IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-4947-2007 (O&M)

Rohtash and another

...Appellants

VERSUS

National Insurance Company Ltd. and others

...Respondents

(ii) FAO-1236-2008 (O&M)

Bimla and others

...Appellants

VERSUS

Rohtash and others

...Respondents

Date of Decision: January 27, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Richa Sharma and Mr.Munish Kumar, Advocates
for the appellants (in FAO-4947-2007) and
for respondents No.1 and 2 (in FAO-1236-2008).

Mr.Neeraj Khanna, Advocate for
Mr.R.N.Singhal, Advocate
for respondent No.1 (in FAO-4947-2007) and
for respondent No.3 (in FAO-1236-2008).

Mr.Mukesh Kumar Bhatnagar, Advocate
for the appellants (in FAO-1236-2008)and
for respondents No.2 to 5 (in FAO-4947-2007).

****

ARCHANA PURI, J.

These are two appeals, filed to assail the Award dated

14.11.2007, passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted by learned Tribunal, on account of death of Ram Partap, in a motor vehicular accident, which took place on 26.11.2006.

The essential facts, as pleaded by the claimants, are as follows:-

That, on 26.11.2006, Ram Partap along with his son Raj Kumar, was coming from morning walk from Sector-2 to Sector-6, Bahadurgarh, on foot. At about 7.00 a.m., when they reached near Sector-6, Bahadurgarh, then one Eicher Tractor bearing registration No.HR-10D-5961, driven by its driver, namely, Rohtash, in a rash and negligent manner and at a high speed, came from the opposite side and struck against Ram Partap, who sustained fatal injuries and died instantaneously. The driver of the tractor fled away from the spot. On the basis of the statement got recorded by Raj Kumar, son of Ram Partap, FIR was registered qua the accident in question.

Further, it was pleaded that deceased Ram Partap was 45 years of age, at the time of accident and he was employed in Oriental Bank of Commerce, GTK Road, Delhi, as Senior Manager and was drawing salary of Rs.28,719/- per month. The widow and children of the deceased had filed the claim petition to seek compensation.

In pursuance of the notice, the driver Rohtash as well as insurance company had made appearance and filed their respective replies, whereas, owner of the offending tractor Raj Singh, who was impleaded as respondent No.2, before the Tribunal, was proceeded against ex-parte.

In his reply, Rohtash, who was impleaded as respondent No.1 before the Tribunal, had denied taking place of the accident. He also denied all other averments, as claimed in the claim petition. The National Insurance

Company Limited also in its reply, took various preliminary objections and besides the same, also took the specific plea about Rohtash, driver to be not holding valid and effective driving licence, at the time of accident and that the tractor in question, was not being used for the purpose, for which it was meant and there was violation of terms and conditions of the insurance policy.

After framing of the issues and adducing of the evidence and on the basis of appraisal of the evidence, brought on record, learned Tribunal had awarded compensation to the claimants to the extent of Rs.11,14,520/-. It was concluded by learned Tribunal that the tractor in question was meant for agricultural purposes and that too, in District Sonepat and since it was being driven in Bahadurgarh, at the relevant time, therefore, it was being driven, at the time of accident, in contravention with the terms and conditions of the insurance policy. That being so, the insurance company was absolved from the liability to pay the compensation and precisely, on this account, the recovery rights were granted to the insurance company, to recover the compensation amount from the driver and owner of the offending tractor.

To assail the right of recovery granted to the insurance company, the driver and owner of the offending tractor i.e. Rohtash and Raj Singh, have filed **FAO-4947-2007**, whereas, feeling aggrieved by the inadequacy of the compensation awarded by learned Tribunal, the appellants-claimants have filed **FAO-1236-2008**.

Even though, in the grounds of appeal, the driver and owner had assailed the finding of fact of accident as well as the manner of taking place of the same, besides recovery rights granted to the insurance company, but however, during the course of arguments, learned counsel for the driver and owner, had only confined the prayer to decline the recovery rights granted to the insurance company.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

To substantiate the factum and manner of taking place of the accident, Raj Kumar, son of deceased Ram Partap, who was accompanying the deceased, at the relevant time, has stepped into witness box as PW-3. He categorically stated about the manner of taking place of the accident and imputed rashness and negligence, on the part of respondent No.1-Rohtash. He had got lodged the FIR, the copy whereof is Ex.P5 and furthermore, even post-mortem report of the deceased has been duly proved. Bimla Devi, widow of the deceased has stepped into witness box as PW-2 and she has deposed about factum of death of Ram Partap, her husband, in a motor vehicular accident. PW-1 Shankar Kumar, Ahlmad of the Court of SDJM, had brought the criminal record and on the basis thereof, deposed about Rohtash, to be facing trial in the FIR No.286 dated 26.11.2006 under Sections 279 and 304-A IPC.

