



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 07.11.2025

1. FAO-2090-2019 (O&M)
National Insurance Co. Ltd.

...Appellant(s)

Vs.

Anshu Devi and others

...Respondent(s)

AND

2. FAO-3063-2019 (O&M)
Anshu Devi and others

...Appellant(s)

Vs.

National Insurance Company Limited and others

....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Devansh Khanna, Advocate for
the appellant-Insurance Company
(in FAO-2090-2019) & for respondent
No.1-Insurance Company
(in FAO-3063-2019).
Ms. Tanika Goyal, Advocate for
respondents No.1 to 4 (in FAO-2090-2019)
and for the appellants (in FAO-3063-2019).

NIDHI GUPTA, J.

FAO-2090-2019:

The present appeal has been filed by the Insurance Company
seeking setting aside of the Award dated 05.12.2018 passed by the
learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred
to as "the Tribunal"); whereby Claim Petition No. 619 dated 01.11.2017
filed by the claimants/respondents No.1 to 4 herein, under Section 166 of



the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”), has been allowed; and the claimants have been awarded compensation of Rs.48,86,130/- alongwith interest @ 7.5% p.a. The 4 claimants are the widow; and 3 minor children of the deceased Sanjay Goswami, who was 32 years old at the time of accident.

FAO-3063-2019

The present appeal has been filed by the claimants seeking enhancement of compensation of Rs.48,86,130/- granted by the learned MACT, Chandigarh vide Award dated 05.12.2018 passed in Claim Petition No. 619 dated 01.11.2017 filed under Section 166 of the Act. The 4 claimants are the widow; and 3 minor children of the deceased Sanjay Goswami, who was 32 years old at the time of accident.

CM-10487-CII-2019 in FAO-3063-2019:

Prayer in this application filed by the applicants/claimants under Section 5 of the Limitation Act is for condonation of delay of 11 days in filing the appeal.

2. For the reasons cited in the application, which is duly supported by an affidavit of the applicant/appellant No.1, the same is allowed; and the delay of 11 days in filing the appeal is condoned.

FAO Nos.2090-2019 & 3063-2019 (O&M)

Both the above said appeals are being disposed of by this common order as both arise out of the same impugned Award dated 05.12.2018; both appeals are between same parties; in respect of the same accident dated 7/8.10.2017; and the facts and issues involved in both the



cases are identical. For the sake of facility, facts are being drawn from FAO-2090-2019 filed by the Insurance Company.

2. The case as pleaded by the claimants in the Claim Petition as recorded by the Tribunal in para 1 of the impugned Award is as follows:-

“.....It was stated in the application that the deceased was 32 years old and was working as Contractor of paint and white wash and was earning Rs.45,000/- per month; that on the intervening night of 7/8.10.2017, deceased Sanjay Goswami, while driving Activa Scooty bearing registration no.PB65-J-5319 was returning to his house at village Kajheri and Dharminder Paswan was sitting on pillion; that at about 12:20 am on the intervening night of 7/8.10.2017, they reached little short of Kumbra Chowk, when car bearing registration no.CH03-H-8747 (here-in-after referred as "the offending vehicle") driven by respondent no.1 crossed the Activa of deceased in dangerous manner at high speed and in rash and negligent manner, due to which the Activa of deceased struck against the footpath and both occupants of the Activa fell on the road; that deceased Sanjay Goswami sustained serious injuries on his head and other parts of the body and was taken to Civil Hospital, Phase-6, Mohali in PCR, where he was declared brought dead by doctors; that the accident took place due to rash and negligent driving of the offending vehicle by respondent no.1; that deceased was not at all at fault; that in respect of the accident, First Information Report no. 157 dated 8.10.2017, was registered at Police Station Mataur, District SAS Nagar, Mohali, under Sections 279, 304-A, 337 and 427 of Indian Penal Code, against the driver of the offending vehicle.”

3. The learned Tribunal upon appraisal of the pleadings, and the oral and documentary evidence adduced by the parties, concluded that



deceased-Sanjay Goswami had died due to the injuries suffered by him in a motor vehicular accident that took place on intervening night of 7/8.10.2017 due to the rash and negligent driving of a Car bearing registration No. CH03-H-8747 (hereinafter referred to as 'the offending vehicle'), which was driven by respondent No.5; owned by respondent No.6; and insured by appellant-Insurance Company herein. The above said compensation was granted by the learned Tribunal alongwith interest @ 7.5% per annum from the date of institution of the claim petition till realization. All the respondents were held jointly and severally liable to pay the above said compensation.

