
(2016) 02 P&H CK 0307

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 598 of 2014 with FAO No. 2705 and 2838 of 2013 (O&M).

Munshi Ram and another

APPELLANT

Vs

Balkar Singh and Others

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Evidence Act, 1872 — Section 77

Motor Vehicles Act, 1988 — Section 149, 166, 173

Citation : (2016) 3 LawHerald 2626 : (2016) 2 PLR 526

Hon'ble Judges : K.Kannan, J.

Bench : Single Bench

Advocate : Munish Kumar Garg, Advocate and Beant Singh Seemar, Advocate, for the Appellant; R.N. Singhal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.Kannan, J. (Oral) - CM No. 1759-CII of 2014 in FAO 598 of 2014

1. For the reasons mentioned in the application, delay in re-filing the appeal is condoned.

2. Civil Miscellaneous Application stands disposed of.

CM 2580-CII of 2014 IN XOBJC No. 20-CII of 2014 in FAO 2705 of 2013

1. For the reasons mentioned in the application, delay in filing the cross-objection is condoned.

2. Civil Miscellaneous Application stands disposed of.

Main Cases

1. All the appeals are at the instance of the claimants and the owner. FAO 2838 of 2013 and FAO 2705 of 2013 are at the instance of the owner aggrieved against the denial of indemnity and a provision for recovery granted to the insurer. FAO 598 of 2014 and cross objection in FAO 2705 of 2013 are at the

instance of the claimants seeking for enhancement.

2. The accident had taken place on 31.08.2011. The counsel for the insurer seeks to contend that it was the case of head on collision and, therefore, the driver of the motorcycle must be taken as having contributed to the accident. The Tribunal has already found the truck driver to be responsible. There is not even an appeal filed by the insurer. The thrust of argument by the counsel appearing on behalf of the owner was not to deny the negligence itself but only plead for a right of indemnity, as per the terms of the policy and the proof which he was trying to adduce with respect to the validity of the driving licence.

3. I will therefore discard and argument raised placing reliance on a judgment of this Court in *Rajinder Puri v. Sandeep Singh (minor) and others* 2014 (3) PLR Page 625 that there should be a finding of contributory negligence. There can be no rule of thumb that a head on collision must always be taken as resultant to contributory negligence of both vehicles. It depends on facts of each case. In this case the collision that caused the death of motorcyclist have been assessed by the Tribunal as resultant to a rash driving of the truck. I will find no reason to modify the same and confirm the finding recording rash and negligence of the driver of the truck.

4. As regards the quantum in FAO 598 of 2014, the deceased was 51 years of age and a housewife. The claimants were the husband and major son and major daughter. The Tribunal took the value of her services at Rs. 2500/-. The counsel argues that there must be prospects of increase. Taking the value of services at Rs. 4500/- and allowing for a multiplier of 11 suitable to the age of deceased, I will provide for the lakh of rupees for loss of consortium to the husband and make a further provision of Rs. 25000/- to each major son and daughter for loss of love and affection. Various heads of claim are tabulated as under.

Fatal Accident Date of accident

Age 51 31.08.2011

Occupation Housewife

Claimants: Husband and major son and major daughter

Sr. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
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1	Income	2,500	4,500
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2	Add, % of increase		
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3	Deduction		
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4	Multiplicand (annualised)	30,000	54,000
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5	Multiplier	11	11
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6	Loss of dependence	3,30,000	5,94,000
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7 Medical expenses

8 Loss of Consortium 1,00,000

9. Loss of love and affection for children 50,000

10 Loss to estate

11 Funeral Expenses 10000 25,000

Total 3,40,000 7,69,000

5. The total compensation payable shall be Rs. 7,69,000/-. The additional amount assessed shall also attract interest at the rate of 9% from the date of petition till the date of payment and shall be distributed between the husband and children and the ratio 2:1:1.

6. As regards the cross objection in FAO 2705 of 2013, the case was death of a young person aged of 22 years. His wife did not join the petition and she is reported to have remarried. The parents alone are the claimants in this case. Although the deceased was stated to be working in a private factory. There was no proof adduced. The Tribunal took the income at Rs. 5200/-, made a deduction of 1/2 and assessed the compensation. The counsel argues 3rd deduction must be taken because he was not a bachelor. If he was literally treated as a bachelor and the wife had not even joined, it was perfectly competent for the court to treat him as bachelor and provide for compensation, taking 50% deduction. I will also find no scope for enhancement of notional income what has been assessed at Rs. 5200/-. I will re-work the compensation and tabulate various heads as under:

Fatal Accident Date of accident

Age 22 31.08.2011

Occupation Claimants: Parents

Sr. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
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1	Income	5200	5200
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2	Add, % of increase		
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3	Deduction 1/2	2600	2600
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4	Multiplicand (annualised)	31200	31200
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5	Multiplier	14	18
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6	Loss of dependence	4,36,800	5,61,600
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7 Medical expenses

8 Loss of Consortium

1,00,000

9 Loss of love and affection for children

10 Loss to estate

5000

11 Funeral Expenses 10,000 25000

Total 4,46,800 6,91,600

7. Aggregate amount of compensation shall be Rs. 6,91,600/- which shall be distributed equally amongst the claimants. The additional amount shall also attract interest at the rate of 9% from the date of petition till payment.

8. In the two appeals bearing FAO No. 2705 and 2838 of 2013 filed by the owner, the most crucial issue is, whether the driver had a valid driving licence. He did not join at the time of trial and there was evidence brought through a person from the DTO Office at Agra, which originally had issued the licence making reference to the licence No. as 18690 of 2003 and making a verification to say that it had not been issued in the name of Balkar Singh, who was the driver. At the Appellate Court, the owner has filed an application under Order 41, Rule 27 CPC that has elicited through RTI a response to say the licence number had been wrongly given as 18690/Ag/2003 when it was actually 16690/Ag/2003 and that it had been issued in the name of Balkar Singh. A response through RTI is of a public officer and it is a public document and would require no further corroboration in the manner contemplated under Section 77 of the Evidence Act. The document must be taken to be true of what its recitals state. The certified copy of the licence issued also shows that the licence had been renewed at the DTO Office at Mansa on 26.08.2008, which was valid up to 19.09.2011. This also shows that the driver had a valid driving licence at the relevant time. I take the additional evidence as relevant and important to decide that the owner and driver were entitled to full indemnity. The award denying indemnity and providing for a right of recovery against for the insurer is set aside. The appeals filed by the owner and driver are allowed. The amount deposited by the owner and driver at the time of preferring the appeals are ordered to be returned to the owner.