2024:PHHC:113049

(206) **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-6884-2019 (O&M)
Reserved on: 23.07.2024
Pronounced on: 29.08.2024

NATIONAL INSURANCE COMPANY LTD. ... Appellant

Versus

GURBAX KAUR AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: - Mr. Nitin Gupta, Advocate
for the appellant.

Mr. Ishan Thakur, Advocate for
Mr. M.S Sidhu, Advocate
for Respondent Nos.5 and 6.

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HARKESH MANUJA, J.

[1]. The present appeal lays challenge to an award dated 03.09.2019 passed by the learned Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (hereinafter referred to as "learned Tribunal"), whereby compensation of Rs.23,50,000/- was awarded to respondents no.1 to 4/claimant along with interest @ 7.5% per annum.

[2]. Respondents no.1 to 4/claimants being dependents upon the deceased, filed claim petition before the Tribunal praying for grant of compensation to the tune of Rs.2,50,00,000/- (Rs. Two Crore Fifty Lakhs only) on account of death of Vijay Singh Bhogal in a motor vehicular

accident which took place on 10.09.2018 while alleging rash and negligent driving of respondent No.5/driver.

[3]. After going through the claim petition and evaluating the evidence led by both the parties, learned Tribunal arrived at a conclusion that the accident occurred on account of rash and negligent driving of respondent No.5/driver and awarded compensation in the following manner:-

S.No	***Heads of Claim***	***Amount (in Rs)***
1.	*Loss of Dependency*	*Rs.22,79,995/-*
2.	*Loss of Consortium*	*Rs.40,000/-*
3.	*Loss of Estate*	*Rs.15,000/-*
4.	*Funeral Expenses*	*Rs.15,000/-*
5.	*Total*	*Rs.23,50,000/* *(Rounded off)*

[4]. Being aggrieved against the award dated 03.09.2019, the present appeal came to be preferred by the appellant/insurance company for reduction of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver been held by the Tribunal in favour of respondents no.1 to 4/claimants being not in dispute, therefore, for the sake of brevity, those are not repeated here.

[5]. Learned counsel for the appellant/insurance company assailed the award while submitting that the deceased was a businessman, earning Rs.9,11,997/- per annum and the Tribunal went wrong by not deducting the

income tax paid by him at the time of assessing his income. He further contended that learned Tribunal has wrongly applied the multiplier of 5 whereas it should have been taken to be 3, considering the age of the deceased as 71 years, in view of the judgment rendered by Hon'ble Apex Court in case of "***National Insurance Company Ltd. Vs. Pranay Sethi and others***", reported as ***2017(4) RCR (Civil) 1009***. Learned Counsel also submitted that the offending vehicle in the present case did not possess valid fitness certificate at the time of motor vehicular accident and as such the liability to pay compensation could not be fastened upon appellant/insurance company and thus, the present appeal should be allowed and the award of learned Tribunal be modified accordingly.

[6]. On the other hand, learned counsel representing respondent no.5 and 6 submits that learned Tribunal rightly held that appellant/insurance company being liable to pay the compensation as the failure to produce valid fitness certificate did not violate the terms of the policy and, thus, the appeal is liable to be dismissed.

[6.1]. Record shows that despite service of respondents no.1 to 4/claimants, none appeared on their behalf.

[7]. I have heard learned counsel for the parties and perused the paper-book of the case. I do not find force in the arguments advanced by learned counsel for the appellant/insurance company.

[8]. In the present case, the deceased being a businessman was running *"Bhogal Rotary Manufacturing Corporation"* and was a regular income tax payee. A perusal of his Income Tax Return for the assessment year 2017-2018 (Annexure A-1) showed that he was having gross total taxable income of Rs.9,11,997/- per annum with tax liability of

