

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

Date of Reserve: 11.05.2023

Date of pronouncement: 29.05.2023.

1. FAO-2387-2018

IFFCO TOKIO General Insurance Company Ltd.Appellant.

VERSUS

Ram Singh and othersRespondents.

2. FAO-2496-2018

Ram Singh and anotherAppellants.

VERSUS

Surjeet Singh and others ...Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Argued by: Mr. Vishal Aggarwal, Advocate
for the appellant (in FAO-2387-2018)
for respondent No.3 (in FAO-2496-2018).

Mr. Jaideep Verma, Advocate
for the appellant (in FAO-2496-2018)
for respondents No.1 and 2(in FAO-2387-2018).

Sukhvinder Kaur, J.

This order shall dispose of **FAO-2387-2018 (IFFCO TOKIO
General Insurance Company Ltd. Vs. Ram Singh and others)** and **FAO-
2496-2018 (Ram Singh and another Vs. Surjeet Singh and others)** as
both the appeals have arisen from a common award dated 13.12.2017.

2. Appeal (FAO-2387-2018) has been filed by the appellant-

Insurance Company for setting aside the award dated 13.12.2017 passed by the Motor Accident Claims Tribunal, Rupnagar, whereby the claim petition filed by the claimants was partly allowed and they were awarded a compensation of Rs.15,27,000/- along with interest @ 9% per annum from the date of filing of the claim petition till the date of realization on account of death of Rajwinder Singh in MACT Case No.336 of 2016 in a motor vehicular accident that took place on 12.04.2016. Appeal (FAO-2496-2018) has been filed by appellants-claimants seeking enhancement of compensation.

3. The relevant facts are that the appellants-claimants filed claim petitions invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation with the averments that on 12.04.2016, Rajwinder Singh (since deceased) was coming from Jhajji Chowk side to his village Agampur on his motorcycle bearing registration No.PB12-U-8641. Rajwinder Singh was driving the motorcycle at a slow speed, on his left hand side. At about 8.00 P.M., when he reached near the turn of Crushers, in the area of village Agampur on Garshankar main road, then a Maruti Dzire Car bearing registration No.PB-12-V-5021, being driven by respondent No.2 (driver) in a rash and negligent manner and at a very high speed, came from the back side and hit the above said motorcycle. Due to the collision, appellant-claimant sustained multiple grievous head injuries, compound fractures on his body and he died on 12.04.2016, on the way to PGI, Chandigarh. On the statement of Prithvi Singh, FIR No.40, dated 13.04.2016, under Sections

279, 304-A and 427 IPC was registered at Police Station, Anandpur Sahib against the said driver.

4. It has been averred in the claim petition that Rajwinder Singh (since deceased) was the only child of the claimants. He was 22 years old and was a student of B.Tech, final year (Civil Engineering) at Global College, Khuhi and was under training with M/s Vishesh Kumar Contractor and was drawing Rs.8,000/- as a stipend. His placement took place in the same company on annual package of Rs.3,60,000/- P.A. He was having a bright future and had also applied for government job for Junior Engineer and was likely to earn handsome salary. The claimants being old aged remained ill and deceased was the only hope of the claimants. Due to sudden demise of their only son, they have suffered irreparable loss and they have been deprived of love, affection, care, help, comfort and society of deceased. Claimants have spent more than Rs.2,00,000/- on transportation and last rites of deceased. It has been prayed that compensation of Rs.80,00,000/- be given qua death of Rajwinder Singh.

5. The driver-Sukhwinder Kumar, owner-Surjeet Singh as well as insurer-IFFCO TOKIO Insurance Co. Ltd. were impleaded as respondents in the claim petition. Respondents No.1 and 2 contested the petition by raising preliminary objections regarding the maintainability of the petition etc. It was further submitted that a false claim petition has been filed in order to extract money from the respondents and deceased himself was negligent while driving and was responsible for the accident.

6. Respondent No.3-Insurance Company also filed its separate

written statement taking preliminary objections inter~alia on the ground of maintainability of petition and validity of driving license etc. All the main contentions of the claim petition were also denied.

7. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

8. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the claim petition and awarded a sum of Rs.15,27,000/- as compensation to the appellants alongwith interest at the rate of 9% per annum from the date of filing the petition till realization. Respondents No.1 to 3 were held jointly and severally liable to pay the compensation.

9. Feeling dissatisfied with the award dated 13.12.2017, the appellant-Insurance Company has filed appeal (FAO-2387-2018), whereas appellants-claimants have preferred appeal (FAO-2496-2018).

10. I have heard learned counsel for the parties and have also perused the relevant record.

FAO-2496-2018

11. Learned counsel for the appellants-claimants has contended that deceased Rajwinder Singh, the only child of the appellants/claimants was a student of B.Tech. final year (Civil Engineering) at Global College, Khuhi. He was under training with M/s Vishesh Kumar Contractor and was drawing stipend @ Rs.9,000/- P.M. and thereafter his placement took place in the same company at salary of Rs.18,000/- P.M. He has contended that

deceased had also applied for the post of Junior Engineer (Civil) in Department of Rural Development & Panchayats and there was every possibility that he would have got the government job. Therefore Tribunal has erroneously assessed the monthly income of deceased as Rs.10,000/- P.M. only. He has submitted that the claimants being old aged parents of the deceased were dependant upon him and he was their only old age hope. He has contended that the compensation that has been awarded by the Tribunal qua the death of Rajwinder Singh (deceased) is on the very lower side, keeping in view the bright future prospects of the deceased, who was well educated. He has further submitted that PW3-Davinder Singh, Account Officer in the firm M/s Vishesh Kumar Contractor, with which company the deceased was undergoing training, has proved on record certificate issued by the proprietor Ex.P4, regarding successful completion of training of Rajwinder Singh in their office from 10.01.2016 to 29.03.2016 on stipend of Rs.9,000/- P.M. and he has also proved Ex.P5 i.e. the appointment letter issued by the proprietor that shows that deceased had been appointed as Technical Engineer in their firm from 30.03.2016 on salary of Rs.18,000/- P.M. He has also argued that the compensation under the conventional heads has also not been adequately granted and nothing has been granted by the Tribunal under the head of loss of estate. He has urged that keeping in view all these facts and circumstances and the above said documentary evidence on record, the present appeal be accepted and the award of the Tribunal be modified and the compensation granted in the present case be enhanced.

12. On the other hand, it has been contended by the respondent/insurance company that compensation awarded is highly excessive and not in accordance with the settled law and award is liable to be modified accordingly.

13. Deceased Rajwinder Singh was the only son of the appellants, who was 22 years old at the time of his death in the accident. He was student of B.Tech, final year (Civil Engineering) at Global College, Khuhi and was under training with M/s Vishesh Kumar Contractor and was drawing stipend of Rs.9,000/- P.M. His placement had also taken place in the same company on salary of Rs.18,000/- P.M. He had also applied for government job for Junior Engineer and was likely to get the government job. Being his old aged parents, the claimants were dependent upon the deceased.

14. Claimant No.1-Ram Singh has stepped into the witness box as PW1 and in his affidavit Ex.PW1/A tendered in his examination in chief, he has deposed on oath all the averments as made in the claim petition.

15. Claimants have also examined PW3-Davinder Singh, Account Officer of firm M/s Vishesh Kumar Contractor, who had deposed that deceased Rajwinder Singh was working as trainee in their firm from 10.01.2016 to 29.03.2016 and they were giving him stipend of Rs.9,000/- P.M. He has produced on record the certificate issued by proprietor of their firm Ex.P4 in this regard. He has also deposed that their firm had appointed Rajwinder Singh as Technical Engineer with salary of Rs.18,000/- P.M. on 30.03.2016 and in this respect has produced on record certificate issued by

the proprietor of their firm as Ex.P5. But in his cross-examination he has stated that their firm maintained the account with regard to every transaction, but there was no record with regard to work of temporary persons and trainees, as no such record was being maintained. He has also stated that every payment made to any person or received from any person is duly shown in their account. But there was no record with regard to any payment made to deceased, as he had died after 10 days of his appointment. There was no record with regard to working of deceased as trainee in their office or any record with regard to payment made to the deceased during the training period. There were no signatures or any writing of deceased in their office. He did not know if there was any record regarding the application for appointment given in their office. He did not know if there was any record in their office regarding issuing of Ex.P4 and Ex.P5. He has also deposed that no authority letter had been given to him to depose in this case.

