

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

Date of decision: 15.05.2023

1. FAO-4948-2017 (O&M)

IFFCO TOKIO General Insurance Company Limited

...Appellant

VS

Harjinder Kaur and others

...Respondents

2. FAO-6617-2017 (O&M)

Harjinder Kaur and others

...Appellants

VS

Vinod and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Yogesh Gupta, Advocate,
For the appellants in FAO-4948-2017
For respondent No.3-Insurance Company in
FAO-6617-2017.

Mr. Parminder Singh, Advocate and
Mr. Sukhdeep Singh, Advocate
For the appellants in FAO-6617-2017 and
For respondents No.1, 2 and 4 to 6 in FAO-4948-2017.

Mr. Digvijay Singh, Advocate for
Mr. Vikram Singh, Advocate for respondents No.6 and 7 in
FAO-4948-2017.

None for respondent No.3 in FAO-4948-2017.

ARUN MONGA, J. (ORAL)

CM-15073-CII-2017 in FAO-4948-2017

Despite availing opportunities, no reply has been filed by
non-applicant(s). For the reasons stated in application, same is allowed

and delay of 43 days in filing the appeal stands condoned, subject to all just exceptions.

CM-21500-CII-2017in FAO-6617-2017

Notice in the application only to respondent No.3-Insurance Company.

At this stage, learned counsel for Insurance Company, who is appearing for appellant in the connected case, accepts notice.

For the reasons stated in application, same is allowed and delay of 54 days in filing the appeal stands condoned, subject to all just exceptions.

Main cases

On the fateful day of 30.03.2016, what otherwise seemed like any other day out of ordinary, a tragic turn of events unfolded for the young Harwinder Singh, a mere 25 years old. Accompanied by his 24 years old wife, now a widow, he visited the Gurudwara to offer his prayers, as was his usual practice. However, the return journey on their motorcycle would prove to be his unfortunate fate. A speeding Canter-truck collided with their two-wheeler, resulting in grave injuries the couple. Despite fighting for his life for a week, Harwinder Singh tragically succumbed to his injuries on April 7, 2016. Appellants/claimants before this Court are his parents and two sisters (in FAO-6617-2017), impugning the Award dated 15.02.2017 rendered by learned Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as, 'Tribunal'), seeking enhancement of compensation. Whereas, in a counter appeal (in

FAO-4948-2017), Insurance Company seeks to set aside aforesaid impugned Award in totality.

2. Vide this common order and judgment, above-mentioned two appeals are being disposed of since they arise out of the same award. For brevity, recitals are taken from FAO-6617-2017.

3. Succinct facts, as noted by learned Tribunal, are as below:

“2. Brief facts of the cases as alleged by the claimants are that on 30.03.2016 Harwinder Singh (since deceased) along with his wife Manpreet Kaur(injured-claimant) was going to his village Sheikhpura on motorcycle bearing registration No. HR-40-F-9502, after paying obeisance in Israna Gurudawara. When they reached near Jind Bye-pass Khansar Chowk, Safidon, in the meantime a Canter bearing registration No. HR56-A-7372 (herein after referred to as the 'offending vehicle') came from the Jind bye-pass, which was driven by respondent No.1 at a very high speed and in a rash and negligent manner and struck in the motor cycle driven by Harwinder Singh, as a result of which they fell down on the road and sustained multiple and serious injuries. It is the case of claimants that the accident took place due to the rash and negligent driving of respondent no.1.

3. Claimants Smt. Harjinder Kaur and others pleaded that after the accident Harwinder Singh was taken to General Hospital, Safidon but considering his serious condition, he was referred to PGI, but he was taken to Arvind Hospital Karnal and had also to be got admitted in Gandhi Hospital, Karnal but he could not survive and succumbed to the injuries on 07.04.2016. It is further pleaded that before the accident the deceased Harwinder Singh was hale and hearty. He was 25 years of age and was an agriculturist and was also in dairy farming and used to earn 1,00,000/- per month. It is further pleaded that a sum of 8.00 lacs were spent on treatment, doctors fee, special diet, transportation and last rites of the deceased. With these averments, claimants prayed for grant of 80.00 lacs as compensation on account of death of deceased Harwinder Singh.”

4. Upon notice, respondents No.1 and 2-driver and owner, respectively, of the offending vehicle denied the averments made in the claim petition and pleaded that petition was not maintainable as claimants

did not have any cause of action. It was averred that no accident took place due to negligence on the part of respondent No.1. A false FIR was lodged against respondent No.1. Further, it was pleaded that amount claimed by appellant-claimants was highly excessive. Prayer for dismissal of claim petition was made.

4.1 Respondents No.3-Insurance company, *inter alia*, raised objections that there was lack of locus standi; no cause of action to institute the claim; claim petition suffered from non-joinder and mis-joinder of necessary parties. Insurance Company also denied the factum of accident. It was pleaded that respondent-driver was not holding valid and effective driving licence. Negligence was on the part of deceased himself. All the averments of the claim petition were also denied.

