

FAO-2009-2017(O&M) and
FAO-4327-2018(O&M)

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

(1) FAO-2009-2017(O&M)

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Ankur Saluja and others

...Respondents

(2) FAO-4327-2018(O&M)

Ankur Saluja and another

...Appellants

Versus

Gurpal Singh and others

...Respondents

Date of Decision:-22.3.2023

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

Present: Mr.Sanjeev Goyal, Advocate for the appellant
in **FAO-2009-2017** and for the respondent No.3 in
FAO-4327-2018.

Mr.Ashish Bakshi, Advocate
for the appellants in **FAO-4327-2018** and
for respondents No.1, 2 and 5 in **FAO-2009-2017**.

Mr.Gopal Mittal, Advocate
for respondent No.7 in **FAO-2009-2017** and
for respondent No.6 in **FAO-4327-2018**.

H.S. MADAAN, J.

1. By this order, I shall dispose of two FAOs i.e. **FAO-2009-2017** filed on behalf of Shri Ram General Insurance Company Ltd. and

FAO-4327-2018 filed on behalf of the claimants, which have arisen out of the same award.

2. Briefly stated, facts of the case are that on 12.10.2013, claimant Ankur Saluja aged about 31 years along with his minor daughter Navdha Saluja aged about 2 years, Smt.Usha Saluja, wife-Neha Saluja (deceased), Neha Rani (maid servant) were travelling in Micra car bearing registration No.PB-02-K-6167 coming from Khanna side and going towards Ludhiana via G.T. Road; the car was being driven by claimant Ankur Saluja; when the said car reached in front of Civil Hospital, Khanna and the time was about 6:30 p.m., then a truck bearing registration No.PB-10-DK-2986 going in front of the car suddenly slowed down; claimant Ankur Saluja also applied brakes and slowed the speed of the car; in the meanwhile, truck bearing registration No.HR-37-C-9593 came from behind being driven by respondent No.2 Ranvir Singh at a very high speed in a rash and negligent manner and without applying brakes hit the car from behind; resultantly the car dashed against truck bearing registration No.PB-10-DK-2986 going ahead; as a matter of fact the car was sandwiched between the two trucks; all the occupants of the car suffered grievous injuries; Neha Saluja wife of claimant Ankur Saluja and mother of claimant Navdha Saluja died at the spot, whereas the other injured were taken to hospital; the accident was witnessed by one Rajesh Kumar.

FIR No.223 of 2013 for the offences under Sections 279, 337, 338, 427 and 304-A IPC with regard to the accident was registered at Police Station City, Khanna.

3. Petitioners/claimants Ankur Saluja and Navdha Saluja had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Gural Singh – owner, Ranvir Singh – driver and Shriram General Insurance Company Ltd. - insurer of truck bearing registration No.HR-37-C-9593 as well as Ludhiana Bottling Company, Ludhiana – owner, Satnam Singh – driver and United India Insurance Company Ltd. - insurer of truck bearing registration No.PB-10-DK-2986 before Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as the Tribunal), claiming compensation to the tune of Rs.65 lakhs along with interest and cost.

4. On getting notice, all the six respondents appeared. Respondents No.1 and 2 had filed a joint written statement raising various legal objections and on merits denying that respondent No.2 was guilty of any rash and negligent driving of the truck, rather according to their version truck bearing registration No.PB-10-DK-2986 was going on G.T. Road near Civil Hospital, Khanna towards Ludhiana followed by Micra car bearing registration No.PB-02-K-6167; the driver of that truck suddenly applied brakes and Micra car hit the truck; the pressure pipe of truck bearing registration No.HR-37-C-9593 burst and brakes failed as a result the said truck struck against the Micra car and truck bearing registration No.PB-10-DK-2986. It was an act of God and the answering respondents could not be made liable to pay compensation.

In the written statement filed by respondent No.3, it also raised various legal objections, on merits denying that any accident had taken place with truck bearing registration No.HR-37-C-9593 stating that

the accident might have been caused by some other vehicle, however in case the accident is proved then same must have taken place due to sole negligence or contributory negligence of the driver of the vehicle in which the injured was sitting and other vehicle involved in the accident; the liability of answering respondent could not be fixed unless it was proved that driver of the vehicle under insurance was holding a valid and effective driving licence at the time of alleged accident along with valid RC, route permit and fitness certificate etc.

Respondents No.4 and 5 filed separate written statement taking preliminary objections that respondent No.5 Satnam Singh driving truck bearing registration No.PB-10-DK-2986 was neither rash nor negligent and the truck has been involved only to get compensation. Such respondents also craved for dismissal of the claim petition.

