IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

235 **FAO No.3977 of 2016 (O&M)**
Date of Decision : 07.02.2024

United India Insurance Co. Ltd. ....Appellant

VERSUS

Sunil Devi and Others ....Respondents

235-1 **FAO No. 2998 of 2016**

Sunil Devi and Others ....Appellants

VERSUS

Sewa Singh and Others ....Respondents

235-2 **FAO No. 6340 of 2016**

Sewa Singh and Another ....Appellants

VERSUS

Sunil Devi and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajneesh Malhotra, Advocate
for the appellant in FAO-3977-2016
for respondent No.3 in FAO-2998-2016 and
for respondent No.5 in FAO-6340-2016.

Mr. Ashwani Arora, Advocate
for the appellants in FAO-2998-2016
for respondent Nos.1 to 4 in FAO-3977-2016 and
for respondent Nos.1 to 4 in FAO-6340-2016

Mr. Ghulam Nabi Malik, Advocate
for the appellants in FAO-6340-2016
for respondent Nos.5 and 7 in FAO-3977-2016 and
for respondent Nos.1 and 2 in FAO-2998-2016.

<u>ALKA SARIN, J.</u> (Oral)

1. This common order will dispose off the above captioned three appeals being FAO-3977-2016 filed by the Insurance Company; FAO-2998-2016 filed by the claimants; and FAO-6340-2016 filed by the driver and owner of the offending vehicle, challenging the award dated 03.02.2016 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal').

<u>FAO-3977-2016 & FAO-6340-2016</u>

2. The present appeals are by the Insurance Company and the owner and driver of the offending vehicle aggrieved by the award passed by the Tribunal.

3. The brief facts relevant to the present case are that on 28.09.2014 Dr. Ram Parkash (hereinafter referred to as the 'deceased') was going from village Khamera to Nangal on Anandpur Sahib-Nangal Road on his scooter bearing registration No.PB-16-B-8310 and was driving on the left side of the road. At about 06.30 pm, when he reached near village Bandlehri, a bus bearing registration No.PB-12-F-8287 (hereinafter referred to as the 'offending vehicle') owned by Dashmesh Bus Service came from Nangal side at a very high speed and was being driven in a rash and negligent manner and struck against the scooter of the deceased by coming on the wrong side of the road. The deceased fell down and received multiple injuries on his head and other parts of the body as a result of which he died at the spot. The driver of the offending vehicle ran away from the spot. The deceased was taken to BBMB Hospital, Nangal where his postmortem was conducted. A DDR was initially registered on the statement of the brother of the deceased, who was not an eye-witness to the accident. Regarding the

accident subsequently FIR was registered being FIR No.142 dated 17.10.2014 at Police Station Nangal under Sections 279 and 304-A of the Indian Penal Code, 1860. Notice of the claim petition was given to the respondents i.e. driver and owner of the offending vehicle and the insurance company. Before the Tribunal respondent No.2 - Sewa Singh son of Davinder Singh - was given up and respondent No.4 - Davinder Singh - was added, who is the owner of the offending vehicle. Respondent No.1 - Sewa Singh son of Mansa Singh - who was the driver of the offending vehicle, filed his reply raising preliminary objections and denying the factum of the accident. It was stated that Davinder Singh son of Mansa Singh was the owner of the offending vehicle. Separate reply was also filed by respondent No.4, who is the owner of the offending vehicle. The Insurance Company also filed a separate reply raising objections regarding the driver of the offending vehicle not holding a driving licence, fitness certificate, route permit and the insurance policy. Further, the factum of the accident was also denied. On the basis of the pleadings of the parties the following issues were framed :

1. Whether on 28.09.2014, the accident took place with Bus bearing No.PB-12-F-8287 due to rash and negligent driving of Sewa Singh respondent No.1, which resulted into death of Ram Parkash ? OPP
2. Whether the claimants are entitled to receive compensation ? If so, to what amount and from whom ? OPP

3. Whether respondent No.1-driver of the offending bus was not holding a valid and effective driving licence and other documents at the time of accident ? OPR-3

