



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(i) FAO-4119-2013 (O&M)

New India Assurance Company Ltd.

...Appellant

VERSUS

Parvati and others

...Respondents

(ii) **FAO-4120-2013 (O&M)**

New India Assurance Company Ltd.

...Appellant

VERSUS

Lakhpati and others

...Respondents

(iii) **XOBJC-9-CII-2014 (O&M)**

New India Assurance Company Ltd.

...Appellant

VERSUS

Parvati and others

...Respondents

(iv) **XOBJC-35-2023 (O&M)**

New India Assurance Company Ltd.

...Appellant

VERSUS

Lakhpatri and others

...Respondents

Date of Decision: February 03, 2025

**FAO-4119-2013 and connected cases****-2-****CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.R.C.Gupta, Advocate
for the appellant.

Ms.Ekta Thakur, Advocate
for the respondents/cross-objectors.

ARCHANA PURI, J.

These are two appeals i.e. FAOs-4119 and 4120-2013, filed at the instance of appellant-New India Assurance Company Ltd., insurer of Innova car bearing registration No.CH-02AA-1666, to assail the Award dated 22.04.2013 passed by learned Motor Accident Claims Tribunal, vide which, the compensation was granted on account of deaths of Manoj Singh and Dalel Kumar, in a motor vehicular accident.

In the aforesaid appeals, cross objections, i.e. XOBJC-9-CII-2014 and XOBJC-35-2023, have also been filed, thereby, seeking enhancement of the compensation.

The facts germane, to be noticed, are as follows:-

That, on that 20.08.2011, at about 2.30 pm., Manoj Singh along with his friend Dalel Kumar, while in Innova car bearing registration No.CH-02AA-1666, driven by its driver Sukhdev Singh, was coming to Chandigarh. When the car reached near Zirakpur, another vehicle came from the opposite side and Innova car struck the said vehicle, it being driven, in a rash and negligent manner and thereafter, went towards Ambala road, after crossing divider of the road. The aforesaid car turned turtle. Manoj Singh and Dalel Kumar suffered extensive injuries on vital parts, which proved fatal. It is the

**FAO-4119-2013 and connected cases****-3-**

categoric claim that the accident had taken place, on account of rash and negligent driving of Sukhdev Singh.

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

Two separate claim petitions were filed. One claim petition bearing MACT No.341 was filed by Parvati, mother of deceased Manoj Singh and the other claim petition bearing MACT No.346 was filed by parents of deceased Dalel Kumar.

However, in reply, it was asserted by driver Sukhdev Singh-respondent No.1 and Manohar Lal-owner-respondent No.2, about no accident to have taken place, in the manner as asserted. However, the insurance company-respondent No.3 also filed separate reply, wherein, it also took plea that no accident had taken place and that the offending Innova car was being used for commercial purposes, against the terms and conditions of the policy.

Thereupon, issues were framed and evidence was adduced by the parties. However, while adjudicating on the question of factum of the accident and on appraisal of the evidence, learned Tribunal had concluded about the accident to have been caused due to rash and negligent driving of Innova car bearing registration No.CH-02AA-1666, by its driver Sukhdev Singh and the same resulted into deaths of Manoj Singh and Dalel Kumar.

Further, while considering about the deceased to be falling in the age group of 19-25 years and also considering them to be bachelors and on account of no sufficient evidence, coming on record, with regard to the vocation followed by the deceased, learned Tribunal, considered the

**FAO-4119-2013 and connected cases****-4-**

earnings of both the deceased, as that of a labourer and concluded about the same to be Rs.4,000/- per month. However, after making deduction to the extent of 50%, considering their marital status, further the future prospects were added to the extent of 30% and thereupon, the compensation was worked upon as $\text{Rs.}2600 \times 12 \times 18 = \text{Rs.}5,61,600/-$. Besides the aforesaid amount, another amount of Rs.20,000/- was granted for 'loss of estate' and expenses incurred on the 'funeral and last rites'. In all, amount of Rs.5,81,600/- was granted to the respective claimants, qua deaths of Manoj Singh and Dalel Kumar.

