IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6185-2012
Date of Decision: April 21, 2015

Renu and others

...Appellants

Versus

Naveen and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Naveen Singh Panwar, Advocate,
for the appellants.

Mr. Harish Nain, Advocate,
for respondent Nos. 1 and 2.

Mr. Sanjeev Goyal, Advocate, and
Mr. Rajbir Singh, Advocate,
for respondent No. 3.

NARESH KUMAR SANGHI, J (Oral)

For the detailed reasons recorded in the judgment of even date passed in FAO No. 5993 of 2012, titled 'Shri Ram General Insurance Company Limited v. Renu and others', the present appeal filed by the appellant/claimants, is partly allowed.

(NARESH KUMAR SANGHI)
JUDGE

April 21, 2015
Pkapoor

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Date of Decision: April 21, 2015

1. FAO-5993-2012 (O&M)

Shri Ram General Insurance Company Limited

...Appellant

Versus

Renu and others

...Respondents

2. FAO-6185-2012

Renu and others

...Appellants

Versus

Naveen and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Sanjeev Goyal, Advocate, and
Mr. Rajbir Singh, Advocate,
for the appellant in FAO-5993-2012 and
for respondent No. 3 in FAO-6185-2012.

Mr. Naveen Singh Panwar, Advocate,
for respondent Nos. 1 to 4 in FAO-5993-2012 and
for the appellants in FAO-6185-2012.

Mr. Harish Nain, Advocate,
for respondent Nos. 5 & 6 in FAO-5993-2012 and
for respondent Nos. 1 & 2 in FAO-6185-2012.

1.	Whether Reporters of local papers may be allowed to see the judgment?	✓
2.	To be referred to the Reporters or not?	✓
3.	Whether the judgment should be reported in the Digest?	✓

NARESH KUMAR SANGHI, J (Oral)

This judgment shall dispose of FAO No. 5993 of 2012, titled "Shri Ram General Insurance Company Limited v. Renu and others", an appeal filed by the insurance company; and FAO No. 6185 of 2012, titled "Renu and others v. Naveen and others", an appeal filed by the claimants for enhancement of the amount of compensation granted by learned Motor Accidents Claims Tribunal, Sonepat (for brevity, 'the Tribunal') vide its award dated 14.8.2012.

The facts are being referred from FAO No. 5993 of 2012. On 28.8.2010, at about 8:45 a.m., Ravinder, aged about 37 years, employed in the office of Post Master, Sonepat, was going to Kharkhoda from village Gorar, on his motorcycle bearing Registration No. HR-10-O-9367, on the correct side of the road. A jeep, bearing Registration No. HR-15-G-4896 came from the opposite side and was in process to overtake another jeep and in the meantime the driver of jeep bearing Registration No. HR-15-G-4896 lost control over his vehicle and straightaway rammed in the motorcycle being driven by Ravinder (since deceased).

As a sequel to the impact, Ravinder fell down on the road and sustained several injuries on his person. The accident was witnessed by Dinesh, son of Baljit (PW4). He (PW4) noted down the registration number of the offending vehicle. When Dinesh (PW4) was taking care of Ravinder, then taking advantage of the crowd assembled at the spot, the driver of the offending vehicle fled away from there. Ravinder was shifted to Post Graduate Institute of Medical Sciences, Rohtak, and from there he was shifted to Mansarovar Hospital, Rohtak, where he remained admitted upto 19.9.2010 and ultimately succumbed to his injuries on the same day. On the basis of statement suffered by Dinesh (PW4), FIR No. 216, dated 29.8.2010, for the offences punishable under Sections 279, 304-A and 337, IPC, was registered at Police Station, Kharkhoda, District Sonepat. After thorough investigation, charge-sheet (report under Section 173, Cr.P.C.) was presented for the prosecution of respondent No. 5, Naveen, driver of the offending vehicle.

Renu (widow), Anu (minor daughter), Aakash (minor son) and Inshwanti Devi (mother) of Ravinder (since deceased) presented the claim petition before learned Tribunal alleging that at the time of his death, Ravinder was aged about 37 years; he (Ravinder) was working as a 'Gramin Dak Sevak Branch Post

Master' (GDS BPM) under the supervision of Post Master, Sonepat, and was posted at Village and Post Office, Gorar, Tehsil Kharkhoda, District Sonepat; he was getting salary of Rs. 9,450/- (Rupees Nine thousand four hundred and fifty) per month; claimants were wholly dependent upon the salary of Ravinder (since deceased); the accident in which Ravinder (since deceased) had sustained injuries had occurred due to rash or negligent driving of jeep, bearing Registration No. HR-15-G-4896; and that the offending jeep was insured by the appellant-Shri Ram General Insurance Company Limited.