4. Learned counsel for the appellant/Insurance Company assails the impugned Award by submitting that the claimants are not entitled to compensation as the alleged offending vehicle has been falsely implicated in the present accident. It is submitted that this is borne out from the fact that the FIR no.157, which had been registered on the statement made by PW3 Dharminster Paswan who was pillion rider on the scooty driven by the deceased, was registered against unknown person and unknown driver. It is contended that if Dharminster Paswan was eyewitness as claimed, then FIR could not have been registered against unknown person and unknown driver; and the names and details of the offending vehicle and its driver would have been mentioned in the FIR. It is further argued that there was no occasion for PW3 to not disclose this information as, as per the medical record, the doctor had declared PW3 fit to make statement on 08.10.2017.

Yet, FIR was registered against unknown person and unknown vehicle. It is



only in the supplementary statement dated 10.10.2017 Ex.P28 made by PW3 that the name of the driver and the details of the offending vehicle were mentioned. It is not clear as to how PW3 discovered these details 2 days after the accident. Learned counsel argues that this establishes that offending vehicle was falsely implicated in the case.

5. Learned counsel for the appellant-Insurance Company further submits that the above said suspicion is further fortified from the fact that as per the Mechanical Report Ex.P27 in respect of the offending vehicle, it is found that there was no damage caused to the offending vehicle. It is contended that this corroborates the fact that the offending vehicle was not involved in the accident in question. Moreover, the driver of the offending vehicle had not entered into the witness box. He had also not filed any police complaint. Learned counsel submits that claim petition has been allowed only on the ground that driver/respondent No.5 did not enter into witness box and had not filed any police complaint; thereby admitting his involvement in the accident in question. It is contended that this fact alludes to the collusion between the claimants and respondent No.5.

6. With respect to quantum, it is submitted by learned counsel for the Insurance Company that income of the deceased has been taken as Rs.3,70,124/- p.a. on the basis of his Income Tax Return for the Assessment Year 2016-17 Ex.P18. However, the said income is on the higher side as nothing has been brought on record to show as to what business was the deceased involved in, what was his occupation, and what was his source of



the said income. It is contended that therefore, income of the deceased has been taken on the higher side and compensation deserves to be decreased.

7. *Per contra*, learned counsel for the claimants/respondents No. 1 to 4 opposes submissions made on behalf of Insurance Company and submits that appellant-Company has been unable to prove any collusion between the claimants and respondent No.5/driver. It is submitted that there is no Mechanical Report on record to indicate that there was no damage caused to the offending vehicle. It is further argued that the Motor Vehicle Act is a beneficial legislation and cannot be equated with the criminal trial; and involvement of the offending vehicle has been proved before the Tribunal on the preponderance of probabilities.

8. As regards quantum, learned counsel for the claimants contends that claimants had produced Income Tax Returns of the deceased for 4 years preceding his death. It is pointed out that as per Income Tax Returns for the Assessment Years 2013-2014, 2014-2015, 2015-2016, and 2016-2017 (Ex.P15 to Ex.P18), deceased had earned Rs.1,91,620/-; Rs.2,12,338/-; Rs.2,65,170/-; and Rs.3,70,124/- respectively. It is submitted that quantum of compensation awarded to the claimants deserves to be increased as the learned Tribunal has made wrongful deduction of Rs.1 lac towards income tax. The same is not permitted as per law. Learned counsel accordingly prays that the impugned Award be modified.

9. No other argument is made on behalf of Id. counsel for the parties. I have heard Id. counsel and perused the case file alongwith Lower



Court Records in minute detail. I find no merit in the submissions advanced on behalf of the Insurance Company; as also for the claimants.

10. It is the contention of learned counsel for the Insurance Company that the offending vehicle was not involved in the accident. It has been submitted that this is proven from the fact that FIR was registered by the alleged eyewitness against unknown person and unknown driver; and it is only in the supplementary statement that details of offending vehicle and name of Driver have been revealed by the complainant PW3. It has further been asserted that offending vehicle is not involved in the accident in question, is also proven from the fact that as per Mechanical Report Ex.P27, there was no damage caused to the offending vehicle.