16. So from testimony of PW3-Davinder Singh, it transpires that, his bare testimony, in the absence of any authenticated record produced by the firm M/s Vishesh Kumar Contractor, where deceased was allegedly initially working as trainee, is not sufficient to prove that the deceased was working as trainee in the said firm on stipend of Rs.9,000/- P.M. and thereafter was issued appointment letter for his placement in the said company on salary of Rs.18,000/- P.M. The documents Ex.P4 and Ex.P5 have not been properly proved as per law, as neither the relevant record pertaining to these documents upon the basis of which these documents had

been prepared, was produced before the Tribunal, nor the author of these documents was examined.

17. Besides that, the claimants have also produced on record copy of matriculation certificate of deceased as Ex.P7, copy of degree of diploma as Ex.P8, copy of detail marks as Ex.P9, copy of detail marks of B.Tech as Ex.P10 to P12, copy of application form for the recruitment for the post of Junior Engineer as Ex.P13. From the above said documents, prima facie it is proved that he had completed the diploma in Civil Engineering and thereafter he was doing B.Tech. at Global College of Engineering and Technology, Anandpur Sahib.

Keeping all this in view, the income of deceased that has been assessed as Rs.10,000/- P.M. by the Tribunal is just and reasonable and does not warrant any interference. The annual income of deceased thus comes to Rs.1,20,000/- .

Again this is an admitted fact that deceased was unmarried so Tribunal has rightly made deduction of 50% of his income towards living and personal expenses and the annual dependancy after deduction of personal and living expenses comes to Rs.60,000/-.

As per the ratio of law laid down by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009**, the Tribunal has rightly made an addition of 40% to the income of the deceased regarding future prospects, so after making addition of 40% income of deceased comes to Rs.84,000/- (Rs.60,000 + 24,000).

18. As per Ex.P7, the matriculation certificate date of birth of

deceased has been mentioned as 23.10.1994 and moreover, this fact is not disputed that deceased was aged 22 years at the time of his death in the accident. So the multiplier of '18' has been rightly applied by the Tribunal, as per law laid down in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) Recent Civil Reports page 77 (S.C).** So after applying the multiplier of '18', the total loss of dependency in this way comes to Rs.15,12,000/- (Rs.84,000 x 18).

19. Besides that Tribunal has awarded Rs.15,000/- as funeral expenses. But in view of ratio of **Pranay Sethi** (supra) claimants are also entitled to Rs.15,000/- on account of loss of estate. So the total compensation that is to be granted to the claimants qua death of deceased Rajwinder Singh comes to Rs.15,42,000/- (15,12,000 + 15000 + 15000).

20. Thus, the appellants/claimants in this appeal are held entitled to the compensation of Rs.15,42,000/- along with interest @ 9% per annum from the date of filing of the claim petition till the realization, which will be shared by both the claimants equally. Accordingly the appeal i.e. FAO-2496-2018 is partly allowed.

Pending applications, if any, shall also stand disposed of.

FAO-2387-2018

21. Learned counsel for the appellant-Insurance company has vehemently contended that from the FIR and the claim petition it is apparent, that the accident had probably occurred with some unknown vehicle and later on the present insured vehicle was involved, to extract the compensation illegally. In the FIR itself no number of the offending vehicle