After appearance of the respondents in the claim petition and filing of replies by them, following issues were framed by learned Tribunal:

> *"1. Whether the accident took place due to the rash and negligent driving of respondent No. 1 while driving vehicle bearing no. HR-15G-4896? OPP.*
>
> *2. If issue no. 1 is proved to what amount of compensation and from whom the claimants are entitled to? OPP.*
>
> *3. Whether respondent No. 1 did not possess a valid driving licence at the time of the accident? OPR-3.*
>
> *4. Relief."*

In order to prove their case, the claimants examined Samunder Singh, Criminal Ahlmad of the Court of learned Judicial

Magistrate Ist Class, Sonepat as PW-1; Joginder Singh, Public Relations Inspector, Head Post Office, Sonepat, as PW-2; Claimant No. 1, Renu (widow of Ravinder) as PW-3; Dinesh, an eye witness, as PW-4; Dr. Bal Krishan Goel as PW-5; and ASI Surender Singh as PW-5. The claimants also produced documents (Exs. P-1 to P-15).

The respondents in the claim petition examined Joginder Singh, Public Relations Inspector as RW-1; Naveen Kumar as RW-2; Vishwadeep Kapur, Branch Manager, Shri Ram General Insurance Company Limited, as RW-3; and also tendered documents (Exs. R-1 to R-3).

After hearing learned counsel for the parties, learned Tribunal partly accepted the claim petition and awarded Rs.11,92,450/- (Rupees Eleven lacs ninety two thousand four hundred and fifty) along with interest @ 7.5% per annum from the date of filing of the petition till realization. Learned Tribunal further directed that on realization of the entire amount, a sum of Rs. 2,00,000/- (Rupees two lacs) would be paid to mother of the deceased while remaining amount was to be shared by claimant Nos. 1, 2 and 3. The amount of the shares of minor children of Ravinder (since deceased) was directed to be deposited in a fixed deposit scheme in a nationalized bank till they (minor children) attained the age of majority. The awarded amount was to be paid jointly and severally by the driver, the owner and the insurance company of the offending vehicle.

Feeling aggrieved by the award, insurance company has filed FAO No. 5993 of 2012, while the claimants have preferred FAO No. 6185 of 2012.

Mr. Sanjeev Goyal, learned counsel for the appellant insurance company submits that the cover note (Ex. R-3) was fraudulently obtained by the owner of the offending vehicle; no premium was credited with the appellant insurance company; no insurance policy in consequence of the cover note (Ex. R-3) was issued to the insured; Vishwadeep Kapur (RW-3), Branch Manager of Shri Ram General Insurance Company Limited, specifically deposed that the cover note (Ex. R-3) was not issued by the insurance company; and that learned Tribunal should have exonerated the insurance company from satisfying the award. In support of his contention, he has also referred to Section 64(VB) of the Insurance Act, 1938, which, *inter alia*, provides that if premium is not paid, in that eventuality there would be no liability on the insurance company to indemnify the owner of the vehicle, i.e. insured.

As stated above, FAO No. 6185 of 2012 has been filed by the claimants for enhancement of the award. Mr. Naveen Singh

Panwar submits that the claimants have proved on record that Ravinder (since deceased) was getting salary of Rs. 9,450/- (Rupees nine thousand four hundred and fifty) per month, whereas learned Tribunal has wrongly assessed his (Ravinder) monthly salary as Rs. 8,990/-; there were four dependents and, as such, learned Tribunal has gone wrong in deducting $1/3^{rd}$ as personal expenses from the salary of Ravinder (since deceased); relying upon the judgment of Hon'ble the Supreme Court in the case of **Sarla Verma v. Delhi Transport Corporation, 2009 (3) R.C.R. (Civil) 77**, learned counsel submits that learned Tribunal should have deducted $1/4^{th}$ amount for personal expenses; it was also pointed out that as per the ratio of the judgments of Hon'ble the Supreme Court in the cases of **Sarla Verma (supra)** and **Rajesh and others v. Rajbir Singh and others, (2013) 9 SCC 54,** 50% of the monthly income of the deceased should have been added as 'future prospects'; nothing has been awarded to the minor children for 'loss of love and affection'; learned Tribunal has awarded Rs. 10,000/- (Rupees ten thousand) only against the settled norm of Rs. 1,00,000/- (Rupees one lac) under the head 'consortium'; learned Tribunal has also gone wrong in awarding a meagre sum of Rs.10,000/- (Rupees ten thousand) against the settled norm of Rs.25,000/- (Rupees twenty-five thousand) for funeral expenses;

