

FAO-6400-2023 (O&M) with XOBJC-51-2024
FAO-6401-2023 (O&M) with XOBJC-53-2024
FAO-6404-2023 (O&M) with XOBJC-52-2024

2024 PHHC-143298



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Reserved on : 12.09.2024
Pronounced on : 04.11.2024

1. FAO-6400-2023 (O&M)

United India Insurance Company Limited Appellant

versus

Poonam Devi and others Respondents

2. FAO-6401-2023 (O&M)

United India Insurance Company Limited Appellant

versus

Jyoti and others Respondents

3. FAO-6404-2023 (O&M)

United India Insurance Company Limited Appellant

versus

Kamlesh Devi and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Maninder Arora, Advocate and
Mr. Aaryan Kargwal, Advocate
for the appellant/Insurance Company.

Mr. Mohit Garg, Advocate
for respondents No.1 and 2/cross-objectors in FAO-6400-2023,
for respondents No.1 to 5/cross-objectors in FAO-6401-2023 &
for respondents No.1 and 2/cross-objectors in FAO-6404-2023.

PANKAJ JAIN, J. (Oral)

1. Insurance company is in appeals. These appeals are directed
against a common award whereby three separate claim petitions arising out



of same accident were decided.

2. FAO No.6400 of 2023 arises out of claim petition bearing No.RBT-51 MACP of 2019 filed by Poonam Devi and others seeking compensation on account of death of Mahender Singh son of Mangtu Ram.

3. FAO No.6404 of 2023 filed at the behest of Kamlesh Devi and another bearing No.RBT-50 MACP of 2019 is for seeking compensation on account of death of Parul minor daughter of claimants.

4. FAO No.6401 of 2023 arises out of claim petition No. No.RBT-52 MACP of 2019. The same was filed by the claimants Jyoti and others seeking compensation on account of death of Smt. Nirmala Devi.

5. As per the claimants, deceased-Mahender Singh alongwith his sister Nirmala Devi and his niece Parul were travelling on motorcycle. They were followed by his cousin brother namely Suresh Kumar on a separate motorcycle. Offending vehicle driven by respondent No.1 in a rash and negligent manner came from the opposite side and struck motorcycle driven by Mahender Singh. All the three persons travelling on the motorcycle fell down and sustained injuries. They were taken to Civil Hospital, Fatehabad. All the three were declared dead. Driver of the offending vehicle fled away from the spot.

6. Driver and owner filed joint written statement. Accident was admitted. Rash and negligent driving was denied. Insurer filed separate written statement claiming false implication of the vehicle. It was claimed that at the time of accident, vehicle was not being driven by respondent No.1 and he was not having valid and effective driving licence. It was further claimed that as per version of the claimants, Mahender Singh was driving



motorcycle with pillion rider due to which it was unstable and in case the accident is proved to have occurred, the same was on account of rash and negligent driving of Mahender Singh.

7. On the basis of the pleadings of the parties, following issues were framed:-

- “1. Whether Sh. Mahender Singh son of Sh.Mangtu Ram @Mangat, husband and son of petitioners in case titled as Smt. Poonam versus Sandeep Singh @ Jogi etc."; Parul daughter of petitioners in case titled as Kamlesh Devi etc, versus Sandeep Singh @ Jogi etc. and Nirmala Devi wife of Sh. Subhash @ Subhash Chander, mother and wife of petitioners Jyoti etc. in case titled as "Jyoti etc. versus Sandeep Singh @ Jogi" died in the accident in question, which took place due to rash and negligent driving of TATA LPT 3118 CONTAINER bearing registration No. -03AC/6911 by respondent No.1?OPP
2. If issue No.1 is proved in affirmative then whether the petitioners of petition titled as Smt. Poonam versus Sandeep Singh @ Jogi etc. are entitled to compensation, if so to what extent and from whom? OPP
3. If issue no.1 is proved in affirmative then whether the petitioners of petition titled as "Kamlesh Devi etc. versus Sandeep Singh @ Jogi etc." are entitled to compensation, if so to what extent and from whom?OPP
4. If issue no.1 is proved in affirmative then whether the petitioners of petition titled as "Jyoti etc. versus Sandeep Singh @ Jogi" are entitled to compensation, if so to what extent and from whom? OPP
5. Whether there is contravention of terms and conditions of the insurance policy? OPR-3
6. Relief.”



8. None of the respondents led any ocular evidence. Learned Tribunal held that from the testimony of PW-4 Surjeet Singh who was following motorcycle of Mahender Singh and transported the injured to the hospital the version of the claimants with respect to rash and negligent driving of respondent No.1 gets fully corroborated. There being no evidence to rebut the same, it is proved that the accident was caused by rash and negligent driving of respondent No.1. While granting compensation, Trial Court held that though Mahender Singh was an agriculturist earning Rs.3 lakhs per year from dairy farming but there was no documentary evidence to prove. His income was assessed to be Rs.10,000/- per month. 40% of the income was added towards future prospects. $\frac{1}{3}^{\text{rd}}$ was deducted in view of law laid down by ***Sarla Verma & others vs. Delhi Transport Corporation & another*** (2009) 6 SCC 121. In the case of ***Sarla Verma (supra)***, multiplier of 16 was applied. Rs.15,000/- was paid towards funeral charges. Total compensation of Rs.18,62,000/- alongwith interest @ 6% per annum was awarded.

