

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAOs (MVA) No. 170 of 2007 &
171 of 2007.

Date of decision: 26th September, 2014.

1. **FAO No. 170 of 2007.**

Neelam Nadda and anotherAppellants.
Versus	
Narender Singh and others	...Respondents.

2. **FAO No. 171 of 2007.**

Oriental Insurance Co. Ltd.Appellant.
Versus	
Smt. Neelam Nadda and others	...Respondents.

Coram:

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

Whether approved for reporting ?¹ Yes.

For the appellant(s):	Mr.K.B. Khajuria, Advocate, for the appellants in FAO No. 170 of 2007 and Mr. Deepak Bhasin, Advocate, for the appellant in FAO No. 171 of 2007.
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For the respondent(s)	Mr.Satyan Vaidya, Advocate, for respondent No. 1 and 2 and Mr. Deepak Bhasin, Advocate, for respondent No. 3 in FAO No. 170 of 2007. Mr. K. B. Khajuria, Advocate, for respondents No. 1 and 2 and Mr. Satyen Vaidya, Advocate, for respondents No. 3 and 4 in FAO No. 171 of 2007.
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Mansoor Ahmad Mir, Chief Justice, (Oral).

Both these appeals are outcome of an award dated 22.2.2007, passed by the Motor Accident Claims Tribunal, Bilaspur, H.P, for short "The Tribunal" in MAC Case No. 43 of 2005 titled Smt.Neelam Nadda and another vs. Narinder Singh and others, whereby compensation to the tune of Rs.10,58,000/- came to be

¹ Whether the reporters of Local Papers may be allowed to see the judgment ?.

awarded in favour of the claimants alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization, hereinafter referred to as "the impugned award", for short.

2. The claimants in FAO No. 170 of 2007 have questioned the impugned award on the ground of adequacy of compensation. The insurer through the medium of FAO No. 171 of 2007 has questioned the impugned award on the ground of saddling it with the liability.

BRIEF FACTS.

3. The claimants filed claim petition before the Tribunal, for the grant of compensation to the tune of Rs.50 lacs as per the break-ups given in the claim petition, on the ground that the deceased Dr. Chander Shekhar Nadda, was travelling in a maruti car No.HP-24-4647 on 11th June, 2004 as an occupant. The driver was driving the said vehicle in a normal speed with due diligence but met with an accident which was caused by Iqbal Singh driver of the offending tractor bearing registration No. PB-43-A-9185, being driven by him rashly and negligently, as per details given in para 4 of the claim petition.

4. The respondents contested and resisted the claim petition. However, owner of the tractor Narender Singh and its driver Iqbal Singh have admitted the factum of accident in reply to paras 23 and 24 of the claim

petition. It is apt to reproduce para 24 of the claim petition and para 10 of the reply to paras 23 and 24 of the claim petition, filed by respondents No. 1 and 2 herein.

"24. That on ill-fated day of 11.6.2004, the deceased Dr. CS. Nadda was going in his car No. HP.24/4647 alongwith petitioner No. 1 from Bilaspur to Chandigarh which was being driven by his driver Roop Lal, s/h Sh. Jeet Ram, r/o Diara Sector, Bilaspur, HP. The deceased was sitting on the front seat alongwith the driver and the petitioner No. 1 was sitting on the back seat of the vehicle. At about 7.45 a.m. when the car reached in front of I.T.I. and near Octroi post, Ropar, a tractor trolley bearing No. PB43A/9185 was standing on the side of the road, when the car which was being driven in a normal speed and deligently reached near the tractor trolley, the driver of the tractor trolley without giving any signal reversed it in a rash and negligent manner and hit the car No. HP-24-4647 on its left side and all the occupants of the car received multiple injuries and were taken to Distt. Hospital, Ropar, in unconscious condition where Dr. C.S. Nadda died due to the injuries sustained by him at about 9 30. a.m."

"10. Para No. 23 and 24 of the petition are wrong hence denied. The petitioner has died due to negligent driving of vehicle of deceased bearing Regn. No. HP-24/4647 as such the respondents are not liable to pay any compensation to the petitioner. The insurer of the vehicle/Car No. HP-24/4647 and its driver are the necessary parties to the claim petition. The petitioners are not entitled to any compensation as alleged in the para as the amount claimed is highly exorbitant and excessive."

5. Thus, the driver had admitted the accident, which was result of rash and negligent driving of the driver.

6. The following issues came to be framed by the Tribunal:

- (i) *Whether Dr. Chander Shekhar had died in an accident with vehicle Bo.PB-43-A-9185 which was being driven by respondent No. 2 in a rash and negligent manner, as alleged? OPP*
- (ii) *If issue No. 1 proved in affirmative, to what amount of compensation, the petitioners are entitled to and from whom? OPP.*
- (iii) *Whether the petition is not maintainable?*
OPR-1 & 2.
- (iv) *Whether the accident is a result of contributory negligence of respondent No. 2. driver of tractor No. PB-43-A-9185 and driver of Maruti Car No. HP-24-4647?OPR3.*
- (v) *Whether respondent No. 2 driver of tractor No.PB-43-A-9185 was driving the vehicle in violation of the provisions of M.V. Act, if so, its effect? OPR3.*
- (vi) *Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR-1 & 2.*
- (vii) *Relief.*

7. Parties led evidence.

8. The claimants have examined Roop Lal, (PW2) Sita Ram (PW3) and one of the claimants, i.e. Neelam Nadda also stepped into the witness-box as PW1.

