IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

256-A **FAO-3860-2016 (O&M)**
Date of Decision : 30.04.2024

NATIONAL INSURANCE COMPANY LTD .... Appellant

VERSUS

GURPREET KAUR & ORS .... Respondents

AND

FAO-3137-2016 (O&M)
Date of Decision : 30.04.2024

GURPREET KAUR & ORS .... Appellants

VERSUS

SATISH KUMAR & ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harjinder Singh, Advocate
for the appellant in FAO-3860-2016 and
for respondent No.3-Insurance Company in FAO-3137-2016.

Mr. Vivek Suri, Advocate,
Mr. Dushyant Godara, Advocate and
Mr. Darpan Bansal, Advocate
for respondents No.1 to 4 in FAO-3860-2016 and
for the appellants in FAO-3137-2016.

ALKA SARIN, J. (ORAL)

1. This common order will dispose off both the above captioned appeals being FAO-3860-2016 filed by the Insurance Company and FAO-3137-2016 filed by the claimants challenging the award dated 04.02.2016 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal').

2. The brief facts relevant to the present case are that on 20.12.2014 deceased Satwinder Singh was stated to be riding on his motorcycle bearing registration No.PB-65-Z-4416 on the left side of the road at a moderate speed from Zirakpur to Banur. At about 9:15 am when he reached near Village Rampur Kalan, little behind Indian Oil Petrol Pump, one Tata Ace bearing registration No.PB-11-BN-5326 came at a high speed being driven in a rash and negligent manner and hit the motorcycle of Satwinder Singh by coming on the wrong side of the road. Satwinder Singh fell down and received multiple injuries. He was shifted to Government Medical College and Hospital, Sector-32, Chandigarh where he succumbed to his injuries. Regarding the incident FIR No.133 dated 21.12.2014 was registered at Police Station Banur. It was averred in the claim petition that the deceased was a businessman and was earning a monthly income of Rs.30,000/-. The Tribunal, on the basis of the statement of the eye-witness, held that the accident had taken place due to the rash and negligent driving of the driver of the offending vehicle bearing registration No.PB-11-BN-5326. On the basis of the pleadings and evidence on the record the Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Annual income	Rs.1,82,650/-
2	Amount after applying deduction 1/4th	[Rs.1,82,650/- – Rs.45,663/-] = Rs.1,36,987/-
3	Multiplier of 17	[Rs.1,36,987 x 17] = Rs.23,28,779/-
4	Loss of Consortium	Rs.1,00,000/-
5	Funeral expenses	Rs.10,000/-
6	Transportation	Rs.5,000/-
7	**Total Compensation**	**Rs.24,43,779/-**
8	**Interest**	**6% per annum**

3. Learned counsel for the Insurance Company would contend that the author of the FIR did not step into the witness box in the present case and that the entire case is a planted case inasmuch as the author of the FIR had given a different vehicle number and the registration number i.e. PB-11-BN-5326 cropped up at a later stage. It is further the contention that the author of the FIR, who was the uncle of the deceased, got recorded his supplementary statement on the same day on which the FIR was record and stated that due to nervousness he had given a wrong vehicle number and that in his supplementary statement a different vehicle number was given and the details of the driver were also mentioned. Learned counsel for the Insurance Company would further contend that though the Income Tax Returns were placed on the record, however, there is no details of the nature of the business that was being carried out by the deceased and hence the reliance on the Income Tax Returns is wholly misplaced.

4. *Per contra*, learned counsel for the claimants would contend that the eye-witness of the accident had stepped into the witness box and filed his affidavit in examination-in-chief (Ex.PW-2/A) wherein he deposed that on 20.12.2014 deceased Satwinder Singh was going on his motorcycle bearing registration No.PB-65-Z-4416 on the left side of the road at a moderate speed and that his motorcycle was hit by one Tata Ace bearing registration No.PB-11-BN-5326 which was being driven rashly and negligently at a very high speed. It is further the contention of the learned counsel for the claimants that the Income Tax Return for the assessment year

2013-14 was placed on the record as Ex.PW-4/A and for the assessment year 2014-15 as Ex.PW-4/B and that the income of the deceased has rightly been assessed by the Tribunal relying on the Income Tax Returns. It is further the contention of the learned counsel for the claimants that no amount has been awarded towards future prospectus and that the amounts awarded under the conventional heads and under loss of consortium are on the lower side. There is no challenge to the deduction made to the extent of 1/4th and the multiplier applied as '17'.