Being aggrieved, the appellant-New India Assurance Company has filed the present appeals.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellant has submitted that the factum of the accident, as such and the involvement of Innova car bearing registration No.CH-02AA-1666, does not stand established. In fact, it is submitted that FIR was got registered, on the statement of driver Sukhdev Singh against the unknown car. Even, PW-3 Gurpreet Singh has been only introduced as an eye witness, whereas, he was not present at the site. While making these submissions, it is submitted that the factum of the accident and involvement of the alleged offending car, as such, does not stand established.

However, the aforesaid submission is not tenable. It is pertinent to mention that it is the categorical claim of the claimants in the respective claim petitions that the accident had taken place, due to rash and negligent driving of the offending Innova car, which was driven by Sukhdev Singh, of which,

**FAO-4119-2013 and connected cases****-5-**

both the deceased were the occupants.

It is the categoric claim that on 20.08.2011, at about 2.30 pm., Manoj Singh along with his friend Dalel Kumar, was travelling in the Innova car bearing registration No.CH-02AA-1666, driven by its driver Sukhdev Singh and when their car reached near Zirakpur, another vehicle came from the opposite side and Innova car struck the said vehicle, it being driven, rashly and at a high speed and thereafter, it went towards Ambala road, after crossing divider of the road. The car turned turtle, as a result whereof, Manoj Singh and Dalel Kumar suffered injuries and had died. It is categorically stated that the accident had taken place, due to rash and negligent driving of the Innova car.

However, it is now submitted by learned counsel for the appellant that Innova car was not involved in the accident in question and much emphasis has been laid upon the order dated 15.12.2012 passed by learned SDJM, Dera Bassi, which dealt with FIR No.247 dated 20.08.2011. In view of the recitals of the said order, it is submitted that the untraced report was submitted in the criminal case, qua the accident in question and therefore, in any case, rashness and negligence, cannot be imputed upon the driver of the aforesaid Innova car.

However, the aforesaid submission is bereft of merits. It is significant to note that in view of the assertions of manner of taking place of the accident, as pleaded in the claim petitions, the respondents had made appearance. Both, driver and owner of the offending Innova car, had made appearance and filed the reply, wherein, they had taken the plea that no such accident had ever taken place. In the light of this denial, also further, it is

**FAO-4119-2013 and connected cases****-6-**

important to make reference to the FIR, copy whereof is Ex.P1. No doubt, as now submitted by learned counsel for the insurance company that this FIR was got registered by Sukhdev Singh, the driver of the aforesaid Innova car and therein, though, he had stated about Manoj Singh and Dalel Kumar, to be occupants of the Innova car, but he stated further that it was struck by unknown vehicle and he imputed rashness and negligence, on the part of driver of unknown vehicle. However, no evidence, as such, has been led. Rather, Sukhdev Singh, in the capacity of being driver, was the best person to dispute about the manner of taking place the accident, as pleaded in the claim petitions, but however, he had not chosen to step into the witness box. Though, both driver and owner, had been contesting the claim petitions before learned Tribunal, but they had only tendered into evidence the documents and closed the evidence.

In the light of Sukhdev Singh, having remained away, it is also pertinent to mention that though, in the FIR, the author has imputed rashness and negligence, on the part of unknown vehicle, but simply on the score of these recitals in the FIR, it cannot be concluded that there was rashness and negligence, on the part of unknown vehicle and particularly, in view of the order dated 15.12.2012, which has been brought on record by the insurance company. In fact, it should be noted that FIR is only for giving information qua the factum of accident and what further, regarding the rashness and negligence, the same can be only proved, during the course of investigation/trial.

Very true, the untraced report has been filed, but however, in view of the denial of the accident, at the instance of the driver and owner

**FAO-4119-2013 and connected cases****-7-**

and driver Sukhdev Singh, not coming forth, in the witness box, in the claim petition, sole reliance, cannot be placed upon the untraced report, to conclude about non-involvement of offending Innova car. Rather, from the contents of the FIR, it stands established that this vehicle was involved in the accident, though, rashness and negligence was denied, therein. It stands established that Sukhdev Singh was driving the offending Innova car.