had been mentioned and it was recorded therein that the accident had been caused by driver of some unknown vehicle. Thereafter on 28.04.2016 after gap of about 16 days, the statement was made by PW-2 Kulwant Singh before the police that he had noted down the registration number of the offending vehicle, but did not inform the police at that time. He has contended that Kulwant Singh has been introduced in connivance with the claimants and owner of the offending vehicle and the offending vehicle has been wrongly involved, to get the compensation and it is a clear case of connivance between the claimants and the owner and the driver of the offending vehicle and the police to get the compensation wrongly. He has also argued that it is an admitted fact on record that Kulwant Singh is the only alleged eyewitness who noted down the number of offending vehicle, but strange enough, that thereafter he got the driver of the offending vehicle Sukhwinder Singh released on bail, by standing as his surety. He has contended that on one hand Kulwant Singh in his cross-examination stated that he did not know the driver of the offending vehicle but on the other hand he got him released on bail. He has contended that thus connivance is writ large and PW2 Kulwant Singh is not a reliable witness. He has also submitted that even if this version of the claimants is presumed to be true, that the alleged offending vehicle was involved in the accident, the claimants have failed to prove the negligence of driver of the offending vehicle and there was no question of awarding any compensation to the claimants. He has contended that the appeal be allowed and award of the Tribunal be set aside and the claim petition be dismissed.

22. On the other hand, counsel for the claimants/respondents has contended that the accident in question had taken place due to rash and negligent driving of driver of the offending vehicle and the said vehicle was very much involved in the accident in question, in which deceased Rajwinder Singh had lost his life. He has further contended that the FIR was got registered by parental uncle of deceased who is not an eyewitness and as such the number of the offending vehicle had not been mentioned in the FIR. He has submitted that during the police investigation after registration of the FIR, through Kulwant Singh it came to light that the offending vehicle was involved in the accident and the said accident had been caused by driver of the said offending vehicle by his rash and negligent driving. He has contended that there was absolutely no collusion as has been alleged by the appellant-Insurance Company and the compensation has been rightly granted by the Tribunal qua death of Rajwinder Singh, after appreciating the entire evidence on record and has prayed that the appeal filed by the insurance company may be dismissed.

23. To prove connivance the cardinal principle is that like fraud there should be specific pleading in that regard and thereafter some positive evidence is also required to be adduced in support thereof. Just raising the finger of suspicion would not be enough to dislodge the claimants who have lost their only son in the accident.

24. The perusal of the written statement of respondent No.3- Insurance company reveals that there is no specific pleading regarding the connivance and just it has been mentioned therein, that Maruti Dzire Car

bearing registration No.PB-12-V-5021 has been falsely involved and entire case is stage-managed for the sole reason of obtaining compensation. As such there are no detailed pleadings that who were the parties to the collusion and how and in what manner the police was also involved in the connivance. Thereafter, preliminary objection No.5 has also been taken in the written statement that if the Court comes to the conclusion that the alleged accident had occurred, then it has been submitted that, the same had occurred due to sole negligence on the part of the driver of motorcycle No.PB-12U-8641 who was driving the same rashly, negligently and at high speed. Thus the furnishing of surety bond Ex.RW1/1 by PW2 Kulwant Singh as surety of driver of offending vehicle is beyond the pleadings as no specific plea regarding the same has been taken in the written statement.

25. Kulwant Singh, who is the eyewitness to the accident has been examined as PW2 by the claimants on 12.05.2017 and thereafter, his cross-examination was conducted on 26.05.2017 and 21.07.2017. The perusal of RW1/1 reveals that this surety bond had been furnished on 02.08.2016, meaning thereby, that when the cross-examination of PW2 was conducted by respondent No.3-Insurance Company on 26.05.2017 and 21.07.2017 then the surety bond had already been furnished by him on 02.08.2016. But he has not been cross-examined on this aspect at all, by the insurance company and there is no whisper in the entire cross-examination of the respondent-insurance company that he had stood surety of driver of the offending vehicle, while getting him released on bail before the trial Court. So even if PW2-Kulwant Singh had stood surety for driver of the offending

vehicle, then it cannot be presumed that he was in collusion with the claimants and driver and owner of the offending vehicle, to get the compensation illegally.