5. Heard.

6. In the present case no doubt the author of the FIR did not step into the witness box, however, one of the eye-witness, who is admittedly not related to the deceased, had stepped into the witness box as PW-2 and had given his affidavit in examination-in-chief (Ex.PW-2/A) wherein he specifically deposed that he had seen the accident and that the accident was caused due to the rash and negligent driving of the driver of the offending vehicle. The said eye-witness was subjected to detailed cross-examination. A perusal of the cross-examination would reveal that there is not even a suggestion put to the said witness that he was not present at the time of the accident or that he was not an eye-witness to the said accident. The argument of the learned counsel for the Insurance Company that the accident actually took place with vehicle bearing registration No.CH-04-E-1660 and not with Tata Ace bearing registration No.PB-11-BN-5326 deserves to be rejected. Simply because the author of the FIR did not step into the witness box

would be no ground to hold that the case was a planted case. Further still, the author of the FIR had specifically stated in his supplementary statement that at the time of the accident he got nervous and had given a wrong vehicle number. Subsequently the correct number and the details of the driver were given and, as noticed by the Tribunal, the driver of the offending vehicle was also facing criminal trial. Further still, the Insurance Company itself had examined ASI Nahar Singh (RW-2) who had clarified the position and deposed that after the registration of the FIR he visited the spot where vehicle bearing registration No.CH-04-E-1660 was present but it was not in a damaged condition whereas Tata Ace bearing registration No.PB-11-BN-5326 which was also standing there was in a damaged condition. The Tribunal has further observed that the fact was further clarified from the photographs (Ex.P-2 to Ex.P-10). In view of the overwhelming evidence, there is no manner of doubt that the accident took place with the offending vehicle i.e. Tata Ace bearing registration No.PB-11-BN-5326. Hence, the argument of the learned counsel for the Insurance Company stands rejected. The second argument of the learned counsel for the Insurance Company that there is no evidence on the record regarding the nature of the business being carried out by the deceased is also noticed to be rejected inasmuch as once the Income Tax Returns of the deceased were placed on the record, the Tribunal has rightly assessed his income.

7. In view of the above, the appeal filed by the Insurance Company being FAO-3860-2016 stands dismissed. The argument of the

learned counsel for the claimants that no amount has been awarded towards future prospectus as well as the argument that the amounts awarded under the conventional head and loss of consortium are on the lower side deserves to be accepted in view of the law laid down in **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

8. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income	Rs.1,82,650/-
2	Amount after applying deduction 1/4th	[Rs.1,82,650/- – Rs.45,663/-] = Rs.1,36,987/-
3	Future prospectus (40%)	[Rs.1,36,987/- + Rs.54,795/-] = Rs.1,91,782/-
4	Multiplier of 17	[Rs.1,91,782 x 17] = Rs.32,60,294/-
5	Loss of estate	[Rs.15,000 + 20% increase] = Rs.18,000/-
6	Funeral expenses	[Rs.15,000 + 20% increase] = Rs.18,000/-
7	Loss of Consortium : (i) Parental (ii) Filial (iii) Spousal's	 [48,000 x 2] = Rs.96,000/- [48,000 x 1] = Rs.48,000/- [48,000 x 1] = Rs.48,000/- [Total Rs.1,92,000/-]
8	**Total Compensation**	**Rs.34,88,294/-**

9. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the claim petition till the realization of the entire amount.

The amount shall be apportioned between the claimants as directed by the Tribunal.

10. In view of the above discussion, the impugned award of the Tribunal is modified and the appeal filed by the claimants being FAO-3137-2016 stands disposed off with the above modification. The appeal of the Insurance Company stands dismissed. Pending applications, if any, also stand disposed off.

30.04.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO