



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **FAO-228-2014 (O&M)**

United India Insurance Company Limited
...Appellant

VERSUS

Smt.Gurjeet Kaur and others
...Respondents

(ii) **FAO-404-2014 (O&M)**

Smt.Gurjeet Kaur and others
...Appellants

VERSUS

Balwinder Singh and others
...Respondents

Date of Decision: May 21, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.D.P.Gupta and Mr.Shubham Gupta, Advocates
 for the appellant (in FAO-228-2014) and
 for respondent No.2 (in FAO-404-2014).

Mr.Ashwani Arora, Advocate
for appellants (in FAO-404-2014) and
for respondents No.1 to 3 (in FAO-228-2014).

ARCHANA PURI, J.

These are two rival appeals filed to assail the Award dated
06.09.2013 passed by Motor Accident Claims Tribunal, whereby,
compensation was awarded to the claimants, on account of death of Surinder
Singh, in a motor vehicular accident, which took place on 19.10.2010.

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FAO-228-2014 has been filed by the insurance company, thereby, questioning the finding of negligence in the accident in hand and the quantum of compensation.

FAO-404-2014 has been filed by the appellants-claimants, thereby seeking enhancement of the compensation awarded by learned Tribunal.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

The facts germane, to be noticed, are as follows:-

That, on 19.10.2010, at about 3.30 a.m., Surinder Singh was going from Sector 46, Chandigarh to CTU Workshop, Phase-I, Chandigarh, while sitting on motorcycle bearing registration No.CH-04-8820, which was driven by Balwinder Singh, at a fast speed and in a rash and negligent manner. They were being followed by Gurmukh Singh and Gurcharanjeet Singh, on a separate motorcycle. After crossing the chowk of Sector-45/46/32/33, Chandigarh, when they were on dividing road of Sector 32-33, at that time, some stray dogs appeared on the road and due to fast speed, Balwinder Singh could not control his motorcycle and got imbalanced, as a result of which, both the occupants of the motorcycle, i.e. Balwinder Singh and Surinder Singh, fell down on the road. Surinder Singh had sustained injuries, whereupon, he was taken to GMCH, Sector-32, Chandigarh, where he was declared dead. The accident had taken place due to rash and negligent driving of respondent No.1-Balwinder Singh, on the basis whereof, claim petition was filed to seek compensation.

In pursuance of the notice issued, respondents made appearance

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and filed their respective replies. Respondent No.1-Balwinder Singh, though admitted the fact of accident and also about deceased Surinder Singh to be pillion rider on the motorcycle, but however, he denied negligence imputed upon him. In fact, he took the plea that the accident had taken place due to sudden appearance of stray dogs on the road, as a result of which, he could not control the motorcycle and fell down on the road. He also admitted about their motorcycle to be followed by Gurmukh Singh and Gurcharanjit Singh, on a separate motorcycle.

Likewise, the insurance company, in its separate reply, took preliminary objections, vis-a-vis, maintainability, cause of action, as well as vehicle being driven in violation of terms and conditions of the insurance policy and that driver of the offending motorcycle, not having valid and effective driving licence. On merits, the factum of accident, as such, was denied.

Issues were framed and after adducing of the evidence by the respective parties, vide impugned Award, the claim petition was allowed and compensation to the extent of Rs.28,57,476/- was granted to the claimants, on account of death of Surinder Singh, in a motor vehicular accident. The liability fastened upon the respondents was joint and several.

Feeling aggrieved by the aforesaid Award, both the insurance company as well as the claimants have filed the rival appeals, as detailed aforesaid.

At the very outset, be it noted that the factum of accident, as such, has not been denied by respondent No.1, who was driving the offending vehicle, at the relevant time. However, learned counsel for

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insurance company, on the basis of the contents of DDR Ex.R4 and statement of Gurmukh Singh, on the basis whereof, DDR was recorded, had stated that accident had taken place, per chance, on account of appearance of stray dogs on the road and there was no negligence, on the part of any person and therefore, the insurance company, as such, is not liable to indemnify the owner. However, the aforesaid submission, is not tenable.