Even, it is pertinent to mention that though respondent No.1 had taken the plea of denial of the accident, but however, while in the witness box as RW-2, he has stated about himself to be going on tractor, on the date of accident i.e. 26.11.2006. Rather, he stated that he was not negligent and deceased Ram Partap was negligent, meaning thereby, he admitted about taking place of the accident, though denied its manner. But however, while taking the evidence in entirety, it stands established that the accident had taken place due to rash and negligent driving of the tractor bearing registration No.HR-10D-5961 and the same resulted in the injuries caused on the person of Ram Partap, which proved fatal. Thus, the finding on this issue, stands hereby affirmed.

Now, coming to the 'work on' of the compensation, as done by learned Tribunal.

Firstly, qua the age of the deceased, it is pertinent to mention that matriculation certificate of the deceased has been duly proved as Ex.P3, which contains the recitals of date of birth of Ram Partap to be 01.09.1960. So calculating, on the date of accident, the deceased was rightly held by learned Tribunal to be 46 years old.

Furthermore, PW-4 S.K.Gupta, Supervisor, Oriental Bank of Commerce, deposed about deceased to be employed as Manager, in their bank and on the basis of the record, brought by him, he proved the salary certificate Ex.P6. The said certificate has been taken into consideration by the Tribunal. This certificate also gives the detail of deductions made, out of the gross salary and the net salary received was Rs.14,850.70 per month and total deductions were to the extent of Rs.13,869/-. However, learned Tribunal erroneously had concluded about the deceased to be getting net salary of Rs.13,869/-, which calls for re-computation, on this count.

Besides the same, multiplier of '10' has been applied. However, while considering the age of the deceased, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the suitable multiplier to be applied is '13'. Even, future prospects and various conventional heads, have been given amiss and the amount under conventional heads is not in consonance with the prevalent law. Considering the aforesaid, the entire 'work on' of the compensation, calls for re-computation.

From the salary certificate Ex.P6, it is evident that gross salary of the deceased was Rs.28,719.70, which is now rounded off as Rs.28,719/-. Though, deduction had been depicted separately in the said certificate, but however, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, for the purpose of 'work on' of the compensation, actual salary ought to be taken minus tax component. Thus, the earnings of deceased are taken as Rs.28,719/- per month, annual whereof, comes to be Rs.3,44,628/-.

As per the tax slab, prevalent in the year 2006-2007, the income upto Rs.1,00,000/- was tax free. From the income bracket of Rs.1,00,000-1,50,000/-, income tax payable was 10%, which is to the extent of Rs.5000/-. Furthermore, for the income bracket of Rs.1,50,000-2,50,000, the tax payable was 20% i.e. Rs.20,000/-. On the income of beyond Rs.2,50,000/-, the tax payable was 30%. Since, the total income of the deceased, as worked upon aforesaid, was Rs.3,44,628/-, therefore, after deduction upto Rs.2,50,000/-, the residue taxable amount works out to be Rs.94,628/- and upon the same, tax payable @ 30%, comes to be Rs.28,388/-. Thus, the total tax payable, comes to be **Rs.53,388/-**. After making deduction of the aforesaid income tax amount, the residue income, comes out to be Rs.3,44,628-53,388=Rs.2,91,240/-.

As per ***Sarla Verma's case (supra)***, considering the number of dependents, deduction to the extent of 1/4th, on the count of 'personal expenses', ought to be made and as such, the loss of dependency comes to Rs.291240-72810=Rs.2,18,430/-.

Further, considering the age of the deceased to be 46 years, as per ***Pranay Sethi's case (supra)***, addition of 30% ought to be made, on the count of 'future prospects' and thus, the annual income of the deceased is worked upon as Rs.218430+65529=Rs.2,83,959/-.

Considering the age of the deceased, as per ***Sarla Verma's case (supra)***, the appropriate and suitable multiplier, to be applied is '**13**', and thus, by applying the same, the loss of dependency, works out to be Rs.283959x13=**Rs.36,91,467/-**.