and that the interest @ 7.5% per annum, awarded by learned Tribunal was also on lower side since Hon'ble the Supreme Court in the matters of **Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, 2015 ACJ 598**, and **Jitendra Khim Shankar Trivedi v. Kasam Daud Kumbhar, 2015 ACJ 708,** had awarded the interest @ 9% per annum from the date of filing of the claim petition till realization.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

So far as the argument raised by Mr. Sanjeev Goyal, learned counsel for the appellant-insurance company that the insurance cover note (Ex. R-3) was fraudulently obtained does not stand to reasons. It is an admitted fact that the cover note (Ex. R-3) was issued by an authorized agent of the appellant insurance company. The person who had issued the said cover note was not produced as a witness before learned Tribunal. There was no averment in the reply filed by the appellant insurance company to the effect that the insurance cover note (Ex. R-3) was fraudulently obtained by the insured from the agent of the said company. Even at the time of framing of the issues, no such issue was pressed upon by the appellant insurance company. Moreover, learned Tribunal has dealt with the argument raised in that regard in para Nos. 24 and 25 of the impugned award.

The argument that the premium was not credited to the account of the appellant insurance company by itself would not be a sufficient ground to believe that the insurance cover note (Ex. R-3) was fraudulently obtained. It might be possible that after charging premium from the insured, the authorized agent did not deposit the said amount with the appellant insurance company. In that eventuality, the insured should not suffer.

In the matter of **New India Assurance Company Limited v. Smt. Saranjit Kaur and others, 2013 ACJ 1184**, this Court held as under:-

> *"13. The statement of Jeevan Kumar (RW-1) may well prove that Gurdeep Singh had stolen the book from the insurance company on which the cover note in question had been issued by him. The insurance company may have proceeded against him on criminal side and the challan may also have been pending against Gurdeep Singh. However, these facts do not negate the fact that the vehicle was insured at the time of accident so far as the owner of the vehicle is concerned. The owner took the cover note from Gurdeep Singh, who is admittedly an employee of the appellant. Jeevan Kumar (RW-1) in his cross-examination has admitted that Gurdeep Singh was working for their office. He has also admitted that the*

alleged cover note (Ex. R1) bears the signatures of said Gurdeep Singh. He has further admitted that the cover note is from the book of cover notes of their branch and that the same had never been cancelled. These facts are sufficient for the insured to take his vehicle as insured and whatever proceedings may be brought by the insurance company against its employee, named, Gurdeep Singh, the insured cannot be said to have not been covered in this case. Therefore, learned Tribunal has not committed any error in taking the vehicle as insured at the time of accident."

As a sequel to the above discussion, there is no force in the submissions of learned counsel for the appellant insurance company.

The arguments raised by learned counsel for the claimants in support of FAO No. 6185 of 2012, appears to be sound. There was no justification for learned Tribunal to have assessed monthly income of Ravinder (since deceased) as Rs. 8,990/- (Rupees eight thousand nine hundred and ninety) when an officer from the Postal Department appeared and produced the salary certificate showing that the monthly salary of Ravinder (since deceased) was Rs. 9,450/- (Rupees nine thousand four hundred and fifty). Therefore, this Court holds that Ravinder (since deceased) was getting monthly salary of Rs. 9,450/-.

This Court also finds that there were four claimants and learned Tribunal has gone wrong in deducting 1/3rd amount from the monthly salary for personal expenses of the deceased. In fact, deduction on account of personal expenses should be 1/4th of the monthly salary. Reference in this regard can be made to the case of **Sarla Verma (supra)**.

While assessing the monthly income, learned Tribunal has also failed to add 50% of the monthly salary for 'future prospects'. Hon'ble the Supreme Court in the case of **Reshma Kumari and others v. Madan Mohan and another, 2013 (2) (R.C.R. (Civil) 660**, had also approved the grant of 'future prospects' to the extent of 50% if a person died at the age of 37 years.

There is also force in the submission of learned counsel for the claimants that nothing has been awarded to the minor children of Ravinder (since deceased) on account of 'love and affection'. This Court is of the opinion that each minor child was entitled to Rs. 1,00,000/- (Rupees one lac) under the said head.

