IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4039 of 2015 (O&M)
Date of decision : November 06, 2015

National Insurance Company Ltd. .....Appellant

Versus

Pooja and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ravinder Arora, Advocate for
Mr. Neeraj Khanna, Advocate
for the appellant.

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LISA GILL, J

Instant appeal has been filed by National Insurance Company Limited challenging award dated 23.01.2015 passed by the learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the 'Tribunal') whereby compensation to the tune of ₹29,14,284/- has been awarded to claimants-respondents No. 1 to 5 on account of death of Narender.

Brief facts, as mentioned in the claim petition, are that on 10.09.2013 Narender (since deceased) was travelling on Hisar-Delhi bye-pass on motorcycle bearing registration No. HR-20-K-8809 from Hisar. He was at a moderate speed on the correct side of the road.

When he reached near GO Mess, Delhi-Hisar bye-pass at 9.00 p.m. car bearing registration No. HR-20-W-9230 driven by respondent No. 6 – Ravish in a rash, negligent and zig-zag manner came from Hisar side i.e. behind Narender and struck against his motorcycle. Narender received serious injuries. Accident was witnessed by one Dalip Singh son of Subhash Saini (PW5) and Chander Shekhar, who were also travelling on Hisar-Delhi bye-pass from Auto market, Hisar by their car. They were behind Narender's motorcycle. Injured was taken to General Hospital, Hisar, thereafter shifted to Sapra Hospital at Hisar and then to V.K. Neurocare Hospital, Model Town, Hisar. However, he succumbed to his injuries on 20.09.2013 in the hospital. Post mortem was conducted. FIR No. 1124 dated 12.09.2013 (Ex. P33) was registered under Sections 279, 337, 427 IPC at Police Station City Hisar. Report under Section 173 Cr.P.C. (Ex. P-34) was filed and charge (Ex. P-35) was framed on 18.02.2014.

Claim petition under Section 166 of Motor Vehicles Act, 1988 was preferred by the claimants who are widow, minor children and parents of deceased Narender. It was averred that deceased was running a shop of selling mobile phones earning ₹30,000/- per month. Amount of ₹1 crore was claimed as compensation.

Claim was contested by the insurance company as well as owner and driver of the offending vehicle. Factum of the accident was denied.

Following issues were framed by the learned Tribunal:-

1. Whether the accident in question occurred due to rash and negligent driving of the offending vehicle bearing

registration no. HR-20W-9230 by respondent No. 1, as alleged? OPP

2. Whether the petitioners are entitled to recover the compensation from the respondents, if so, to what extent? OPP
3. Whether the present petition of the petitioners is not maintainable in law? OPR
4. Relief.

Learned Tribunal on consideration of facts and circumstances concluded that the accident in which Narender received fatal injuries was caused due to the rash and negligent driving of the offending vehicle by its driver – Ravish. Insurance company was held liable to indemnify the insured.

Age of the deceased – Narender was concluded as 27 years at the time of his death. Income tax return for the assessment year 2011-12 (Ex. P-37) was proved by PW7 Rajesh Kumar, Senior Tax Assistant. Income of the deceased was established to be ₹1,23,000/- per annum on the basis of Income Tax Return. An addition of 50% was extended towards future prospects in view of the judgment of Hon'ble Supreme Court in ***Rajesh and others versus Rajbir Singh and others 2013 (3) RCR (Civil) 170***. Annual income was, thus, calculated at ₹1,84,500/-. Deduction of 1/4th was effected as per guidelines laid down by the Hon'ble Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*** as there are five dependants in this case. Multiplier of 17 was applied in view of the age of the deceased. Total compensation of ₹29,14,284/- was awarded as detailed below:-

Loss of dependency	₹22,10,000/-
Loss of consortium	₹ 1,00,000/-
Loss of love and affection (@₹1,00,000/- each to minor children and parents)	₹ 4,00,000/-
Medical expenses on the basis of bills	₹ 1,79,284/-
Funeral charges	₹ 25,000/-
Total	₹29,14,284/-

Learned counsel for appellant-insurance company vehemently argues that the impugned award is liable to be set aside as the identity of the driver of the offending vehicle is not proved. FIR No. 1124 was registered on 12.09.2013 whereas, the accident took place on 10.09.2013. Furthermore, FIR was registered on the statement of father of the deceased and not Dalip Singh. It is further submitted that FIR in question is clearly false and fabricated as there is no mention of Dalip Singh (PW5) an alleged eye-witness of the accident and whose statement has been relied upon by the Tribunal to prove rash and negligent act on the part of the driver. In case, Dalip Singh had indeed witnessed the accident in question, he would have lodged the FIR.

