

FAO-1736-2016 (O&M) with -1-
FAO-3106-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. FAO No.3106 of 2017 (O&M)
Order Reserved On: 28.04.2023
Order Pronounced On:26.05.2023

Gurmeet Kaur and Others

..... Appellants

V/s.

New Guru Kanshi Transport Company and Others

.....Respondents

2. FAO No.1736 of 2016 (O&M)

United India Insurance Co. Limited

..... Appellant

V/s.

Gurmeet Kaur and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gopal Mittal, Advocate
for the appellants (in FAO-1736-2016) and
for the respondents (in FAO-3106-2017).

Mr. Kashmir Singh, Advocate
for the appellants in FAO-3106-2017 and
for the respondents in FAO-1736-2016.

Harpreet Singh Brar, J.

CM-10253-CII of 2017 (in FAO-3106-2017)

1. Prayer in this application filed under Section 151 of CPC, is for condonation of delay of 24 days in refiling of the present appeal.
2. For the reasons recorded in the application, the delay of 24 days is hereby, condoned.
3. The application is allowed.

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4. Prayer in this application filed under Section 5 of Limitation Act, is for condonation of delay of 296 days in filing of the appeal.

5. For the reasons recorded in the application, the delay of 296 days is hereby, condoned.

6. The application is allowed.

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7. Both the appeals arise out of the same award, therefore, both are being heard and decided together by this common judgment.

8. The Insurance Company through instant appeal bearing no. FAO-1736-2016 is seeking setting aside of the award dated 03.11.2015 passed by Motor Accident Claims Tribunal, Tarn Taran (for short "Tribunal").

9. The Claimants through instant appeal bearing FAO-3106-2017 are seeking enhancement of the compensation awarded vide award dated 03.11.2015 passed by the said Tribunal.

FACTUAL BACKGROUND

10. The brief facts of the present case are that Sarwan Singh, son of Anokh Singh, aged 23 years met with a road accident on 13.03.2013. The deceased was driving a motor cycle bearing registration no.PB-46-90-0853. At that time, a buffalo came in front of the motor cycle being driven by Sarwan Singh and while trying to save the buffalo, he hit a bus bearing registration no.PB-03U-1331. As a result thereof, Sarwan Singh fell on the road and sustained head injury which caused his death. The claimants filed a

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petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), seeking compensation on account of death of Sarwan Singh.

11. The learned Tribunal had framed the following issues:
1. Whether Sarwan Singh had died in the motor vehicular accident which took place on 13.3.2013 in the area near Tarn Taran at about 11:15 AM due to rash and negligent driving of bus bearing No.PB-03-V-1331 being driven by respondent No.3-Iqbal Singh?
 2. If issue No.1 is proved, whether the petitioners are entitled for compensation, if so, to what extent?
 3. Whether respondent No.3 - Iqbal Singh was not having legal and valid driving licence at the time of alleged accident?
12. Learned Tribunal had held that the claimants are entitled to the grant of compensation of a sum of Rs.17,40,403.34 payable by respondent No.4-United India Insurance Company Limited, on account of death of Sarwan Singh. Respondent No.4 was directed to deposit the said amount within three months before the Tribunal, failing which the claimants shall also be entitled to 6% simple interest per annum on the said award amount from the date of filing of the claim petition till the realization of the whole compensation amount.

CONTENTIONS

13. Learned counsel for the Insurance Company has argued that the onus to prove negligence of the driver of the offending vehicle was upon the claimants. Admittedly, no FIR has been lodged regarding the accident in which the deceased-Sarwan Singh had died, only DDR has been lodged. The version recorded in the DDR indicates that the deceased-Sarwan Singh had hit the bus while saving the buffalo and nobody was at fault, as such, finding of the learned Tribunal on issue No.1 is wrong.

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14. Learned counsel for the Insurance Company further contended that the deceased himself was negligent and it was due to his negligence that the accident took place, therefore, the Insurance Company cannot be held liable to pay the compensation. He further contended that the amount of compensation awarded by the Tribunal is highly exorbitant and no proof of income of the deceased has been brought on record. As such, learned counsel for the Insurance Company prays for setting aside the award dated 03.11.2015 rendered by the learned Tribunal.

15. On the other hand, learned counsel for the claimant has assailed the award on the ground that the income of the deceased-Sarwan Singh was much more than what was assessed by the learned Tribunal. PW-05 Bhupinder Singh has proved in evidence the agreement dated 15.04.2012. According to the above said agreement, the income of the deceased was Rs.30,000/- per month. Further, nothing has been awarded to the claimants for loss of love and affection and the interest awarded by the learned Tribunal is 6% p.a, which is not in accordance with the settled law. Keeping in view of the same, learned counsel for the claimant has prayed for enhancement of the compensation.

ANALYSIS

16. After hearing learned counsel for both the parties and going through the record of the case with their able assistance, this Court is of the view that the award passed by the learned Tribunal is required to be modified.

17. The learned Tribunal has noted in para 20 of the award that nowhere in his written statement, the driver of the offending bus- Iqbal Singh has taken a stand that he was not rash or negligent in driving the offending

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bus. Moreover, driver-Iqbal Singh had appeared in the witness box as RW-01 and he did not state that the accident had occurred due to the negligence of the deceased-Sarwan Singh, rather, in cross-examination, he had admitted that he was driving a heavy vehicle and the deceased-Sarwan Singh had died in the said accident. The accident had taken place near the city and the driver of a bus is required to drive the bus at a reasonable speed with extra care and caution. Merely because the FIR was not registered, it cannot be assumed that there was no negligence on part of the driver-Iqbal Singh. The inquest proceedings under Section 174 Cr.P.C., as well as post mortem report clearly indicate that the deceased-Sarwan Singh had died on the spot due to the injuries sustained in the accident with the offending bus and a DDR was lodged on account of the accident. In the absence of any specific plea by the driver regarding not driving the offending bus in a rash and negligent manner, this Court cannot conclusively hold that the accident had taken place due to rash and negligent driving of the deceased-Sarwan Singh.