Besides the aforesaid, as per ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, each of the appellants-claimants are entitled to 'parental', 'spousal' or 'filial' consortium, as required. Considering the same, as per ***Pranay Sethi's case (supra)***, an amount of Rs.40,000/- is required to be granted to the dependents, which also called for further enhancement to the extent of 10%, after period of every three years of passing of the judgment and taking it to be so, the compensation, on the count of 'loss of consortium', at present, works out to be Rs.48,400/- to each of the claimants i.e. Rs.48400x4=**Rs.1,93,600/-** and likewise, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Ram Partap, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.36,91,467/-**
Loss of consortium	**:**	**Rs.1,93,600/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.39,21,367/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.39,21,367-11,14,520=Rs.28,06,847/-**. On the enhanced amount of the compensation i.e. **Rs.28,06,847/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Out of the total compensation, as now worked upon, appellants-claimants No.2 to 4 are held entitled to **Rs.9,00,000/-** each and the residue amount of **Rs.12,21,367/-**, shall be disbursed to appellant-claimant No.1. However, the compensation, if any, disbursed to the appellants-claimants, at any earlier stage, shall be adjusted, accordingly.

Now, comes the question of liability to pay the compensation. From the evidence on record, it stands established that the offending tractor was duly insured, at the time of accident and even, Rohtash was having valid and effective driving licence. However, it was only on the count of Raj Singh, owner of the offending tractor, to be resident of Sonepat and its driver to be also belonging to Sonepat and the tractor was involved in the accident in Bahadurgarh, it was concluded by learned Tribunal that the tractor was not used for the agricultural pursuit, at the relevant time and therefore, the insurance company was absolved from the liability and thus, it was granted recovery rights. However, the finding, so recorded by learned Tribunal, is palpably wrong.

In this regard, it is firstly pertinent to mention that even though, in the reply, the insurance company had taken the plea of the tractor bearing registration No.HR-10D-5961, not being used for agricultural purposes, at the time of alleged accident and therefore, there was clear cut violation of the terms and conditions of the insurance policy as well as the Motor Vehicle Act, but however, to substantiate this plea, no such evidence, has been brought on record. The sole witness examined by the insurance company is RW-1 Nafe Singh, Licensing Clerk, SDM Office, who had brought the record, with regard to the issuance of driving licence to Rohtash. So far as, legality and validity of the driving licence is concerned, that is not an issue in the present case. No witness, as such, has been brought on record, qua the purpose of use of the tractor at the relevant time.

Even, it is pertinent to mention that Rohtash, who was driver of the offending tractor, at the relevant time, when stepped into witness box as RW-2, no satisfactory cross-examination was conducted to substantiate the plea that tractor was used for the purpose, other than the agricultural pursuit. However, one suggestion was given that the tractor was being used for commercial purposes and this suggestion was denied by Rohtash.

No doubt, the tractor attached with the trolley (if so), are liable to be used for agricultural purposes only and if the owner uses it for other than agriculture purposes, then certainly, it is a case of breach of policy and in that eventuality, the insurance company, can be directed to pay and recover the compensation from the owner and driver, but however, this can be done, only if, it is so substantiated by adducing some positive evidence, in respect of the same.

As observed aforesaid, no such evidence, has been brought on record. Simply on the score of owner being resident of Sonepat and the driver also residing within the jurisdiction of Sonepat and the accident having taken place at Bahadurgarh, it cannot be presumed that there was breach of the conditions of the insurance policy. Some positive evidence, ought to have been brought on record by the insurance company, to substantiate the plea that the tractor was being permitted to use for non-agricultural purposes and the operation of the same was diverted from the activity other than the agricultural purpose. However, no evidence, as such, has been placed on record, to so prove.

In the given circumstances, solely on the plea, so taken and more particularly, while considering the testimony of Rohtash, driver of the offending tractor, as observed aforesaid, the insurance company, as such, cannot be exonerated from its liability. Considering the same, the insurance company could not be held to pay the compensation and recover the same from the owner and driver of the offending tractor.

Consequently, the findings recorded by learned Tribunal, on the count of recovery rights given to the insurance company, is set aside and the liability of the insurance company, to pay the compensation, is held to be joint and several, together with driver and owner of the tractor being registration No.HR-10D-5691.

Accordingly, the impugned Award dated 14.11.2007 stands modified, to the extent, as indicated aforesaid.

In the light of the aforesaid observations, both the appeals stand allowed.

The pending civil misc. applications, if any, shall stand disposed of.

January 27, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**