3rd is to be made, on the count of 'personal expenses', which comes to be Rs.1,59,726/- and the residue earnings comes to be **Rs.4,79,178-1,59,726=Rs.3,19,452/-**.

As per *Sarla Verma's case (supra)*, considering the age of the deceased, '17' is the suitable multiplier to be applied. Thus, by applying the same, the loss of dependency comes to be **Rs.3,19,452x17=Rs.54,30,684/-**.

Besides the aforesaid, amounts are to be paid on conventional heads, namely, loss of consortium, loss of estate and funeral expenses.

In this regard, reference is made to decision rendered in *Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327*, wherein, the Hon'ble Supreme Court, while relying upon

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Magma’s case (supra), had concluded about the children and mother of the deceased, all to be entitled to Rs.40,000/- each towards filial and parental consortium. Also, reference is made to *Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85*, wherein also, the Hon’ble Supreme Court had held the claimants of that case, each to be entitled to compensation, on the count of ‘spousal consortium’ for wife and ‘parental consortium’ for two children.

In consonance with the observations made in *Pranay Sethi’s case (supra)*, after making addition of 10%, after three years from the passing of the judgment, the amount payable, on the count of ‘loss of consortium’ is to extent of **Rs.44,000/-** to each of the claimant (Rs.44,000x3=Rs.1,32,000/-) as well as parents of the deceased. Besides the same, the claimants are also entitled to compensation for the ‘loss of estate’ as well as ‘funeral expenses’, to the extent of **Rs.16,500/-**, on each count.

Considering the same, the compensation payable to claimants, on account of death of Bajrang, is re-appraised, as herein given:-

Loss of dependency	:	Rs.54,30,684/-
Loss of consortium	:	Rs.1,32,000/-
Loss of estate	:	Rs.16,500/-
Funeral expenses	:	Rs.16,500/-
Total	:	Rs.55,95,684/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.55,95,687-47,60,758=Rs.8,34,926/-**.

Out of the enhanced amount of Rs.8,34,926/-, claimant-Usha Devi is held entitled to compensation of Rs.4,34,926/- and claimants-Sahil

and Sumit, are held entitled to compensation of Rs.2 lakh each.

However, the liability, so worked upon by learned Tribunal is erroneous. In this regard, it is important to make reference to *Hans Raj Chaudhary vs. Smt. Nanhi Devi and others, 2013(7) RCR (Civil) 2574*, wherein, it was observed that learned counsel appearing on behalf of the insurance company still insist that Sections 66 and 69 of the Motor Vehicle Act, set out the various terms of permit and one of the terms is that, be that the vehicle could traverse, only within the area allowed in the permit. The language used in Section 149 that sets out the permissible defences, employs the expression of user of a vehicle "for a purpose not allowed by the permit". The purpose of the permit is not the same thing as condition in the permit. The legislature has employed a language restricting it only to violation of purpose of permit. The MV Act, being a beneficial legislation, the issue of liability should be interpreted to the benefit of claimant and to the extent to which the owner obtains indemnity, it makes possible the prospect of recovery so much easier. Likewise, in the case of *Future General Insurance Co. Ltd. Vs. Smt. Surjo Devi and others 2013(2) RCR (Civil) 564*, this Court had laid down that a violation of any other term, than the purpose for which the permit was to operate, will not be a defence, which will be available in the scheme of the Motor Vehicles Act. Likewise, in *National Insurance Company Ltd. Vs. Rajinder Giri and others 2012(2) RCR (Civil) 183*, the vehicle had a valid route permit for being plied in State of Rajasthan. The accident took place, when the vehicle was being operated in the State of Haryana. It was thus observed by the Court, as herein given:-

“It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State.

*The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under Section 149(2) of the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in **National Insurance Co. Ltd.'s case (supra)** would not stand attracted to the facts of this case.”*

Furthermore, in ***Banshidhar vs. Smt.Krishna and others, 2018(1) PLR 415***, while taking into consideration the fact that there was no dispute between the parties to the lis, about the insured vehicle, having the permit to transporting the passengers, but however, the only allegation being that permit was given to the owner, with respect to plying the vehicle in the territory of State of Rajasthan, whereas, it was found to be plying in the State of Haryana, it was observed in the given circumstances that such violation of the permit, can only entail penalty. The purpose for which the vehicle was being used, remains the same. The permit granted to the insured was for plying and carrying passengers and at the time of accident, the vehicle was being used for carrying passengers only.