Quantum of compensation awarded has also been challenged. It is contended that there is no evidence to show that the deceased had any regular income. He was not in Government employment and neither had a permanent job. Therefore, grant of 50% addition in the income on account of loss of future prospects is uncalled for. Reference is made to order dated 02.07.2014 **SLP (c) No. 1673 of 2015** titled **National Insurance Company versus**

Pushpa and others to argue that the matter regarding addition in income on account of future prospects in respect of self employed/privately employed persons stands referred to a larger Bench by the Hon'ble Supreme Court. Therefore, award of compensation on account of loss of future prospects is unjustified. Exaggerated amount has been awarded under the conventional heads, which is liable to be reduced.

I have heard learned counsel for the appellant and perused the available record.

It is not in dispute that FIR No. 1124 dated 12.09.2013 was registered against Ravish i.e. driver of the offending vehicle in respect to the accident in which the deceased lost his life. Report under Section 173 (Ex. P-34) as well as charge (Ex. P-35) is on record. It is not denied that the said respondent is facing criminal proceedings. Mere delay of two days in registration of the FIR in the peculiar facts of the case is not a circumstance to conclude that the accident in question did not take place as claimed.

It has been held by the Hon'ble Supreme Court in **Parmeshwari v. Amir Chand and others*, 2011(2) RCR (Civil) 153*** that in cases under this Act, it is the touchstone of preponderance of probabilities on which the case of the claimants has to be tested. There should not be insistence on proof beyond reasonable doubt as in criminal cases. There is indeed no evidence on record to suggest that the identity of the driver does not stand established. Insurance company cannot be absolved of its liability in such circumstances. It has rightly been held by the learned Tribunal that the only irresistible conclusion which can be drawn is that the accident in question took place due to rash and negligent driving of the offending vehicle by the respondent – driver.

Perusal of the FIR Ex. P33 reflects that it has been registered on the basis of statement of father of the deceased, who revealed that he received telephonic message on 10.09.2013 that his son had met with an accident. Number and description of the car has not been disclosed by him which appears natural in the facts and circumstances of the case as he states that he immediately took his son for medical treatment. PW5 Dalip Singh has specifically deposed that his statement was recorded by the police at Padao Chowki, Police Station City Hisar. After due investigation, challan/report under Section 173 Cr.P.C., Ex. P-34 was presented against the driver in question. Charge was framed against the said driver who is admittedly facing trial. Medical bills as well as Post Mortem Report of Narender (Ex. P-39) on record proved that Narender died due to fatal injuries suffered by him in the said accident. There is nothing on record to suggest anything to the contrary. Thus, there is no infirmity in the finding returned by the learned Tribunal on this count.

In respect to the question of award of compensation on account of future prospects, it cannot be denied that the Hon'ble Supreme Court has specifically held in the case of **Rajesh** (supra) as well as **Munna Lal Jain v. Vipin Kumar Sharma, (*2015) 6 SCC 347*** that there should be an addition in the income on account of loss of future prospects as per the age of the deceased even in case of self-employed/privately employed persons. Though a reference is made to order dated 02.07.2014 of the Hon'ble Supreme Court in SLP CC No.8058 of 2014 (National Insurance Company Ltd. v. Pushpa and others) to submit that the matter in respect to addition in income on account of future prospects of self-employed persons etc. stands referred to a larger Bench, it is not disputed that operation of the decision in the case of **Rajesh** (supra) has not been stayed. Decision in **Munna Lal Jain's** case (supra) has been rendered subsequent to the reference. Therefore, there is no illegality or infirmity in award of compensation in this respect.

Furthermore, claimants are clearly entitled to the amount awarded on account of loss of consortium and funeral expenses. Entitlement on account of loss of love and affection to the children can also not be denied keeping in view the judgments of Hon'ble Supreme Court in the case of **Rajesh** (supra) as well as ***Vimal Kanwar versus Kishore Dan and others*** (2013) 7 SCC 476 and ***Reshma Kumari and versus Madan Mohan and another*** (2013) 9 SCC 65. There is no ground for reduction in the quantum of compensation.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity which warrants interference by this Court.

Appeal is, accordingly, dismissed.

(Lisa Gill)
Judge

November 06, 2015
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