In the given circumstances, suffice to consider the testimony of Gurpreet Singh, an eye witness, who had stepped into witness box as PW-3. To this witness also, no cross-examination has been conducted about the Innova car to be not involved in the accident and also about there to be no fault, on the part of Sukhdev Singh driver.

Learned Tribunal had rightly concluded about the accident to have taken place, on account of rash and negligent driving Innova car by its driver Sukhdev Singh. In the light of the same, no sustenance can be drawn from the order dated 15.12.2012, brought on record by learned counsel for the insurance company, during the pendency of the appeals.

Considering the same, now let us consider the extent of compensation to be awarded to the claimants qua deceased Manoj Singh and Dalel Kumar.

From the evidence adduced, it stands established that both the aforesaid persons had died, on account of the injuries sustained, in the accident in question. Also, it is not disputed that they were in the age group of 19-25 years, at the relevant time and their marital status was unmarried. Though, it is specific version of mother of deceased Manoj Singh about him to be doing private job and earning Rs.8,000/- per month and also about

**FAO-4119-2013 and connected cases****-8-**

deceased Dalel Kumar to be working as mason and earning Rs.8,000/- per month, but however, qua the vocation of both the deceased, no sufficient evidence was brought on record and learned Tribunal had appropriately considered the deceased to be working as labourers and had assessed the earnings of both the deceased as Rs.4000/- per month, which is appropriate, as per the minimum wages, prevalent at the relevant time. Considering the same, while taking both the deceased to be unmarried, the loss of dependency was appropriately taken as Rs.2000/- per month.

To this amount, addition of 30% was made, which was to be extent of Rs.600/-. However, considering the age of both the deceased, on the count of 'future prospects', addition had to be made to the extent of 40%, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*. Thus, the income of both the deceased is worked upon as $Rs.2000 + 800(40\%) = Rs.2800/-$, per month, annual whereof, comes to be **Rs.33,600/-**.

Considering the age of both the deceased, as per *Sarla Verma's case (supra)*, the appropriate and suitable multiplier, to be applied is '18', and thus, by applying the same, the loss of dependency, works out to be $Rs.33600 \times 18 = Rs.6,04,800/-$.

Besides the aforesaid, as per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', the mother of Manoj Singh and parents of Dalel Kumar are entitled to 'filial' consortium. 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%,



FAO-4119-2013 and connected cases

-9-

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 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 claimants-cross objectors, on account of deaths of Manoj Singh and Dalel Kumar, is re-computed, as herein given:-

Deceased Manoj Singh

Sr.No.	Heads	Calculation
(i)	Loss of dependency	Rs.6,04,800/-
(ii)	Loss of consortium	Rs.48,400/-
(iii)	Loss of Estate	Rs.18,150/-
(iv)	Funeral expenses	Rs.18,150/-
(v)	Total	Rs.6,89,500/-
(vi)	Enhanced compensation after the deduction of compensation awarded by the Tribunal	Rs.6,89,500-5,81,600= Rs.1,07,900/-

Deceased Dalel Kumar

Sr.No.	Heads	Calculation
(i)	Loss of dependency	Rs.6,04,800/-
(ii)	Loss of consortium	Rs.48,400x2= Rs.96,800/-
(iii)	Loss of Estate	Rs.18,150/-
(iv)	Funeral expenses	Rs.18,150/-
(v)	Total	Rs.7,37,900/-
(vi)	Enhanced compensation after the deduction of compensation awarded by the Tribunal	Rs.7,37,900 -5,81,600= Rs.1,56,300/-



FAO-4119-2013 and connected cases

-10-

On the enhanced amount of the compensation, as now worked upon in each case, the claimants-cross objectors, 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.

Accordingly, the impugned Award dated 22.04.2013 stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the above observations, both the appeals i.e. **FAOs-4119 and 4120-2013** stand dismissed, whereas, **XOBJC-9-CII-2014** and **XOBJC-35-2023** stand allowed.

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

February 03, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No