Learned counsel has also rightly argued that the widow should be awarded Rs. 1,00,000/- (Rupees one lac) under the head 'consortium'. It was also rightly argued that instead of Rs. 10,000/- (Rupees ten thousand), the claimants were entitled to Rs. 25,000/- for funeral expenses of Ravinder (since deceased).

This Court also accepts the submission of learned counsel for the claimants that interest awarded @ 7.5% is also on lower side. The claimants are entitled to interest @ 9% per annum from the date of filing of the claim petition till realization.

The annual income of Ravinder (since deceased) after adding the component of 'future prospects' @ 50% of the assessed monthly income comes to Rs. 1,70,100/- (Rupees one lac seventy thousand and one hundred) [Rs.9,450/- + Rs. 4,725 = Rs. 14,175 X 12 months = Rs. 1,70,100/-]. In the year 2010, income tax was payable beyond Rs. 1,50,000/- (Rupees one lac and fifty thousand). Therefore, roughly a sum of Rs. 2,000/- (Rupees Two thousand) has to be deducted as income tax from the aforementioned total income of the deceased. Accordingly, the net annual income of Ravinder (since deceased), after deducting income tax comes to Rs. 1,68,100/- (Rupees one lac sixty-eight thousand and one hundred).

As already noticed in the earlier part of the judgment, deduction on account of personal expenses has to be calculated after deducting 1/4th amount from the assessed salary of the deceased, which comes to Rs. 42,025/- (Rupees forty-two thousand and twenty-five) [Rs. 1,68,100/- X 1/4 = Rs. 42,025/-]. Thus, the net annual dependency of the claimants would be Rs. 1,26,075/-

(Rupees one lac twenty-six thousand and seventy-five) [Rs.1,68,100/- - Rs. 42,025 = Rs. 1,26,075/-). Ravinder (since deceased) was aged 37 years at the time of his death, therefore, learned Tribunal has rightly applied the multiplier of 15. After applying the multiplier, the amount comes to Rs. 18,91,125/- (Rupees eighteen lacs ninety-one thousand one hundred and twenty-five) [Rs. 1,26,075/- X 15 = Rs. 18,91,125/-]. After adding the amounts awarded by this Court under the heads of 'consortium', 'love and affection' and funeral charges', the total amount of compensation comes to Rs. 22,16,125/- (Rupees twenty-two lacs sixteen thousand one hundred and twenty-five) [Rs. 18,91,125/- + Rs. 1,00,000/- + Rs. 2,00,000/- + Rs. 25,000/- = Rs. 22,16,125/-].

To sum up, the claimants would now be entitled to the following amount:-

Sr. No.	**Heads**	**Detail of calculation**	**Amount (in Rs.)**
(A)	**(B)**	**(C)**	**(D)**
1	Assessed monthly income of the deceased		9450
2	Future prospects	50% of 1(D)	4725
3	Monthly income after adding future prospects	1(D) + 2(D)	14175
4	Annual Income	3(D) X 12	170100
5	Less Income Tax		2000
6	Net Annual Income	4(D) - 5(D)	168100
7	Less personal expenses of the deceased	$1/4^{th}$ of 6(D)	42025
8	Dependency of the claimants (Annual)	6(D) - 7(D)	126075

9	Compensation after applying multiplier	8(D) X 15	1891125
10	Loss of consortium, payable to widow of the deceased.		100000
11	Love and Affection (payable to each minor children	100000 X 2	200000
12	Funeral expenses		25000
	Grand Total	Sum of 9(D) to 12(D)	**2216125**

The claimants would also be entitled to interest @ 9% from the date of filing of the petition till realization. The awarded amount along with interest already paid by the appellant insurance company shall be deducted from the enhanced amount awarded by this Court. The amount shall be disbursed to the claimants as per the directions issued by learned Tribunal while passing the award. The whole amount shall be paid by the appellant insurance company.

In view of above, the appeal filed by the insurance company, i.e. FAO No. 5993 of 2012 fails and the same is hereby dismissed, while the appeal filed by the claimants, i.e. FAO No. 6185 of 2012 is partly allowed.

The Registry is directed to return the lower Court record forthwith and place a copy of this judgment on the file of FAO No. 6185 of 2012.

(NARESH KUMAR SANGHI)
JUDGE

April 21, 2015
Pkapoor