It is categoric claim of the claimants that the accident had taken place, on account of rash and negligent driving of motorcycle driven by respondent No.1-Balwinder Singh, as a result whereof, Surinder Singh had sustained injuries, which proved fatal. Also, it is not disputed that the motorcycle of which the deceased was pillion rider, was being followed by another motorcycle of which, Gurmukh Singh and Gurcharanjeet Singh were the occupants.

To so substantiate its claim, besides Gurjeet Kaur, widow of the deceased, deposing about the death of Surinder Singh, in the accident in question, Gurcharanjeet Singh has been examined as PW-2 and his sworn testimony, in the form of affidavit is Ex.PW2/A, wherein, he has categorically imputed rashness and negligence, on the part of Balwinder Singh, while driving the motorcycle in question. He has also categorically deposed that on account of speed being high, said Balwinder Singh could not control his motorcycle and got imbalanced and went out of control, as a result whereof, both the occupants fell on the road and sustained injuries. He categorically stated in his affidavit that accident had taken place, due to rash and negligent driving of motorcycle by Balwinder Singh.

While facing cross-examination, he has further categorically stated

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that the accident had taken place, in front of his eyes.

In the light of the aforesaid evidence, it is pertinent to mention that respondent No.1-Balwinder Singh, who was driving the ill-fated motorcycle, at the relevant time, did not have the courage to step into the witness box and to depose about his own version qua the accident. There is no contra evidence offered by driver of the insured. The version of an eye witness, ought to be believed, in these circumstances.

Though, it is submitted that different version is coming forth, in the DDR, copy whereof is Ex.R4, but however, this DDR, ipso facto, does not counter the categoric statement made by the eye witness, on oath. In fact, copy this DDR has simply been tendered into evidence. Not even the person, who had got recorded this DDR, has been examined. Thus, in the light of the same, this DDR, cannot be given preference to the categoric statement made by an eye witness, on oath, more particularly, when Balwinder Singh did not have cheeks to step into the witness box and put forth his version of taking place of the accident and rashness and negligence imputed upon him.

In the given circumstances, learned Tribunal had appraised the evidence in appropriate manner and correctly, reached the conclusion about the accident to have been caused due to rash and negligent driving of motorcycle in question by respondent No.1-Balwinder Singh, which resulted into death of Surinder Singh.

Now, let us consider the quantum of compensation, as worked by learned Tribunal.

In the claim petition, it is asserted that deceased Surinder Singh

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was 53 years old and his date of birth was 15.12.1957, which stand amply established from the evidence, brought on record. Even, deceased following the occupation of Driver with CTU Depot No.1, is not disputed. The same, otherwise also, stand amply established from the testimony of PW-1 Gurjeet Kaur and PW-3 Daljit Singh, Junior Assistant, who had brought the service record of Surinder Singh. Daljit Singh had categorically deposed about deceased to be working as Driver in CTU Depot No.1 Chandigarh, since, 09.07.1984 and he expired on 19.10.2010. He proved the salary certificate Ex.P7 and Ex.P8. Ex.P7 reveals about deceased Surinder Singh to have drawn the salary at the time of accident, whereas, Ex.P8 relates to his date of retirement and salary. As per the said certificate, the last drawn salary of the deceased was Rs.28,113/-.

Considering the same, learned Tribunal had worked upon the annual earnings to be Rs.3,37,356/-. After deducting the amount of tax, as per the prevalent rates, which was to the extent of Rs.18,268/-, the annual earnings was taken as Rs.3,19,088/-. Out from the aforesaid amount, 1/4th was deducted, on account of 'personal expenses' and the residue amount for the dependency was taken to be Rs.2,39,316/-. Considering the age of the deceased, multiplier of '11' was applied and the amount was worked upon as Rs.26,32,476/-. Besides the aforesaid amount, amounts of Rs.1,00,000/- on account of 'loss of consortium', Rs.25,000/- for 'funeral expenses' and Rs.1,00,000/- for loss of love and affection to the minor child, were granted and thus, the total compensation was worked upon as Rs.28,57,476/-.