This Court, also made a distinction from the observations made by the Hon’ble Supreme in case titled as ***National Insurance Co. Ltd. vs. Chella Bharathamma, 2004(4) RCR (Civil) 399***, wherein, the Court was dealing with the situation, where a vehicle was being plied, without a permit and in that context, it was held that the vehicle cannot be placed at a better pedestal,

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vis-a-vis, one who has a permit. Section 66 of the Motor Vehicles Act, only deals with the purpose of which the vehicle was plied. Considering the same, the appeal filed to challenge the recovery rights given to the insurance company was allowed and the finding, to the extent of grant of recovery rights, given to the insurance company was set aside.

In this context, now reverting to the case in hand. It is pertinent to mention that the permit, coming on record, was permitting the bus in question to be plied from Kotputli to Raipur via Rajasthan Border Paniala Mor, Gonedra i.e. within the jurisdiction of Rajasthan State for 15 kms. and this permit was valid from 27.10.2009 to 26.10.2014. However, the accident took place near Dhani Bandawali, Police Station Nangal Choudhary, District Mahendergarh i.e. within the jurisdiction of Haryana State. Though, the permit covers the date of accident, but the place of accident, falls within the jurisdiction of Haryana State.

In the given circumstances, when no evidence is coming on record, about use of aforesaid vehicle for any purpose other than permitted, such violation of permit, will not absolve the insurance company from the liability to pay the compensation, so worked upon. As such, the liability of the insurance company is also held to be joint and several with the driver and owner of the bus in question. At this juncture, it is also pertinent to mention that learned Tribunal had made Kailash, Satender Singh and Parkash Chand, as jointly and severally liable, but however, from the evidence adduced, it stands established that Parkash Chand is registered owner of the bus bearing registration No.RJ-32PA-1734. Though, he had attempted to set up a case about the aforesaid bus to have been sold to

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Satender Singh, but however, the aforesaid fact, does not stand established and it has been so recorded by learned Tribunal also, which as such, has not been challenged any further. In the given circumstances, the liability can only be fastened upon Parkash Chand, as registered owner and not on Satender Singh i.e. respondent No.2, before learned Tribunal.

As such, now the liability of respondents No.1, 3 and 4 i.e. driver-Kailash, owner-Parkash Chand and Insurance Company is held to be joint and several to pay the compensation, so worked upon.

In the light of the aforesaid conclusion, learned counsel for the insurance company has also submitted that since the deceased was Government Teacher and he died in harness, therefore, the claimants shall be entitled to the compensation to be payable under **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**. He submits that the amount so received as compensation, payable to the dependents of the deceased Government employee, under the Motor Vehicle Act, is though not to be deducted, but however, the amount received or receivable towards the financial assistance, equivalent to the pay and allowance for the period specified under Rule 5(1) of the Rules, has to be deducted. To so substantiate his submission, learned counsel for the insurance company has placed reliance upon the case **CA No.9654 of 2016**, titled as **Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others**, decided on **23.09.2016**, wherein, the Hon'ble Supreme Court had observed, as herein given:-

“22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the

fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependents/claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to “pay and other allowances” that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of “loss of income”. So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the

dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello’s case, 1999 ACJ 10 (SC) and Patricia Jean Mahajan’s case, 2002 ACJ 1441 (SC).

In the light of the aforesaid observations, it is important to make reference to the statement of PW-2 Usha Devi, wherein, while facing cross-examination, she had stated that she is not getting salary, in lieu of death of her husband, but has further stated that she had filed papers with the Department for release of the salary to her. In the given circumstances, if the amount is received by the claimants under the **Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006**, the requisite amount, shall be deducted from the compensation, so worked upon aforesaid, proportionate to the shares, as received by the claimants.

In view of the aforesaid observations, the impugned Award dated 29.08.2014 stands modified, to the extent, as indicated aforesaid and the remaining terms of the Award shall remain same.

As such, FAO-9782-2014 stands partly allowed, thereby, fastening the liability on the insurance company also, besides registered owner and driver, and FAO-1228-2015 stands allowed, thereby, enhancing compensation, as worked upon aforesaid.

September 01, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No