

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

**FAO No. 3935 of 2014 (O&M)
DATE OF DECISION :- May 30, 2023**

Smt. Poonam Devi and others

...Appellants

Versus

Waseem and others

...Respondents

FAO No. 4502 of 2014 (O&M)

Smt. Maya Devi and others

...Appellants

Versus

Waseem and others

...Respondents

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

Present:- Mr. Arjun Attri, Advocate for the appellant.

Mr. Kanwaljeet Singh, Advocate
for Ms. Anu Bala Garg, Advocate for respondent No. 1.

Mr. Aakash Sheoran, Advocate for respondents No. 2 to 4.

Mr. Rajbir Singh, Advocate for respondent No. 5.

1. My this order shall dispose of two appeals bearing FAO No. 3935 of 2014 titled 'Smt. Poonam Devi and others versus Waseem and others' and FAO No. 4502 of 2014 titled 'Smt. Maya Devi and others versus Waseem and others'.

2. Briefly stated the facts of the case are that on account of death of Satyawar son of Sh. Bhoop Singh resident of village Pehrajwas and Hukam Singh son of Bhoop Singh resident of Nizampur in a motor vehicular accident which took place on 8.3.2012 at about 2.30 P.M in the area of Mallik Petrol Pump, Hodal Road, Nuh, statedly on account of rash and negligent driving of tractor bearing registration No. HR-28A-4381 (hereinafter referred to as the offending tractor) by respondent No. 1 Waseem, the legal representatives of both the deceased had brought claim petitions under Section 166 of the Motor Vehicles Act, 1988 those of Satyawar namely Smt. Poonam Devi, widow, Lakki, minor son, Bhoop Singh, father and Prem Devi, mother, all residents of Village Pehrajwas, District Rewari against respondents Waseem, driver, Jaikam, Iqbal and Tahir, all three of them owners and Shri Ram General Insurance Company Limited, insurer of offending tractor. Their claim petition was given MACT No. 92 of 2012 whereas legal representatives of Hukam Singh namely his widow Smt. Maya Devi, minor daughters Minakshi @ Indra and Madhu, minor sons Yaman Singh @ Yashbir and Bishan Singh, all residents of Village Nizampur, Tehsil Tauru, District Mewat had brought a claim petition against all those respondents and their claim petition was given MACT No. 72 of 2012.

3. Both the claim petitions were tried together having arisen out of the same accident and were dismissed vide a single Award dated 28.1.2014 for the reason that petitioners-claimants had failed to establish that the accident in which Satyawar and Hukam Singh had lost their lives had taken place on account of rash and negligent driving of tractor by respondent No. 1 Waseem.

4. Feeling aggrieved, the petitioners claimants have approached this Court by way of filing separate appeals. The appeal filed by legal representatives of deceased Satyawar is titled 'Smt. Poonam Devi and others versus Waseem and others' bearing FAO No. 3935 of 2014 and appeal filed by legal representatives of Hukam Singh is titled 'Smt. Maya Devi and others versus Waseem and others' bearing FAO NO. 4502 of 2014.

5. Notice of both the appeal were given to the respondents, who have put in appearance through counsel.

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

7. I find that the impugned Award cannot stand judicial scrutiny and is liable to be set aside. In this case the claimants had brought sufficient evidence both ocular and documentary to discharge of onus of proving issue No. 1 upon them. They have examined the eye witness of the accident namely Nitin Kumar PW4, who had provided the ocular version of the accident deposing in consonance in case of claimants as given in the claim petition categorically stating that the accident in which Satyawar and Hukam Singh had lost their lives had taken place on account of rash and negligent driving of offending tractor by respondent No. 1 Waseem. He was cross-examined at length on behalf of respondents but he stuck to his guns and could not be shattered on any material point. Coupled with that is the fact that respondent No. 1 Waseem was booked in a criminal case registered vide F.I.R Ex. PW2/A and further he was challaned in the said case after completion of investigation, copy of report under Section 173 Cr.P.C. is Ex.P2 and then formal charge had been framed against him vide charge sheet Ex.P1.

8. This was more than sufficient to prove the issue but the Motor Accident Claims Tribunal by adopting a totally wrong and erroneous approach discarded that evidence solely for the reason that in the criminal case Nitin Kumar PW4 had not supported the prosecution story. May it be so. The Tribunal was to reach at its own conclusion on the basis of evidence adduced by the parties and not to get swayed away by the fact that Nitin Kumar PW4 had not supported the prosecution story in the criminal case.

9. Interestingly there is nothing to show that Nitin Kumar PW4 was confronted with his statement recorded in the criminal case. Without doing that by picking up few lines from the proceedings of the criminal case the Tribunal started condemning his deposition. The Tribunal forgot that it was dealing with claim petition under Section 166 of the Motor Vehicles Act which is a piece of welfare legislation where strict procedures and rules of evidence are not applicable. The Tribunal proceeded as it was contesting a criminal case.

10. Interestingly, respondent No. 1 driver of the offending tractor had not opted to step into the witness box and to depose that he was not at fault. Similarly respondents No. 2 to 4, owners of the tractor had not appeared to state that the tractor belonging to them was not involved in the accident. Even then the Motor Accident Claims Tribunal gave verdict with regard to issue No. 1 against claimants which is certainly not sustainable.