26. Much reliance has also been placed by learned counsel for the appellant on the fact that the driver of the offending vehicle Sukhwinder Kumar (respondent No.4) has also been acquitted in IPC Challan No.143 dated 21.08.2016 on 02.11.2018 and in this case PW2 Kulwant Singh had turned hostile and it shows that driver of the offending vehicle was not responsible for causing the accident in question. But I do not find any substance in the above said contention of learned counsel for the appellant. The acquittal of the accused in the criminal trial was in respect of offence under Section 304-A IPC by the criminal Court, only on the basis of the material placed before the said criminal Court. Whereas, only an enquiry of civil nature is to be conducted before the Tribunal and it is well settled proposition of law that rights of the parties in the civil enquiry are to be decided on the basis of preponderance of probabilities. It has been held in **Lakhu Singh Vs. Uday Singh, 2008(1) LJR 209** that in a petition under Section 166 of M.V. Act, the Tribunal is required to hold an enquiry and is not supposed to act as a criminal Court. That it is not for the tribunal to find out whether the petitioners have proved the occurrence beyond the shadow of doubt and even if there is prima facie evidence of the occurrence, there is no reason to disbelieve the evidence of the petitioner. The registration of FIR and trial of the accused in criminal case is sufficient to prove that the accident had taken place.

27. Merely because the name of respondent No.1 and registration number of the offending vehicle are not there in the FIR, is not a circumstance, to discredit the case of the claimants. PW-2 Kulwant Singh has specifically stated in his cross-examination that he had given the statement to the police after 10 days of the accident. At the time of giving his statement to the police, he was not aware about the name of the driver and owner of the offending vehicle. But he was knowing the number of the offending car. He came to know about the death of the injured person, when, after about 6-7 days he visited the hospital to get his wife checked. He had specifically denied the suggestion that car in question has been falsely implicated by him, in connivance with claimants and respondent No.1. Thus it was only during the police investigation that the identity/particulars of the offending vehicle were traced by the police and then the charge sheet was filed. The time and place of accident have been clearly given in the FIR, as well as in deposition of PW2. FIR can be got registered even by a person who may not be an eyewitness of the occurrence and it is only during the investigation of the case that the police traces the culprit/criminal who had committed the crime. If there was some delay by PW2-Kulwant Singh in disclosing the particulars of the offending vehicle to the police, such factor may be relevant during the criminal trial but it cannot be given much weightage in proceedings for determining compensation payable in a petition under Section 166 of the M.V. Act.

28. Conducting investigation and collecting evidence is not the job of an informant or an eye-witness. If the investigating agency during the

investigation succeeded in tracing the offending vehicle and also its driver, then the investigating agency is not be castigated for the same. Reliance in this respect can be placed upon **Pillathal and other Vs. R.S. Ganesan and others, II(2000) ACC 265(Madras).**

29. Otherwise also this contention of respondent No.3 that claimants are in collusion with respondent No.1 and 2 and the police is not sustainable, as the investigating agency had no reason to take the side of the appellants. Rather apparently by acting impartially it investigated the matter and could trace the offending vehicle and its driver and only after the investigation respondent No.1 and offending vehicle were found to be involved in the accident in question. Respondent No.3 even did not prefer to call the investigating officer in the witness box to raise their pointed finger against its truthfulness and veracity.

30. Statement of PW2-Kulwant Singh is quite detailed regarding the entire manner in which the accident in question had taken place. This witness has braved the cross-examination but nothing impeaching his credit has surfaced. It has to be noticed that during investigation involvement of vehicle in question and its driver (respondent No.4) was found and that is why the driver was challaned and he faced trial. In **Girdhari Lal Vs. Radhey Shyam & others, 1994(1) ACJ 168**, it was observed that when the driver is tried on account of rash driving that leads to a prima facie conclusion that the accident occurred due to his rash and negligent driving. If the offending vehicle was not recovered from the spot it was because of the fact that the driver of the offending vehicle fled away along with the

vehicle from the spot of the accident. PW2-Kulwant Singh has categorically stated that the driver of the offending car had stopped his car and came out from the car and when he saw that the motorcyclist had received serious injuries, he ran away with his car. He had followed his car but he ran away. Respondent No.4 has not bothered to step into the witness box in order to rebut the evidence of the claimants and to prove that he was not the author of the accident. Thus, the Tribunal was fully justified in coming to the conclusion that the offending car was involved in the accident and the accident took place as the offending vehicle was being driven in a rash and negligent manner by respondent No.4-Sukhwinder Kumar.

31. In view of my above discussions it is held that this appeal i.e. FAO-2387-2018 is bereft of any merits and stands dismissed.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

29.05.2023

komal

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