9. The owner and driver have examined one Daler Singh as RW-1 and driver Iqbal Singh also stepped into the witness-box as RW2.

10. The insurer-appellant has not led any evidence thus, the evidence led by the claimants and insured remained unrebutted.

11. There is ample evidence on the record to the effect that driver Iqbal Singh has driven the offending vehicle, i.e. tractor in a rash and negligent manner on the said date and has caused the accident, in which the deceased, namely, Dr. Chander Shekhar Nadda sustained injuries and succumbed to the same. There was no need to lead any evidence in view of the admission made by the driver and owner as discussed hereinabove. However, they have led the evidence and proved the factum of accident. Accordingly, the findings returned by the Tribunal on Issue No.1 are upheld.

12. The insurer had to prove issues No. 4 and 5, have not led any evidence, failed to discharge the onus, thus the Tribunal has rightly decided issues No. 4 and 5 against the appellant and in favour of the claimants. Accordingly, the findings on the said issues are upheld.

13. The driver and owner had to prove issues No. 3 and 6, failed to lead any evidence and in view of the pleadings, there was no need to lead any evidence. It is apt to record herein that the owner and driver have not

questioned the impugned award on any ground. Accordingly, findings on these issues are upheld.

14. Now coming to issue No.2. Admittedly, deceased was a government employee and was drawing Rs.18,443/- as salary, as per the salary certificate Ext. PW3/A which has been discussed by the Tribunal in paras 20 and 21 of the impugned award, but the Tribunal has fallen in error in making deductions while assessing the loss of income.

15. I wonder how the Tribunal has held that the claimants have lost source of income only to the tune of Rs.10,08,000/- by taking income of the deceased as Rs.10495/- (carry home salary), despite the fact that he was drawing salary to the tune of Rs.18,443/- per month as per the salary certificate Ext. PW3/A. The deductions which were made towards the G.P.F and other subscriptions are also part of the income and part of gross salary. Thus, the Tribunal has fallen in error in holding that the income of the deceased was to the tune of Rs.10,495/- while he was drawing salary to the tune of Rs.18443/-. In fact, the Tribunal has to make the assessment while keeping in view the subsequent pay revision and inflation of price. However, I deem it proper to hold that deceased was earning Rs.18,400/- per month and after deducting 1/3rd, it is held that the claimants have lost source of dependency to the tune of Rs.12,300/- per month. The date of birth of the deceased

is given as 15.7.1960, meaning thereby he was 45 of years at the time of the accident and the Tribunal has rightly applied the multiplier of "12" keeping in view the Second Schedule appended to the Motor Vehicles Act and the mandate rendered in **Sarla Verma versus Delhi Road Transport Corporation**, reported in **AIR 2009 SC 3104**, upheld in **Reshma Kumari & ors vs. Madan Mohan & anr.**, reported in **2013 AIR SCW 3120**.

16. Thus, the claimants are held entitled to Rs.12,300x12= 14,76,000x12= 17,71,200/- with interest @7.5% per annum from the date of filing the claim petition till its realization, and lawyer's fee to the tune of Rs.2,200/- as granted by the Tribunal.

17. The factum of insurance is not disputed and insurer has failed to plead and prove that insured has committed any willful breach. Thus, the insurer came to be rightly saddled with the liability.

18. The insurance company is directed to deposit the enhanced amount within six weeks from today in the Registry of this Court. On deposit, the same shall be released in favour of the claimants, through payee's account cheque, strictly in terms of the conditions contained in the impugned award. The amount already deposited by the insurance company, be released in favour of the claimants, forthwith, through payee's account cheque.

19. At this stage, the learned counsel for the insurance company in FAO No. 171 of 2007 stated that he has filed application under Order 41 Rule 27 of the Code of Civil

Procedure for additional evidence. It is unfortunate that insurer has dragged the claimants to the *lis* right from 2005. The insurer has contested the claim petition without any ground. As discussed hereinabove, the insurer has not led any evidence in defence before the Tribunal right from 2005 till the passing of the impugned award. The insurer has contested the claim petition on flimsy grounds, knowing the fact that the insurer is liable to indemnify the insured.

20. As a consequence, the appeal filed by the Insurance company being FAO No. 171 of 2007 is dismissed and appeal filed by the claimants for enhancement being FAO No. 170 of 2007 is allowed and compensation is enhanced, as indicated above.

21. Having said so, the application being CMP No. 401 of 2007 in FAO No. 171 of 2007, is also dismissed.

22. Send down the record, forthwith.

September 26, 2014,
(*cm Thakur*)

(Mansoor Ahmad Mir)
Chief Justice.