9. In the petition filed seeking compensation on account of death of Parul, minor child aged 04 years, her income was notionally assessed to be Rs.50,000/- per month. Applying multiplier of 15, Rs.7,50,000/- was awarded alongwith Rs.15,000/- under conventional head.

10. In the petition filed seeking compensation on account of death of Nirmala Devi aged 36 years a home maker, her income was assessed to be Rs.9,000/- per month. Multiplier of 15 was awarded. Rs.40,000/- was awarded to appellant No.5-Subhash being husband towards loss of consortium and Rs.15,000/- as funeral charges. Consequently, an amount of



Rs.16,90,000/- was awarded.

11. Insurance Company has filed appeals impugning findings on the rash and negligent driving of respondent No.1. It is being claimed that it is a case of contributory negligence as all the riders on the motorcycle were without helmet. Mr. Arora submits that it being a case of head on collision, the deceased-driver Mahender Singh also cannot be absolved of his liability.

12. I have heard counsel for the appellant and have carefully gone through the records of the case.

13. The best person to testify regarding contributory negligence is the driver of the offending vehicle Sandeep Singh. He opted not to appear in the witness box. Though, insurer filed application under Section 170 to oppose the claim petitions on merits, yet no effort was made to lead any evidence to prove contributory negligence of deceased-Mahender Singh. Testimony of PW-4, who is an eye witness and the person who transported the injured to the hospital remained unrebutted on record.

14. In view thereof, this Court does not find any reason to interfere in the findings recorded by the Tribunal on issue No.1. Consequently, appeals preferred by the insurer-appellant are dismissed.

15. Claimants are in cross-objections before this Court. Counsel for the cross-objectors/claimants submits that income of Mahender Singh was wrongly assessed as per the minimum wages of unskilled workmen. He being agriculturist was a highly skilled person. On being asked with respect to land holding of deceased-Mahender Singh, Mr. Garg admits that on record holding of Mahender Singh to the extent of 03 kanal only could be proved.



16. Counsels are *ad idem* that as per the notification dated 11.06.2019 issued by State of Haryana, minimum wages notified for semi-skilled workmen are Rs.356.49 per day.

17. From the perusal of the award, it is evident that Tribunal has taken income of the deceased Mahinder Singh not as unskilled worker, but an agriculturist, his income has been taken to be Rs.15,000/- per month. However, keeping in view that the land still is there and will remain source of income, his monthly income was assessed @ Rs.10,000/- per month. There is no dispute with respect to multiplier and deduction. However, Tribunal failed to award compensation to claimant No.2 towards loss of consortium. Rs.40,000/- under that head is awarded. Cross-objections are allowed to that extent in appeal No.FAO-6404-2023.

18. Coming on to the cross-objection by Jyoti etc. seeking compensation awarded on account of death of Nirmala Devi, Tribunal erred in taking her notional income @ Rs.9,000/- which is less than even unskilled worker. Tribunal has assessed a home-maker equivalent to a semi-skilled worker which is overtly wrong. This Court in the case of **United India Insurance Co. Ltd vs. Sube Singh and others, passed in FAO No. 218-2014** while dealing with the issue of income of homemaker for the purpose of compensation under MACT held as under:-

“while dismissing the appeal filed by the Insurance Company against the award of the Tribunal wherein the Tribunal took the income of a house wife at Rs.9000/- per month, held that to tag a house wife as skilled labour alone does not do complete justice to her multifarious role as home manager. House wife is something more than mere skilled worker and it would not be



unreasonable to estimate contribution of deceased at higher figure. The SLP filed against the said judgment has also been dismissed.

12. Thus, income of the deceased, who was a home-maker has to be assessed at Rs.10,000/- per month. An element of 40% future prospects needs to be added. Thus, in the considered opinion of this Court even if the compensation awarded by the Tribunal is recalculated it would not make substantial difference in the same quantitatively.”

19. Thus, the income of Nirmala Devi is taken to be Rs.15,000/- per month. Future prospects of 40% are awarded. Multiplier of 15 has been rightly granted. Rs.15,000/- each has been rightly granted under conventional heads of loss of estate and funeral charges.

20. In the considered opinion of this Court, all the 05 claimants are entitled for grant of loss of consortium @ Rs.40,000/- The award is modified to the aforesaid extent. In the third claim petition, this Court finds that the compensation awarded is just and needs no modification. The cross objections are decided accordingly.

21. A photocopy of this order be placed on the files of other connected cases.

(PANKAJ JAIN)
JUDGE

04.11.2024

Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No