Rs.2,96,735/- per annum (Rs.82,801/- as Tax payable + Rs.2,13,934/- as Tax Deducted at Source) and the same was required to be deducted from his total income in view of decision rendered by the Hon'ble Supreme Court in case of ***"Shyamvati Sharma & others vs Karam Singh & others"***, reported as ***(2010) 12 SCC 378***. However, in the said Income Tax Return from the entry at item no.10 it is evident that the deceased was also having exempted income(non-taxable) to the tune of Rs.68,37,594/- per annum which consisted of agricultural income and income from other sources. Now, even though this exempted income devolved upon the dependents of the deceased but still there ought to be loss of income due to lost managerial skills of the deceased, reliance in this regard can be placed on the decision rendered by the Hon'ble Supreme Court in case of ***"K. Ramya & Ors. vs National Insurance Co. Ltd. & Anr."***, reported as ***2022 (4) R.C.R. (Civil) 435***, whereby it was held that mere fact that deceased's share in business venture was either transferred to legal heirs, prior to death or it devolved upon the dependents, it would not be sufficient justification to conclude that benefits from such business would continue to accrue to dependents in similar manner. It was further held that as a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of total agricultural/business income but acceptable range can be increased in the light of specific circumstances. Relevant excerpt thereof is reproduced hereunder: -

> "17. The mere fact that the Deceased's share of ownership in these businesses ventures was transferred to the Deceased's minor children just before his death or to the dependents after his death is not a sufficient justification to conclude that the benefits of these businesses continue to accrue to his dependents. On the contrary, it has come on record that the Deceased was actively involved in the day-to-day administration of these businesses from their stage of infancy, had undergone specialized training to administer his

> business and that the audit reports neatly delineate Deceased's share of income from the businesses. These facts necessitate that the entire amount from the business ventures is treated as income. Similarly, the amount earned from the bank interests and remaining investments must also be included as income.
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> xxxx
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> 21. Now, the sole issue which remains before this court is whether the entire amount under `Income from House Property and Agricultural Land' should be deducted or not. In this respect, we are guided by the observations of this court in ***State of Haryana v. Jasbir Kaur (2003) 7 SCC 484***. wherein it was noted that -
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>> 8. x-x-x-x
>> The land possessed by the deceased still remains with his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered.
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> (Emphasis Applied)
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> ***In our opinion***, the abovementioned observations, though made in the context of agricultural land, would also be applicable to rent received from leased out properties as the loss of dependency arises mainly out of loss of management capacity or efficiency. As a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations."

Therefore, loss of income of the deceased from the aforesaid exempted income is very cautiously assessed @ 12% in view of ***K. Ramya's*** case (supra) and the total income of deceased for computation of compensation is reassessed as Rs.18,63,581/- per annum {Rs.8,20,511 i.e., 12% of Rs.68,37,594/- (exempted income) + Rs.9,11,937(taxable income) – Rs.82,801(tax payable) – Rs.2,13,934/- (Tax Deducted at Source) = Rs.18,63,581/-}.

[8.1]. Now, coming to the contention raised by learned Counsel for the appellant/insurance company that multiplier of 3 should have been applied in view of ***Pranay Sethi's*** case (supra). It is pertinent to mention here that the Hon'ble Apex Court in ***Pranay Sethi's*** (supra) held that multiplier should be reduced by 2 every five years after the age of 50 years. Relevant extract thereof is reproduced hereunder: -

> *"44. As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of Sarla Verma read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below :-*
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> > *"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

Therefore, in the present case multiplier is to be applied of 3 while considering the age of the deceased as 71 years.

[8.2]. Further, the contention raised by learned Counsel for the appellant/insurance company that the offending vehicle did not possess valid fitness certificate at the relevant time in the present case and as such the liability to pay the amount of compensation could not be fastened upon the appellant has to be dealt while keeping in mind the relevant provision of Motor Vehicle Act, 1988 (hereinafter referred to as "the 1988 Act"). Section 149(2) of the 1988 Act reads as under: -

> "149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks -
> (1) XX XX XX XX XX
> (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :
> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :
> (i) a condition excluding the use of the vehicle-

> (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
> (b) for organised racing and speed testing, or
> (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
> (d) without side-car being attached where the vehicle is a motor cycle; or
> (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
> (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
> (b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

A perusal of the 1988 Act reveals that there were certain defences, which were available to the Insurance Company. The absence of a fitness certificate is not a defence which is available under Section 149(2) of the 1988 Act. Further, the facts and circumstances of the present case are squarely covered by the decision rendered by a co-ordinate bench of this Court in case of ***"Charanjit Singh and others vs Harish Kumar Sachdeva and others"***, reported as ***2018 (4) R.C.R (Civil) 993***, whereby it was held that failure to possess valid fitness certificate would not amount to fundamental breach of policy, the relevant paragraph thereof is reproduced as under: -

> "13. Counsel for the insurer has failed to convince this Court as to how non-possessing of a fitness certificate is covered within the purview and ambit of grounds envisaged in clause (a) or/and (b) of Section 149(2) of the Act. In absence of legislature providing non-possessing of a fitness certificate to be a ground to defend action by the insurer, it is difficult to sustain findings of the Tribunal that the insurer is entitled to recovery right against the insured for his failure to produce the fitness certificate. That being so, findings recorded by the Tribunal giving recovery right in favour of the insurer are liable to be set aside and ordered accordingly. Resultantly, the insurer shall be liable to pay compensation to the claimants by way of indemnification of the insured in discharge of its obligation under the contract of insurance without any recovery right against the insured."

Therefore, question of liability to pay the compensation been fastened upon the appellant/insurance company as held by learned Tribunal warrants no interference.

[9]. Furthermore, learned Tribunal mistakenly disregarded the major married sons and daughter while not considering them as dependents and denying them anything under the head of loss of consortium along with the deduction to be made on account of deceased having spent part of his income towards family expenses in view of the decision of Hon'ble Supreme Court in case of ***"National Insurance Company Ltd. vs Birender and others"*** reported as ***(2020) 11 SCC 356***, whereby it was held that all legal representatives of the deceased were entitled for compensation, irrespective of they being dependent or not. Relevant paragraphs thereof are reproduced hereunder: -

> "14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus:-
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> > "9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High ***Court was justified in its view*** that the appellant could maintain a claim petition in terms of Section 166 of the Act.
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> > 10. .....The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

> 11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).
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> 12. As observed by this Court in ***Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275*** the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in ***Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234*** a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."……

15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only……"

Therefore, the deduction to be made from the income of the deceased towards contribution for family expenses in the present case was required to be done as 1/4.

[10]. Also, in view of judgments of the Hon'ble Apex Court in ***"Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another"***, reported as ***2009 (3) RCR (Civil) 77***, ***Pranay Sethi's*** case (supra) and ***"United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur"***, reported as ***(2021) 11 SCC 780***, the compensation awarded under conventional heads also needs to be reassessed. Claimants are held

entitled to Rs.18,000/- as compensation under the head of funeral expenses and Rs.18,000/- towards loss of estate by applying 10% increase under the conventional heads. Loss of consortium is to be awarded to the tune of Rs.48,000/- x 4 (Rs.1,92,000/-) as respondents no.1 to 4/claimants being wife and children of deceased are also entitled for spousal and filial consortium; but simultaneously, respondents no.1 to 4/claimants are not entitled for compensation on account of loss of love and affection.

[11]. In view of the discussion made above, the respondents no.1 to 4/claimants shall be entitled for the grant of following compensation: -

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Total Annual Income of deceased (after tax deduction)*	*Rs.18,63,581/-*
3.	*Deduction (1/4)*	*Rs.4,65,895/-*
3.	*Net Income after Deduction*	*Rs.13,97,686/-*
4.	*Income after applying multiplier of 3 as per age of 71 years (Rs.13,97,686/- X 3)*	*Rs.41,93,058/-*
5.	*Funeral Expenses*	*Rs.18,000/-*
6.	*Loss of Consortium (Rs.48000x4)*	*Rs.1,92,000/-*
7.	*Loss of Estate*	*Rs.18,000/-*
	Total Compensation	*Rs.44,21,058/-*
	Amount Awarded by the Tribunal	*Rs.23,50,000/-*
	Enhanced Amount	*Rs.20,71,058/-*

