IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. **FAO-447-2022 (O&M)**
   Date of decision: 12.09.2023

SHRI RAM GENERAL INSURANCE COMPANY LIMITED

..Appellant

Versus

NEELU YADAV AND ORS

..Respondents

2. **FAO-449-2022 (O&M)**

SHRI RAM GENERAL INSURANCE COMPANY LIMITED

..Appellant

Versus

NEELU YADAV AND ORS

..Respondents

3. **FAO-450-2022 (O&M)**

SHRI RAM GENERAL INSURANCE COMPANY LIMITED

..Appellant

Versus

NEELU YADAV AND ORS

..Respondents

4. **FAO-2331-2022**

NEELU YADAV AND ORS

..Appellants

Versus

MAHENDRA SINGH AND ORS

..Respondents

5. **FAO-2707-2022**

NEELU YADAV AND ORS

..Appellants

Versus

MAHENDRA SINGH AND ORS

..Respondents

6. FAO-2800-2022

NEELU YADAV AND ORS

..Appellants

Versus

MAHENDRA SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajbir Singh, Advocate
for the appellant-Insurance Company
(in FAO-447, 449 & 450 of 2022).

Mr. Rajiv Kumar Saini, Advocate
for the appellant (in FAO-2331, 2707 & 2800 of 2022).

Mr. Parveen Kumar Rohilla, Advocate
for respondent No.1 and 2 (in FAO-2331, 2707 & 2800 of 2022)
for respondent No.5 and 6 (in FAO-447, 449 & 450 of 2022)

ANIL KSHETARPAL, J(Oral)

1. A batch of six connected appeals has come up for final disposal. Three appeals have been filed by the Insurance Company, whereas, remaining three have been filed by the claimants.

2. The accident took place on 12.12.2019 at about 04:00 a.m., which resulted in death of Sh. Hira Lal Yadav, Smt. Sonwati and Sh. Ashok Yadav. The Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal") has awarded compensation of Rs.8,27,000/- on account of death of Smt. Sonwati, whereas, Rs.7,38,000/- has been awarded on account of death of Sh. Ashok Yadav, and on account of death of Sh. Hira Lal Yadav, Rs.16,10,000/- has been awarded. The Tribunal has held that the Insurance Company of the truck shall be liable to pay 50% of the total compensation as there was contributory negligence on the part of Sh. Hira Lal Yadav (deceased).

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel the Insurance Company contends that the car driven by Sh. Hira Lal Yadav collided with the truck, that was parked on the *kacha* portion and therefore, the finding of the Tribunal that the driver of the truck was contributory negligent to the extent of 50% is erroneous. While referring to daily diary report (Ex.P-1), recorded by Sh. Ram Nagina Yadav, he submits that the driver of the truck was not at all negligent. He further submits that RW-1, driver of the truck Sh. Mahendra Singh has appeared in evidence and stated that the truck was parked on the *kacha* portion.

5. On the other hand, the learned counsel representing the claimants while referring to the deposition of eye-witness PW-2 Sh. Raj Karan Yadav submits that the truck was parked in the middle of the road without any reflector, parking lights or blinkers and therefore, the driver of the truck was entirely responsible for the accident.

6. The correctness of photocopy of the record produced by the learned counsel representing the claimants is not disputed by the learned counsel representing the Insurance Company. Certain photographs of the place of accident have also been produced. It is evident that the truck is parked right after the continuous white stripe painted on the road. Parking of the vehicles is regulated by the Regulation 15 of the Road Regulations, 1989 framed under the Motor Vehicles Act, 1988, which reads as under:-

> *"**15 Parking of the vehicle-** (1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users*

> *and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.*
> ***(2) A driver of a motor vehicle shall not park his vehicle:-***
> *(i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;*
> *(ii) on a foot-path;*
> *(iii) near a traffic light or pedestrian crossing;*
> *(iv) in a main road or one carrying fast traffic;*
> *(v) opposite another parked vehicle or as obstruction to other vehicle;*
> *(vi) alongside another parked vehicle;*
> ***(vii) on roads or at places or roads where there is a continuous white line with or without a broken line;***
> *(viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;*
> *(ix) on the wrong side of the road;*
> *(x) where parking is prohibited;*
> *(xi) away from the edge of the footpath."*

7. It is evident that in Sub-Regulation 2 of Regulation 15, the driver of a motor vehicle is debarred from parking his vehicle where there is continuous white line whether broken or without breakage.

8. Moreover, PW-2 Sh. Raj Karan Yadav has stated that the truck was parked on the middle of the road. In the DDR allegedly recorded by Sh. Ram Nagina Yadav, it is recorded that the car collided with the truck after the driver lost his control, however, admittedly, Sh. Ram Nagina Yadav is not the eye-witness. Moreover, Sh. Ram Nagina Yadav, has never been examined by the Insurance Company. The Tribunal on the preponderance of probabilities has found that such DDR cannot be relied upon to entirely absolve the driver of the truck, who had parked the vehicle in violation of the rules. In such circumstances, there is no error in the findings recorded by the Tribunal with regard to the contributory negligence of the truck driver to the extent of 50%.