4. Whether the claim petition is not maintainable ? OPR

5. Relief.

4. On issue No.1 the Tribunal believed the version as put forth by the claimants. Regarding the DDR it was held that it was recorded on the statement of Ram Pal, who was not a witness to the accident. It is pertinent to note that after filing of the written statement the driver and owner of the offending vehicle did not step into the witness-box though the counsel appeared and conducted the cross-examination of the claimants and the Insurance Company. The Tribunal further held that the driving licence held by the driver of the offending vehicle was not valid. The Insurance Company was given recovery right and the claimants were awarded a compensation of Rs.45,95,000/- along with interest @ 6% per annum. The income of the deceased was taken as Rs.80,000/- per month, which comes to Rs.9,60,000/- per annum, out of which a sum of Rs.1,20,000/- was deducted towards income tax and after deduction of the income tax the annual income of the deceased was taken as Rs.8,40,000/- and after applying a deduction of 1/3rd towards personal expenses of the deceased and annual dependency of the family the income of the deceased was assessed as Rs.5,60,000/-. A multiplier of 8 was applied and a consolidated amount of Rs.1,00,000/- was awarded towards loss of consortium to the wife of the deceased; Rs.10,000/- towards funeral expenses and Rs.5,000/- towards transportation.

5. Learned counsel for the Insurance Company would contend that initially a DDR was registered on 28.09.2014 (Ex.R1/Ex.R3) which was recorded on the statement of Ram Pal in which he has stated that the accident took place as buffaloes were crossing the road and suddenly hit the scooter of his brother Dr. Ram Parkash (deceased). Subsequently, after a long delay, a FIR was lodged on 17.10.2014 and the eye-witness PW4 Om Dayal has been introduced. Similar arguments as raised by the Insurance Company have also been raised by the owner and driver of the offending vehicle, who have preferred FAO-6340-2016. Additionally, learned counsel for the owner and driver of the offending vehicle has stated that the driving licence was held to be a fake driving licence by the Tribunal despite the fact that the person from the Department has specifically stated that the renewal was done from their office and in the name of respondent No.1 in the claim petition i.e. driver of the offending vehicle.

6. *Per contra* learned counsel for the claimants has contended that the said argument was dealt with by the Tribunal in detail and was rejected on the ground that PW4 Om Dayal was an eye-witness to the accident and he stated that he was travelling in the offending bus on the fateful day i.e. 28.09.2014. The bus was going from the side of Nangal towards Anandpur Sahib. At about 06.30 pm, when the bus reached near village Bandlehri, he saw that a scooterist was coming from Anandpur Sahib. The driver of the bus was driving the bus at a very high speed in a rash and negligent manner and hit the scooterist by going on the wrong side of the road. It was subsequently that he learnt that the person who died in the accident was Dr. Ram Parkash. He has also given his statement before the Police, which was proved on record as Ex.PW2/8. Leaned counsel for the claimants has further

contended that PW2 ASI Balvir Singh, the Investigating Officer, also appeared and stated that the accident was caused by respondent No.1 i.e. driver by driving the offending bus in a rash and negligent manner. Learned counsel for the claimants in response to the argument raised by learned counsel for the Insurance Company has contended that initially the driving licence was in the name of Gurnam Singh son of Swaran Singh, which was for a scooter only, and the renewal was made on the basis of the said licence in the name of respondent No.1 in the claim petition i.e. Sewa Singh son of Mansa Singh and that the Tribunal has rightly held the licence to be invalid.

7. I have heard learned counsel for the parties.

8. The eye-witness of the accident Om Dayal appeared as PW4 and stated that he was travelling in the offending bus on the fateful day i.e. 28.09.2014. The offending bus was going from the side of Nangal towards Anandpur Sahib. At about 06.30 pm, when the bus reached near village Bandlehri, he saw that a scooterist was coming from Anandpur Sahib. The driver of the bus was driving the bus at a very high speed and in a rash and negligent manner and hit the scooterist by going on the wrong side of the road. The argument of learned counsel for the Insurance Company that initially a DDR was recorded on the statement of the brother of the deceased and that a different version has been put forth in the FIR, has rightly been rejected by the Tribunal inasmuch as the brother of the deceased was not an eye-witness to the accident. In the present case ASI Balvir Singh, who was the Investigating Officer, appeared as PW2 and stated that the accident occurred due to rash and negligent driving of the offending vehicle. It is not a case where the bus has simply been introduced to get a claim inasmuch as recovery rights have been given to the Insurance Company. The argument of

learned counsel appearing on behalf of the owner and driver of the offending vehicle that the driving licence was valid and the recovery rights ought not to have been given to the Insurance Company also deserves to be rejected on the ground that neither the driver nor the owner of the offending vehicle stepped into the witness-box. Though the other witnesses were cross-examined by their counsel, however, both the driver and the owner themselves chose not to step into the witness-box. The licence was renewed on the basis of an earlier licence which was not in the name of the driver of the offending vehicle. The Tribunal gave a categoric finding that the verification report (Ex.R10) issued by the DTO, Hoshiarpur mentions the old driving licence as licence No.1396/R/2011. The record of the said licence was also produced. As per the record the said licence was issued in the name of Gurnam Singh son of Swaran Singh resident of VPO Chohan for driving a scooter only. The licence issued in the name of Sewa Singh was a renewed driving licence on the basis of DL No.1396/R/2011 which was in the name of Gurnam Singh son of Swaran Singh and that too only for a scooter.