11. However, the said arguments of learned counsel for Insurance Company are liable to be rejected firstly, in view of the fact that in a claim petition under the Motor Vehicles Act, involvement of the offending vehicle is to be determined on the basis of preponderance of probabilities and not in the stringent manner of a criminal trial. In the present case, admittedly, PW3 has made supplementary statement dated 10.10.2017 Ex.P28 in which the name of the driver and details of the offending vehicle have been clearly mentioned. No doubt, the said statement has been made 2 days after registration of FIR, however, the same cannot be held to be fatal to the case of the claimants. The Hon'ble Supreme Court in **New India Assurance Co. Ltd. v. Velu, (SC) : Law finder Doc ID # 2685999 decided on 12.12.2024**, has held that attendant circumstances are also to be taken into

consideration; which, in the present case are that admittedly, in the



accident in question, the author of the FIR Dharminster Paswan had also suffered injuries. This is evident from the fact that the Postmortem Report Ex. P9 (at page 179 of the LCR) shows that the body of the deceased was brought by Harpreet Singh ASI 310/BTA. This would indicate that the pillion rider PW3 Dharminster Paswan was not in a fit condition to make a statement to the police. It is also to be seen that after suffering from trauma of accident, one is not in a correct frame of mind to accurately recall the details of the offending vehicle and of the driver. As such, in the first instance, the complainant was unable to provide all the necessary information. Even in his supplementary statement, PW3 has categorically stated that at the time of recording of his initial statement on 08.10.2017, PW3 was not in a fit state of mind due to injuries suffered by him and anxiety/trauma suffered due to the accident in question. Furthermore, PW3 in his cross-examination (at page 135 of the LCR) has categorically stated that *"After the accident, I was become unconscious and did not tell the number of the offending vehicle to the police."* Thus, non-disclosure of the identity of the driver, as also details of the offending vehicle by PW3 in the first instance, cannot be held to prove false implication of the offending vehicle.

12. The appellant has also relied upon Mechanical Report "Ex.P27". However, the record reveals that "Ex.P27" is a certified copy of the Inquest Report made by the police. At this stage, it is submitted by learned counsel for Insurance Company that Mechanical Report formed part of Inquest Report Ex.P27. However, even after a detailed perusal of the LCR, Id.



counsel for the Insurance Company is unable to show that any Mechanical Report has been brought on record; or the same forms part of Inquest Report Ex.P27.

13. From the above discussion, I find no error in the findings of learned Tribunal on Issue No.1 to the effect that accident in question has been caused due to rash and negligent driving of the offending vehicle of respondent No.5.

14. As regards quantum of compensation, it has been contended on behalf of the Insurance Company that income of the deceased has been taken on the higher side as there is nothing on record to indicate what business the deceased was doing. The said argument of the appellant is misplaced as it was the clear pleaded case of the claimants that the deceased was working as a Contractor of paint and whitewash from which he was earning Rs.45,000/- p.m. The Income Tax Returns Ex.P-15 to Ex.P-18 also indicate that the deceased was working as a Civil Sub-Contractor. Income of the deceased as Rs.3,70,124/- p.a. also stands proved from the Income Tax Return for the Assessment Year 2016-2017 Ex.P18. As such, I find no error in the monthly income of Rs. 30,843/- as assessed by learned Tribunal.

15. Argument of learned counsel for the claimants that learned Tribunal could not have made a deduction of Rs.1 lac towards income tax, is also incorrect and contrary to the undisputed legal position in this regard. It has been held by various Courts in plethora of judgments that deduction of

income tax is a valid deduction; and it is only sundry allowances et cetera,



which cannot be deducted while determining income of the deceased. Therefore, learned Tribunal has correctly taken income of the deceased as Rs.30,843/- p.m. Further, age of the deceased was proved to be 32 years from his Aadhar Card and Pan Card Ex.P2 and Ex.P3 respectively; wherein his date of birth is mentioned as 01.01.1985. Even as per Postmortem Report Ex.P9, the age of the deceased was mentioned as 33 years approximately. Accordingly, Tribunal has correctly made addition of 40% towards future prospects; and correctly applied multiplier of 16. As there were 4 claimants, deduction of 1/4th has also been correctly made. The Tribunal has further awarded Rs.40,000/- to claimant No.1/widow towards loss of consortium; Rs.15,000/- towards funeral expenses; and Rs.15,000/- towards loss of estate; thereby granting total compensation of Rs.48,86,130/-.

16. From the above facts, it is clear that a very just and fair compensation has been awarded to the appellants. Nothing whatsoever has been shown to this Court that would merit enhancement of the compensation granted to the appellants. No doubt Chapter-12 of the Act is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. Hon'ble Supreme Court in '**State of Haryana Vs. Jasbir Kaur**' Law Finder Doc ID # 64043 and '**Divisional Controller K.S.R.T.C. Vs. Mahadeva Shetty and another**' (2003) 7 SCC 197, has held that the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source

of profit but at the same time it should not be a pittance. In case of



‘General Manager, KSRTC Vs. Susamma Thomas and others (1994) 2 SCC

176, the Hon’ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

17. Keeping in view the above factual and legal position, no ground is made out to interfere in the impugned Award. Both the appeals are accordingly **dismissed**.

18. Pending application(s) if any also stand(s) disposed of.

07.11.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No