Respondent No.6 insurance company of truck bearing registration No.PB-10-DK-2986 in the separate written statement filed by it also denied its liability to pay compensation, praying for dismissal of the claim petition.

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

6. After hearing arguments, the Tribunal vide award dated 25.1.2017 allowed the claim petition partly and compensation of Rs.28,62,500/- with interest @ 7% per annum from the date of the claim petition till actual realization was awarded to the claimants, payable by respondents No.1 to 3 jointly and severally. Whereas no liability to pay

compensation was fastened upon the other respondents.

7. 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.

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

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

10. Learned counsel for the appellant – insurance company has contended that it was a case of contributory negligence inasmuch as driver of all the three vehicles involved in the accident were responsible for happening of the accident because if driver of truck bearing registration No.PB-10-DK-2986 going ahead of the ill-fated car had not applied the brakes suddenly, then the accident might have been avoided; similarly if claimant Ankur Saluja driving the ill-fated Micra car had kept a safe distance from the truck going ahead and furthermore if the driver of truck bearing registration No.HR-37-C-9593 had also maintained a safe distance between his truck and Micra car going ahead, the accident might not have taken place, therefore, all the drivers of the three vehicles involved in the accident must share the blame for happening of the accident and it is not proper to shift the entire blame on driver of truck bearing registration No.HR-37-C-9593 as has been done by the Tribunal and in the process only the driver, owner and insurance company of the said truck have been held to be liable to pay compensation to the

claimants.

11. Whereas, learned counsel appearing for the respondents have contested these contentions stating that the Tribunal has rightly given the verdict that respondent No.2 Ranvir Singh was responsible for the accident for want of care and caution on his part.

12. After considering the rival contentions and perusing the record, I find that the Tribunal was fully justified in deciding issue No.1 in favour of the claimants against respondents No.1 to 3. Both the eye-witnesses of the accident, namely, PW3 Rajesh Kumar and claimant Ankur Saluja appearing as PW4 in their affidavits have deposed as per the case of the claimants in the claim petition. Coupled with that is the fact that FIR Ex.PW1/1 with regard to the accident had been lodged against respondent No.2. Therefore, respondent No.2 was rightly held to be responsible for happening of the accident. The version set up by respondents No.1 and 2 that the accident had taken place on account of sudden applying of brakes by the driver of truck bearing registration No.PB-10-DK-2986 was not found to be believable and was rejected. From the facts and circumstances of the case and evidence available on record, no inference can be drawn that it was a case of contributory negligence or that Ankur Saluja driver of ill-fated car or Satnam Singh driver of truck bearing registration No.PB-10-DK-2986 were also at fault in happening of the accident. Therefore, this argument of learned counsel for the appellant – insurance company is rejected.

13. With regard to the other submission made by learned counsel for the appellant – insurance company that considering the age of the

deceased to be 29 years, the Tribunal fell in error in adding 50% towards future prospects after assessing the income of deceased as Rs.13,125/- per month.

14. That submission made by learned counsel for the appellant – insurance company seems to have merit. In view of judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased was below age of 40 years, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs. 13125 + 5250 = Rs.18,375/-.

15. The Tribunal had rightly deducted 1/3rd of the monthly earning of the deceased towards her personal and living expenses. Doing that the dependency of claimants comes out to Rs.12250(18,375 - 6125)/- per month, annual dependency comes out to Rs. 12250 x 12 = Rs.1,47,000/-.

16. The Tribunal has used multiplier of 17, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,47,000 x 17 =24,99,000/-.

17. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.1 lakh towards consortium of husband, Rs.50,000/- towards love and affection to claimant No.2 and Rs.10,000 towards loss of estate.

18. 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.

Doing that the compensation comes out to be Rs.26,09,000(24,99,000+40000+40000+15000+15000).

19. The Tribunal has wrongly awarded compensation of Rs.28,62,500/-. The same is reduced to Rs.26,09,000/-. 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.

20. With such modifications, FAO-2009-2017 filed on behalf of Insurance Company is allowed partly with costs.

21. 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.

22. As regards the FAO-4327-2018 filed on behalf the claimants seeking enhancement of compensation, I find that the compensation awarded does not call for any increase, rather the Tribunal has been

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somewhat liberal with the claimants in granting compensation and in view of discussion above, the same has been reduced. Consequently, FAO-4327-2018 filed on behalf of the appellants/claimants stands dismissed.

Since the FAO-2009-2017 stands allowed partly with modification and FAO-4327-2018 stands dismissed, the miscellaneous application(s), if any, pending in the appeals stand disposed of accordingly.

22.3.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No