5. Learned Tribunal framed the following issues:

1. *Whether the accident took place on account of rash and driving of TATA Canter bearing registration No. HR-56-A-7372 by respondent no.1, resulting into death of Harwinder Singh (deceased in this petition) and injuries to Manpreet Kaur (claimant in second claim petition)?OPP*
2. *If issue no.1 is proved,whether claimants of first claim petition are entitle to any compensation, if so, to what amount and from whom? OPP*
- 3.*Whether claimant of second claim petition is entitled to any compensation, if so to what amount and from whom?OPP.*
4. *Whether respondent no.1 was not a skilled driver and not holding a valid and effective driving license at the time of accident?OPR-3.*
5. *Whether vehicle in question was being driven in contravention of terms and conditions of insurance policy as well as provisions of Motor Vehicles Act, if so to its effect?OPR-3*
- 6.*Relief.”*

6. On appraisal of record/evidence, learned Tribunal decided issues No.1, 2 & 3 in favour of claimants and against respondents. Issues No.4 and 5 were decided in favour of respondents No.1 and 2 and against

respondent-Insurance Company. Consequently, claimants No.1 and 3 (mother and widow of deceased respectively) were awarded compensation of Rs.24,64,000/-. Out of the total amount, claimant No.3-widow was held entitled to receive 80% of the amount of compensation and remaining 20% was awarded to claimant No.1-mother of the deceased.

7. Feeling aggrieved, both insurance company and claimants No.1, 2 and 4 to 6 have filed separate first appeals.

8. I have heard competing arguments of learned counsel for parties and gone through the record with their assistance.

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9. Learned counsel for appellant-Insurance Company contends that learned Tribunal while assessing compensation committed grave error by allowing 50% addition to the income of deceased for future prospects, which should have been 30%, given the age and nature of job of deceased.

9.1. Shorn of unnecessary details, the further submissions of learned counsel for appellant-Insurance Company(in FAO-4948-2017) are that the findings returned by learned Tribunal are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

10. On the other hand, learned counsel supports the reasons recorded by learned Tribunal for holding that claimants were entitled to 50% increase in income of deceased on account of future prospects.

11. Having perused the impugned award, my considered opinion is that considering the age and nature of work of the deceased, the increase for future prospects should have been taken at 40% instead of 50%.

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13. Learned counsel appearing on behalf of claimants herein submits that compensation awarded by the Tribunal on account of loss of consortium and funeral expenses/last rites needs to be enhanced. He further contends that income of deceased was wrongly assessed at Rs. 9560/- only. Whereas, deceased used to earn Rs.1,00,000/- per month from agriculture as he himself cultivated the land measuring 8 Kanals and also earned income through the land measuring 10 Kanals taken on lease. In support of his averments, he relies on the Apex Court judgment rendered in **National Insurance Co. Ltd. v. Pranay Sethi**,¹.

14. Testimonies of PWs have remained unimpeached in the cross-examination. In particular, the widow of the deceased PW3 Manpreet Kaur clearly stated that her deceased husband was an agriculturist. She has stated that 8 acres of land was owned by him. The father of the deceased PW-4 Gurdayal Singh corroborated the version, though at the same time, he stated that technically the land was in his name but it was after his death it would have gone to his son as there was no one else to look after. Essentially the evidence establishes that being ancestral property deceased was the only stake-holder *qua* 8 acres of land. Apart from that he was cultivating the additional 10 acres of land *qua*

which there is evidence on record which remained unrebutted by the Insurance Company.

15. In the premise, I am of the view that income of the deceased was wrongly assessed as Rs.9560/- per month by learned Tribunal. No doubt, the claim of the income being 1 lakh per month seems to be exaggerated but being an agriculturist, the minimum wages or DC rates may not really be the best way to determine the income of the agriculturist. It is common knowledge that agricultural income being tax free, the agriculturists do not generally file income tax returns. That apart, most of the agricultural income is generally in cash therefore, it may not be possible to produce bank entries *qua* the same.

16. Be that as it may, by common sense guesstimate income from 18 acres of land on monthly basis can be safely assumed at Rs.15,000/- per month.

17. Applying the principles in the case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**,²**Pranay Sethi’s case (supra)** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**³, amount of compensation is recalculated as below:

Name of deceased	Harwinder Singh
Date of accident	30.03.2016
Date of death	07.04.2016
Age	26 years
Income	Rs.15,000/- p.m.
Future prospects @ 40%	Rs.6000/-
Multiplier	17
Total	21,000x 17x 12=42,84,000/-
Deduction in dependency 1/3 rd	42,84,000-14,28,000=28,56,000/-

²2009 (3) The Punjab Law Reporter 22

³2019 (3) SCC (Cri) 153

(Mother and widow)	
Loss of consortium @ 44,000x5 (Parents, widow & two sisters)	Rs.2,20,000/-
Funeral expenses	Rs.16,500/-
Loss of estate	Rs.16,500/-
Treatment expenses (as awarded by learned Tribunal)	Rs.2,88,850/-
Total	Rs.33,97,850/-
Compensation awarded by learned Tribunal	Rs.24,64,000/-
Enhanced amount of compensation	Rs.9,33,850/-

18. Accordingly, the impugned award is modified in terms of the above computations. Revised compensation shall be payable to the claimants along with interest as already imposed by the learned Tribunal, from the date of filing of the claim petition till the actual date of payment. The same shall be payable to the claimants within a period of 2 months of their approaching the insurance company along with web print of the instant order, failing which additional compensatory interest of 3% p.a. shall be paid from the date of filing of the claim petition as per the following apportionment:

Claimant No.2 Gurdial Singh (father) : Rs.44,000/-

Claimant No.4 Gurpreet Kaur (sister) : Rs.44,000/-

Claimant No.5 Manjeet Kaur (sister) : Rs.44,000/-

Remaining amount of compensation along with interest @ 7.5% per annum shall be payable to claimant No.1 Harjinder Kaur (mother of deceased) and claimant No.3 Manpreet Kaur (widow of deceased) in the ratio of 20% : 80%, as determined by learned Tribunal.

19. As an upshot of the above discussion, **FAO-4948-2017** stands dismissed and **FAO-6617-2017** stands partly allowed, in the above terms.

- 20. Pending application(s), if any, shall also stand disposed of.
- 21. A photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

15.05.2023
Vandana

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