

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

Date of decision: 31.07.2018

1. FAO No.3938 of 2016 (O&M)

Pinki and others

..... Appellants

Versus

Jaskaran Singh and others

..... Respondents

2. FAO No.4158 of 2016 (O&M)

New India Insurance Company Ltd.

..... Appellant

Versus

Pinki and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajan Bansal, Advocate
for the appellants (in FAO-3938-2016).

Mr. R.C. Gupta, Advocate
for the appellant (in FAO-4158-2016).

Mr. Amandeep Chhabra, Advocate
for respondents No.1 and 2 (in FAO-3938-2016).
for respondents No.5 and 6 (in CR-4158-2016).

Mr. Rajan Bansal, Advocate
for respondents No.1 to 3 (in FAO-4158-2016).

Mr. Pradeep Kumar, Advocate
for respondent No.3 (in FAO-3938-2016).

Mr. Dinesh Maurya, Advocate, for
Mr. G.S. Sandhu, Advocate
for respondent No.4 (in both cases).

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of two appeals bearing

FAO No.3938 of 2016 and FAO No.4158 of 2016 as both have arisen out

of one claim petition.

Deep Singh who lost his life in a motor vehicular accident on 28.09.2014 was aged about 33 years. His young widow, two minor daughters and widowed mother filed a claim petition under Section 166 of the Motor Vehicle Act. The respondents denied the accident. In alternative, it was pleaded that even if the Court comes to a conclusion that the accident has taken place, it had not taken place due to rash and negligent driving of the offending vehicle.

Deceased-Deep Singh was travelling on a motor-cycle along with two others when the offending vehicle i.e. a motor car hit the motor-cycle on which the deceased was travelling from the opposite side resulting into his death. Learned Motor Accident Claim Tribunal after recording a finding that the offending vehicle i.e. motor car was being driven in rash and negligent manner, assessed the compensation payable at Rs.58,66,000/-.

Learned counsel for the insurance company in FAO No.4158 of 2016 has submitted as under:-

Identity of the driver is not established as originally the name of driver was given as Balkaran Singh which was later on corrected as Jaskaran Singh. Hence, he submitted that there is possibility of false implications. In the present case, Ashok Kumar, who was travelling on the ill-fated vehicle, has initially informed the Police and inadvertently given name of the driver as Balkaran Singh whereas it was Jaskaran Singh. Ashok Kumar has appeared in the Court as CW-2 and another Laxmi Narain, injured who was also travelling on the same ill-fated vehicle has been examined as CW-3. It is further not in dispute that Police also after

investigation have concluded that it was Jaskaran Singh who was driving the offending vehicle.

In view of the aforesaid evidence, this Court does not find that finding of the learned Motor Accident Claim Tribunal on this aspect are erroneous.

Next argument of learned counsel for insurance company is that three persons were travelling on a motor-cycle which met with an accident and therefore, the Tribunal shall have made the deceased contributory negligent. It may be significant to note that the respondents in the claim petition have not led any evidence to prove that the deceased, who was driving the motor-cycle, had contributed to the accident. In such circumstances, merely because on a two-wheeler three persons were travelling, inference cannot be drawn that against the driver of the two-wheeler that he was also contributory negligent in absence of evidence available on the file.

Next submission of learned counsel is to the effect that the accident took place head on as both the vehicles were coming from the opposite sides and therefore, the deceased was contributory negligent. This Court does not find any force even in this submission of learned counsel because it is the positive case of the claimants that the offending vehicle i.e. car came at a very fast speed and in a zig-zag manner and caused the accident when the car was brought on the wrong side of the road. The respondents including the Insurance company has not produced any evidence to prove that the car was not brought to the wrong side resulting in accident. Hence, there is no force in the submission of learned counsel.

Learned counsel for the Insurance Company has further argued that while assessing the compensation, a deduction of 1/4th should have been applied as number of dependents are four. He has further submitted that the income tax payable has not been deducted. He has further submitted that the Motor Accident Claim Tribunal has applied multiplier of 18 which should be 16 keeping in view the age of the deceased. He has further submitted that on account of conventional heads, the Court has granted Rs.2,50,000/- which cannot be beyond Rs.70,000/- in view of judgment passed by the Constitution Bench in the case of National Insurance Company Ltd. Vs. Pranay Sethi, 2017(4) RCR (Civil), 1009.

On the other hand, learned counsel for the claimants has submitted that the Motor Accident Claim Tribunal has not added increased income on account of future prospects as the deceased was 33 years old having permanent employment with Hindustan Insecticide Ltd., a public sector undertaking and therefore, on account of future prospects, income was to be increased by 50%. He further submitted that while calculating income tax payable, benefit of contribution made towards provident fund of Rs.50,000/-($4182 \times 12 = 50,184$) is given.

Learned counsel for the appellant has further submitted that the Motor Accident Claim Tribunal has erred in apportioning the amount awarded equally although according to him, mother was entitled to lesser compensation as compared to two minor girls who had lost their father and had entire life ahead of them.

Keeping in view the aforesaid facts, the quantum of compensation is re-worked as under:

<i>Heads</i>	<i>Compensation awarded by MACT, Bathinda</i>	<i>Compensation awarded by Hon'ble High Court</i>
Income	Rs.34,000/-	Rs.34,000/-
+ Future prospects	Nil	(50%) Rs.17,000/- 34000+17000= Rs.51,000/-
Annual Dependency		51,000 X 12 = 6,12,000/-
Income Tax deduction (Ist – 2,50,000/- exempted from tax) (– 50,000/- for provident fund exempted from tax) (2,50,000 to 5,00,000 @ 10% = 25,000/-) above Rs.5,00,000/- @ 20% (62,000 @ 20% = Rs.12,400)	Nil	37,400/-
Income after tax		612000-37400 = 5,74,600/-
- 1/4 th Deduction	34,000 – 8500 = 25,500/- (rounded to Rs.26,000/-)	5,74,600 – 143,650 = Rs.4,30,950/-
Multiplier	Multiplier of 18 Rs.26,000 X 12 X 18 = Rs.56,16,000/-	Multiplier of 16 Rs.4,30,950 X 16 = Rs.68,95,200/-
<u>Conventional Heads</u>		
(i) Funeral expenses	Rs.25,000/-	Rs.15,000/-
(ii) Loss of estate	Rs.25,000/-	Rs.15,000/-
(iii) Loss of love & affe.	Rs.1,00,000/-	Nil
(iv) Consortium	Rs.1,00,000/-	Rs.40,000/-
Total Compen. awarded	Rs.58,66,000/-	Rs.69,65,200/-
Enhanced Compensation		Rs.10,99,200/-

Keeping in view the fact that the deceased has left behind two minor daughters aged about 7 and 4 years, therefore, the compensation would be divided in the following manner.

Widow mother	15%
Widow wife	25%
Both the daughters	30% each

Resultantly, both the appeals are disposed of in the manner indicated above.

31.07.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No