9. In FAO-2331-2022, the claimants pray for enhancement of compensation. The learned counsel representing the appellants contend that the Tribunal has erred in taking the mean of five different Income Tax Returns though the last Income Tax Return for the previous year i.e. 2017-18 is Ex.P-36. He submits that this Income Tax Return was filed on 08.06.2018 that is much before the date of accident. As per the aforesaid Income Tax Return, Sh. Hira Lal Yadav was having gross annual income of Rs.4,54,462/-.

10. There is substance in the argument of the learned counsel representing the claimant. It was not appropriate for the Tribunal to calculate average of the income on the basis of the various returns, which were filed from the previous years i.e. 2013-2014, 2014-2015 and 2015-2016 particularly when the last Income Tax Return filed on 08.06.2018 i.e. immediately before the death was available. Thus, the income of Sh. Hira Lal Yadav is assessed at Rs.4,55,000/- annually.

11. Accordingly, the revised compensation is calculated as under:-

Heads	**Amount awarded by the Motor Accident Claims Tribunal (MACT)**	**Amount awarded by the High Court**
Gross income	Rs.3,33,772/-	Rs.4,55,000/-
Future Prospects (10%)	Rs.3,33,772 + Rs.33,378/- = Rs.3,67,150/-	Rs.4,55,000/- + Rs.45,500 = Rs.5,00,500/-
Dependency (¼)	Rs.Rs.3,67,150/- – Rs.91,788/- = Rs.2,75,362/-	Rs.5,00,500/- – Rs.1,25,125/- = Rs.3,75,375/-
Multiplier (11)	Rs.2,75,362/- X 11 = Rs.30,28,982/-	Rs.3,75,375/- X 11 = Rs.41,29,125/-
Funeral Expense	Rs.15,000/-	Rs.15,000/-
Loss of estate	Rs.15,000/-	Rs.15,000/-

Filial consortium	Rs.40,000/- X 4 = Rs.1,60,000/-	Rs.40,000/- X 4 = Rs.1,60,000/-
Total amount awarded (Award)	Rs.32,18,982/-	Rs.43,19,125/-
Enhanced Compensation	Rs.43,19,125 – Rs.32,18,982 = Rs.11,00,143/-	

12. The enhanced compensation of Rs.11,00,143/- (Rs.43,19,125/- – Rs.32,18,982/-) shall be payable along with the interest at the rate of 7.5% from the date of filing of the claim petition till its realization.

13. FAO-2880-2022 is arising from the death of late Smt. Sonwati. The claim petition has been filed by four children i.e. 4 daughters. The tribunal has assessed the contribution of a home maker at the rate of Rs.10,000/- per month. The family was reasonably affluent. Sh. Hira Lal Yadav was maintaining a Hyundai Verna car, which is a three box model sedan car. In such circumstances, the contribution of the home maker towards family particularly when there are four daughters, cannot be measured in terms of money. However, the Court is required to make some assessment in order to assess the claim.

14. Keeping in view the facts of the case, the revised compensation is assessed at the rate of Rs.15,000/- per month.

Heads	Amount awarded by the Motor Accident Claims Tribunal (MACT)	Amount awarded by the High Court
Annual income	Rs.1,20,000/-	Rs.1,80,000/-
Future Prospects (25%)	Rs.1,20,000/- + Rs.30,000/- = Rs.1,50,000/-	Rs.1,80,000/- + Rs.45,000/- = Rs.2,25,000/-
Dependency (¼)	Rs.1,50,000/- – Rs.37,500/- = Rs.1,12,500/-	Rs.2,25,000/- – Rs.56,250/- = Rs.1,68,750/-

Multiplier	Rs.1,12,500/- X 13 = Rs.14,62,500/-	Rs.1,68,750 X 13 = Rs.21,93,750/-
Funeral Expense	Rs.15,000/-	Rs.15,000/-
Loss of estate	Rs.15,000/-	Rs.15,000/-
Filial consortium	Rs.40,000/- X 4 = Rs.1,60,000/-	Rs.40,000 X 4 = Rs.1,60,000/-
Total amount awarded (Award)	Rs.16,52,500/-	Rs.23,83,750/-
Enhanced Compensation	Rs.23,83,750/- – Rs.16,52,500/- = Rs.7,31,250/-	

15. The enhanced compensation of Rs.7,31,250/- (Rs.23,83,750/- – Rs.16,52,500/-) shall be payable along with the interest at the rate of 7.5% from the date of filing of the claim petition till its realization.

16. In FAO-2707-2022, the enhancement of the compensation is claimed on account of the death of Sh. Ashok Yadav. He was barely 19 years of age at the time of his death.

17. The learned counsel representing the appellants contends that the income of Sh. Ashok Yadav has been assessed at the rate of Rs.8,500/- per month, which is equivalent to minimum wages payable to a workmen. He submits that Sh. Ashok Yadav was doing his graduation from the college and therefore, the income assessed by the Court is on the lower side.

18. On the other hand, the learned counsel representing the Insurance Company contends that the sisters are not dependent upon the brother because their father was earning reasonably well and the claimants have been held entitled for the compensation on account of death of their father.

19. Keeping in view the aforesaid facts, there is no scope of enhancement in this appeal.

20. With these observations, the appeals are disposed of.

21. All the pending miscellaneous applications, if any, are also disposed of.

September 12th, 2023 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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