11. Learned counsel for the Insurance Company has referred to certain judgments i.e one by the Apex Court titled 'Surender Kumar Arora and Anr. Versus Dr. Manoj Bisla and Ors.' 2012(6) ALL MR 471 and other two judgments of this Court titled 'United India Insurance Company Limited versus Kamla Devi and others' 2010(4) PLR 235 and 'National

Insurance Company Limited versus Smt. Billo Devi and others' in FAO No. 5613 of 2017 (O&M). However, in view of the facts and circumstances of the case these judgments do not help him in any way. Therefore, the verdict given by the Tribunal on issue No. 1 is reversed and this issue is decided in favour of the claimants and against the respondents.

12. With regard to issues No. 3 and 4 those were decided against respondent Insurance Company.

13. However, the Tribunal omitted giving any finding with regard to issue No. 2.

14. As per evidence available on record Satyawar was aged about 23 years, married having a minor son. Although as per case of claimants he was working as a driver earning Rs.15,000/- per month but no cogent and convincing evidence in that regard has been brought on file by the claimants.

15. Under the circumstances, I find it proper and appropriate to treat him as a manual labourer. The minimum wages in the State of Haryana at relevant time for an unskilled worker were Rs.4847/-. Therefore, income of the deceased is assessed as such. Addition of 40% of the salary is to be made towards future prospects. Doing that the monthly income of the deceased is worked out as $\text{Rs.4847} + \text{Rs.1938.80} = \text{Rs.6785.80/-}$

16. Keeping in view the number of family members, deduction of 1/4th of the amount is to be made towards his personal and living expenses. In that way the dependency of the claimants comes out to Rs. 5089.35. The annual dependency of claimants is worked out to $5089.35 \times 12 = \text{Rs.61,072.20/-}$. Keeping in view the age of the deceased multiplier of 18 is required to be applied. Doing that the total dependency of claimants comes out to $61,072.20 \times 18 = \text{Rs.10,99,299.60/-}$. The claimants are entitled to get

Rs.40,000/- as compensation under Head loss of consortium, Rs.15,000/- on account of loss of Estate and Rs.15,000/- as funeral expenses. In that way under the conventional Heads the claimants are entitled to get Rs.70,000/-. Adding that amount the total compensation is worked out to Rs.11,69,300/-. Since no violation of terms and conditions of the Insurance policy has been found to be there by the Tribunal, therefore, the liability of the driver, owner and the Insurance Company to pay the compensation is joint and several. The claimants would be entitled to get interest at the rate of 7.5% per annum on this amount from the date of filing of claim petition till actual realization. The apportionment of compensation amongst claimants who are legal representative of deceased Satyawar would be as under :-

1. Smt. Poonam	40%
2. Lakki (minor)	30%
3. Bhoop Singh	15%
4. Prem Devi	15%

17. The share of minor is to be kept in the form of FDR with some nationalized Bank till he attains majority. However if evidence is produced that he has already attained majority then his share be also released to him directly.

18. In the case of deceased Hukam Singh i.e. FAO NO. 4502 of 2014, as per version of claimants Hukam Singh was aged about 40 years. However, a perusal of the post-mortem report of the deceased proved in evidence as Ex.PW3/B goes to show that in column of age the entry is 40-42 years. Similarly in Rashan Card of the deceased and his family copy mark 'A' his age is mentioned to be 35 years as on 11.5.2005. The accident had taken place on 8.3.2012 which means that Hukam Singh deceased was aged

about 42 years at that time. The salary certificate has not been proved in accordance with law by summoning the employer of the deceased. Therefore, I find it proper and appropriate to take the monthly income of deceased Hukam Singh to be Rs.4847/- as per minimum wages of an unskilled worker in the State of Haryana at relevant time. In view of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' where the deceased was self employed or on fixed salary an addition of 25% is to be made when the deceased was between the age of 40-50 years.

19. Therefore, addition of 25% of the salary is to be made towards future prospects. Doing that the monthly income of the deceased is assessed to be $4847 + 1212 = \text{Rs.}6059/-$ Keeping in view the number of family members, deduction of 1/4th of the amount is to be deducted towards his personal and living expenses which comes out to Rs.1514.75/- say Rs.1515/-. In that way the dependency of the claimants comes out to $\text{Rs.}6059 - 1515 = \text{Rs.}4544/-$. In that way, the annual dependency of claimants is worked out to $4544 \times 12 = \text{Rs.}54,528/-$. Keeping in view the age of the deceased multiplier of 14 is required to be applied. Doing that the total dependency of claimants comes out to $\text{Rs.}54,528 \times 14 = \text{Rs.}7,63,392/-$. The claimants are entitled to get Rs.40,000/- as compensation under Head loss of consortium, Rs.15,000/- on account of loss of Estate and Rs.15,000/- as funeral expenses. In that way under the conventional Heads the claimants are entitled to get Rs.70,000/-. Adding that amount the total compensation is worked out to Rs.8,33,392/-. Since no violation of terms and conditions of the Insurance policy has been found to be there by the Tribunal, therefore, the liability of the driver, owner and the Insurance Company to pay the

compensation is joint and several. The claimants would be entitled to get interest at the rate of 7.5% per annum on this amount from the date of filing of claim petition till actual realization. The apportionment of compensation would be as under :-

- | | |
|-----------------------------|-----|
| 1. Smt. Maya Devi | 40% |
| 2. Minakshi @ Indra (minor) | 15% |
| 3. Madhu (minor) | 15% |
| 4. Yaman Singh (minor) | 15% |
| 5. Bishan Singh (minor) | 15% |

20. With regard to apportionment the share of minor is to be kept in the form of FDR with some nationalized Bank till they attain majority. However, on presenting proof of the fact that they have attained majority the share of minor claimants be released to them directly.

21. Accordingly, both the appeals are allowed with costs.

(H.S. MADAAN)
JUDGE

May 30, 2023
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No