In the given facts, enhancement is being awarded despite there being no cross-appeal or cross-objections filed by respondents no.1 to 4/claimants, while placing reliance on the decision rendered by the Hon'ble Apex Court, in case of ***"Ibrahim vs Raju and others"***, reported as **(*2011) 10 SCC 634***, whereby it was held that in a claim petition filed under the beneficial provisions of the 1988 Act, compensation even more than what is claimed can be granted. Relevant paragraph thereof is reproduced hereunder: -

> "21. ***We are conscious*** of the fact that in the petition filed by him, the appellant had claimed compensation of Rs. 3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty bound to award just compensation, we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lacs. This approach is in tune with the judgment in ***Nagappa v. Gurudayal Singh, 2003(1) RCR (Civil) 258 SC : (2003)2 SCC 274.*** In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in ***Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire, 1987 ACJ 311 (Bombay),*** Orissa High Court in ***Mulla Mod. Abdul Wahid v. Abdul Rahim, 1994 ACJ 348 (Orissa)*** and Punjab and Haryana High Court in ***Devki Nandan Bangur v. State of Haryana, 1995 ACJ 1288 (P&H)*** and observed :
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> > "For the reasons discussed above, ***in our view***, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition.""

Furthermore, the Hon'ble Supreme Court in case of ***"Pralhad vs State of Maharashtra"***, reported as ***2010 (3) Apex Court Judgments (SC) 653***, held that powers under Order 41 Rule 33 of CPC are very wide and ought to be used in order to do complete justice to a case even when the party has not preferred an appeal. Relevant paragraphs thereof are reproduced hereunder: -

> "17. Now, the only question which remains is whether the landowners, without filing an appeal before the High Court from the order of the Reference Court, are entitled to the aforesaid benefit on the basis of their application under Order 41 Rule 33 of Civil Procedure Code.
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> 18. The provision of Order 41, Rule 33 of Civil Procedure Code is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which ought to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.
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> 20. In ***Vanarsi v. Ramphal, AIR 2004 Supreme Court 1989***, this Court construing the provisions of Order 41 Rule 33 of Civil Procedure Code held that this provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject matter of appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the Court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party. (See para 15 at pg. 1997). It has also been held by this Court in ***Samundra Devi and others v. Narendra Kaur and others, 2008(4) RCR (Civil) 395 : 2008(5) R.A.J. 441 : 2009(1) AICJ 433 : (2008) 9 SCC 100 (para 21)*** that this power under Order 41, Rule 33 of Civil Procedure Code cannot be exercised ignoring a legal interdict."

Even though ***Pralhad's*** case (supra) dealt with the Land Acquisition (Amendment) Act, 1984 which is a beneficial legislation enacted to compensate the landowners, therefore, the reasoning given therein could be used in the present case as well because the 1988 Act is also a beneficial legislation enacted to compensate the victims of motor vehicular accident.

Thus, in the humble opinion of this court, from the facts and circumstances of the case in hand; upon consideration of the entire evidence available on record; applying the exposition of law laid down by the Hon'ble Supreme Court on the point of grant of compensation to any victim under the 1988 Act and the powers derived from Order 41 Rule 33 of CPC, the amount of compensation has been modified.

[12]. The grant of interest @ 7.5% per annum is unjust in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in ***"Smt. Supe Dei and others Vs. National Insurance Company Limited and other"***, reported as ***(2009) (4) SCC 513,*** approved in a subsequent judgment titled as ***"Puttamma and others Vs. K.L. Narayana Reddy and another"***, reported as ***2014 (1) RCR (Civil) 443***, the interest is increased to 9% per annum on the amount of compensation awarded to the respondents no.1 to 4/claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

[13]. Present appeal is **dismissed** whereas the award of compensation granted by learned Tribunal is modified in the aforesaid terms. The enhanced compensation shall be released in favour of respondents no.1 to 4/claimants. Registry of this Court to make sure that a copy of this decision is served upon each of respondents no.1 to

4/claimants at the earliest and to ensure the same, this appeal be re-listed after two months of this decision for necessary compliance.

[14]. Disposed off in the above terms.

[15]. Pending miscellaneous application(s), if any, shall also stand disposed of.

29.08.2024 **(HARKESH MANUJA)**
Sonika **JUDGE**

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