Learned counsel for the insurance company, while placing reliance upon the judgment passed by this Court in ***Chameli Mittal and***

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another vs. M/s Chahal Bus Service and others, decided on 18.12.2023, FAO-2563-3008, has submitted that in fact, learned Tribunal had erroneously worked upon the compensation. It is submitted that in fact, it was required to be worked upon in two blocks, one relating prior to his retirement and other relating to post-retirement period. However, the aforesaid submission is not tenable.

It is pertinent to mention in *Chameli Mittal's case (supra)*, the compensation was worked upon by learned Tribunal, while considering the period of one year, which was pre-retirement and second block related to post-retirement period. However, the manner of work on, was affirmed by this Court, on account of the period of retirement to be very near, at the time of death of the deceased. However, in the present case, deceased Surinder Singh was 53 years old and he had a long period to go, prior to his retirement and therefore, the compensation cannot be computed in the form of blocks.

However, the compensation, worked upon by learned Tribunal, do call for re-computation, as per prevalent settled law.

The salary of the deceased is taken as Rs.28,113/-, annual whereof comes to Rs.3,57,356/-. Out of this annual earnings, the income tax deducted by learned Tribunal, as per the prevalent rates for the financial year 2010-2011, is appropriate, which is to the extent of Rs.18,268/-. After deducting the said amount, the annual income comes to be Rs.3,19,088/-.

To the aforesaid amount, keeping in view the age of the deceased, as per guidelines laid down in *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of

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15% ought to be made, on the count of 'future prospects'. Thus, the income of the deceased is worked upon as $\text{Rs.}319088 + 47863(15\%) = \text{Rs.}3,66,951/-$.

Considering the number of dependents of the deceased, 1/4th is to be deducted, on the count of 'personal expenses' as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*. Thus, making this deduction, the loss of dependency comes to be $\text{Rs.}366951 - 91737 = \text{Rs.}275214/-$.

To the aforesaid amount, appropriate and suitable multiplier, to be applied is '11', as applied by learned Tribunal and by applying the same, the loss of dependency, works out to be $\text{Rs.}275214 \times 11 = \text{Rs.}30,27,354/-$.

Besides the aforesaid amount, it is pertinent to mention that under the conventional heads, the amount granted by learned Tribunal is on higher side. An amount of Rs.1 lakh has been given, towards consortium. Another amount of Rs.1 lakh was given towards love and affection and Rs.25,000/- was granted as funeral expenses.

As per *Pranay Sethi's case (supra)*, the compensation, ought to be paid to the claimants, on the count of 'loss of consortium', which was stated to be to the extent of Rs.40,000/-. However, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the aforesaid count, works out to be, **Rs.48,400/-** to each of the claimants i.e. $\text{Rs.}48400 \times 4 = \text{Rs.}1,93,600/-$. Even though, learned Tribunal had granted Rs.1 lakh towards 'love and affection', but however, as per *'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'*, loss of love and affection is comprehended in loss of consortium'. Hence, there is no justification to



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award compensation towards loss of love and affection, as a separate head. Further, as per *Pranay Sethi's case (supra)*, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to claimants, on account of death of Surinder Singh, is re-computed, as herein given:-

Loss of dependency	:	Rs.30,27,354/-
Loss of consortium	:	Rs.1,93,600/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.32,57,254/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.30,27,354-28,57,476=Rs.3,99,778/-**. On the enhanced amount of the compensation i.e. **Rs.3,99,778/-**, the claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the appeal, till realization of the enhanced amount of compensation. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid observations, the appeal filed by the insurance company i.e. **FAO-228-2014** stands dismissed, whereas, appeal filed by the appellants-claimants i.e. **FAO-404-2014**, stands allowed.

May 21, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No