18. It is no longer *res integra* that the parameters of standard of proof beyond reasonable doubt cannot be applied to the claim proceedings before the Tribunal under the Act. The object and purpose of the Act is to determine the amount of fair compensation in the event of an accident having been taken place. Such a determination has to be made on the foundation of fairness and reasonableness. The learned Tribunal is required to decide the claim petition on the preponderance of probabilities.

19. The Hon'ble Supreme Court in **Shivaji Dhyanu Patil Vs. Smt. Vatschala Uttam More, 1991 (3) SCC Criminal 865**, has categorically held that the compensation can be granted under the Act even if the accident is

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caused by a standing vehicle. Their Lordship held that even when the vehicle is stationary due to a breakdown, the death of deceased falls within the scope of the expression 'use of motor vehicle'. 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**, speaking through Justice A.K. Ganguly, held as follows:-

“13. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos.2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored.

14. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos.2 and 3.

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

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consideration the respective stories set forth by both the parties.”

20. In view of the settled law referred to above, the contention of the learned counsel for the Insurance Company regarding the negligence of the deceased is untenable. The strict rule of evidence or the standard of proof required under the Code of Criminal Procedure would not apply to claim proceedings before the Tribunal under the Act.

21. Learned counsel for the claimants has sought compensation under the head of loss of love and affection. A perusal of the record indicates that the claimants were awarded Rs.1,00,000/- towards loss of consortium. The Hon’ble Supreme Court in **New India Assurance Company Vs. Som Vati, 2020 (9) SCC 644**, has held that once the compensation is awarded under the head of ‘loss of consortium’, no amount shall be awarded under the head ‘loss of love and affection’, as it would amount to duplication of compensation. Therefore, the claimants are not entitled to any compensation under the head of loss of love and affection.

CONCLUSION

22. After careful consideration of the facts and circumstances of the case, this Court is of the opinion that the amount of the compensation needs to be redetermined as per the judgments of the Hon’ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(2) RCR (Civil) 1009**, and **Sarla Verma Vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77**. The Tribunal has relied upon a notification issued by the Government of Punjab under the Minimum Wages Act and the notional income of the deceased-Sarwan Singh was assessed as Rs.6648/- and his annual income was calculated to be Rs.79,773/- and 50% increase towards

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future prospects was also awarded. The notional income as assessed by the Tribunal is affirmed whereas 50% increase towards future prospects is reduced to 40% as per the judgment of **Pranay Sethi** (*supra*). The Tribunal has not awarded any amount for loss of estate and has awarded an amount of Rs.1,00,000/- towards loss of consortium and Rs.25,000/- on account of funeral expenses.

23. In view of the judgment of the Hon’ble Supreme Court in **Pranay Sethi** (*supra*), an amount of Rs.15,000/- is awarded towards loss of estate, Rs.15,000 on account of the funeral expenses and Rs.40,000/- each to all four dependents towards loss of consortium. It was further held that the aforesaid amounts should be enhanced at the rate of 10% in every three years. Furthermore, a sum of Rs.25,000/- is awarded towards litigations expenses. Accordingly, the compensation under different heads has been determined as under:-

Sr.No.	Under Head	Amount
A	Pecuniary	
1.	Income	Rs. 6648/-
2.	Annual Income	Rs. 79,776/-
3.	Future Prospects (40%)	79776 x 40/100= Rs. 31,910/- 79,776 + 31,910= Rs. 1,11,686/-
4.	Deductions (25%)	1,11,686 x 25/100 = Rs. 27,921/- 1,11,686- 27,921= Rs. 83, 765/-
5.	Multiplier	18 83,765 x18= Rs. 15,07,770/-
	Total Column A	15,07,770/-
B.	Non-pecuniary	
1.	Loss of estate	Rs.18,150/-
2.	Funeral expenses	Rs. 18,150/-

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3.	Loss of consortium	Rs. 48,400 x4 = Rs. 1,93,600/-
4.	Litigation cost	Rs. 25,000/-
	Total Column B	Rs. 2,54,900/-
Total Compensation (A+B)		Rs. 17, 62, 670

24. The Tribunal has awarded interest at the rate of 6% per annum which is enhanced to 7.5% per annum in view of the judgment of **Sarla Verma** (*supra*) and **Pranay Sethi** (*supra*).

25. Accordingly, the appeal filed by the Insurance Company (FAO No.1736 of 2016) is dismissed and the appeal filed by the claimants (FAO No.3106 of 2017) is partly allowed to the extent that the Insurance Company is liable to pay the redetermined amount of Rs.17,62,670/- along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of actual payment.

26. In case the compensation as awarded by the learned Tribunal has not been paid to the victim, Insurance Company is directed to pay the same within a period of two months from the date of passing of this order along with an interest at the rate of 7.5% p.a. If any amount is already paid by the Insurance Company to the claimants, the same shall be deducted from the amount of compensation awarded by this Court.

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

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

(Harpreet Singh Brar)
JUDGE

26.05. 2023

Sonia Puri

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No