9. In view of the above, both the appeals being FAO-3977-2016 and FAO-6340-2016 filed by the Insurance Company as well as the driver and owner of the offending vehicle, respectively, being devoid of any merits are dismissed.

<u>FAO-2998-2016</u>

10. The present appeal has been filed by the claimants. The Tribunal in the present case has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.1,63,183/-
2	Monthly income after 50% deduction	Rs.80,000/-
3	Annual income	[Rs.80,000 x 12] = Rs.9,60,000/-
4	Income after deduction Rs.1,20,000/- towards income tax	[Rs.9,60,000 - 1,20,000] = Rs.8,40,000/-
5	Deduction 1/3rd	[Rs.8,40,000 - 2,80,000] = Rs.5,60,000/-
6	Multiplier of 8	[Rs.5,60,000 x 8] = Rs.44,80,000 /-
7	Loss of consortium to wife	Rs.1,00,000/-
8	Funeral expenses	Rs.10,000/-
9	Transportation	Rs.5,000/-
	Total Compensation	**Rs.45,95,000/-**
	Interest	**6%**

11. Learned counsel for the claimants would contend that the salary of the deceased was Rs.1,63,183/- per month and that the Tribunal has erred in deducting 50% of his salary on the ground that the family would get 50% of the amount as pension. A deduction of 1/3rd has been applied, which has not been challenged by the learned counsel for the claimants. However, no addition has been made towards loss of future prospects and an addition of 15% would have to be made towards loss of future prospects. It is further the contention that the Tribunal has wrongly applied a multiplier of 8 which ought to have been 9. It has further been contended that an amount of Rs.1,00,000/- has been awarded towards loss of consortium to the wife of the deceased only and the amount awarded under the conventional heads is also not in accordance with law. In support of his contention the learned counsel for the claimants has relied upon the judgments of the Hon'ble Supreme Court in the cases of **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]**.

12. *Per contra* learned counsel for the Insurance Company as well as for the owner and driver of the offending vehicle have contended that sufficient amount of compensation has already been awarded to the claimants and there is no scope of any further enhancement

13. In the present case the monthly income of the deceased was Rs.1,63,183/-. The Tribunal has erred in taking the salary as 50% i.e. Rs.80,000/- per month. The same is accordingly taken as Rs.1,63,183/- per month. After deducting the income tax the annual income of the deceased would be Rs.15,40,737/-. An addition of 15% would have to be made towards loss of future prospects. The deduction of 1/3rd has rightly been applied by the Tribunal, however, a multiplier of 8 has wrongly been applied, which would be 9 in view of the law laid down in the case of **Pranay Sethi** (supra). The amount awarded under the conventional heads is not in accordance with law. Under the conventional heads, the claimants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses as per the law laid down in the cases of **Pranay Sethi** (supra) and **N. Jayasree** (supra). The claimants would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium i.e. spousal to the wife and parental to the three children.

14. Accordingly, the reworked compensation is as under :

Sr. No.	**Heads**	**Compensation Awarded**
1	Annual Income	Rs.15,40,737/-
2	Deduction 1/3rd	[Rs.1540737-513579] =Rs.10,27,158/-
3	Future Prospects - 15%	[Rs.1027158+154074] =Rs.11,81,232/-
4	Multiplier - 9	[Rs.1181232x9] =Rs.1,06,31,088/-
5	Loss of estate	Rs.18,000/-
6	Funeral expenses	Rs.18,000/-
7	Loss of consortium (i) Parental (ii) Spousal's	 [Rs.48,000/-x3] = Rs.1,44,000/- Rs.48,000/- **(Total Rs.1,92,000/-)**
	Total Compensation	**Rs.1,08,59,088/-**

15. 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 enhanced amount of compensation shall be apportioned amongst the claimant-appellants as directed by the Tribunal.

16. In view of the above discussion, the appeal being FAO-3977-2016 filed by the Insurance Company and the appeal being FAO-6340-2016 filed by the driver and owner of the offending vehicle are dismissed while the appeal being FAO-2998-2016 filed by the claimants is allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
07.02.2024 **JUDGE**
jk

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