IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 18.08.2015.

FAO No.918 of 2013

Sunita and others ....Appellants.

VERSUS

Naresh Kumar and others ....Respondents.

WITH

FAO No.1095 of 2013 (O&M)

United India Insurance Company Ltd., Sirsa ....Appellant.

VERSUS

Sunita and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate for the appellants.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

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<u>SNEH PRASHAR, J.</u>

The two first appeals, particulars of which have been given above, had arisen from an award dated 27.11.2012 passed by Motor Accident Claims Tribunal, Kurukshetra in MACT petition No.91 of 2011. Both shall be disposed of by this common judgment in FAO No.918 of 2013.

Before proceeding to the contentious issues, a short sketch of the facts is given hereunder:-

On 06.06.2011, Karam Chand, employed as Head Constable with Haryana Police was coming to his house from bus stand Kurukshetra by means of his motorcycle bearing registration No.HR-07K-9312. He was driving the motorcycle in a normal speed, on his left side of the road and was being followed by his brothers Dharam Pal and Rakesh Kumar. When at about 20:15 hours, he reached near Mahadev Gaushala, a car bearing registration No.HR-07P-1185 (hereinafter referred to as the "offending car") came from the side of Kurukshetra being driven in a rash and negligent manner and struck against his motorcycle, as a result of which he fell down and suffered multiple, serious and grievous injuries. He was taken to L.N.J.P. Hospital, Kurukshetra but his condition being serious was referred to P.G.I., Chandigarh. He succumbed to the injuries on 07.06.2011 at Government Medical College, Sector-32, Chandigarh. First Information Report No.279 dated 07.06.2011 under Sections 279 and 304-A of the Indian Penal Code was registered at Police Station City, Thanesar, in respect of the accident.

Appellants, Smt. Sunita being widow alongwith two minor children and father of the deceased filed a petition under Section 166 and

140 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation on account of untimely death of Shri Karam Chand in the accident.

The petition was contested by respondents No.1 and 2 driver and owner of the offending car as well as by respondent No.3 (appellant in FAO No.1095 of 2013) being the insurer of the said car. Respondents No.1 and 2 took the stand that the accident occurred due to rash and negligent driving of the motorcycle by deceased Karam Chand himself. Respondent No.3-insurer raised objections that the offending car was being driven in violation of the terms and conditions of the insurance policy; the petition had been filed in collusion with the petitioners; and that the offending car was not the vehicle involved in the accident.

On the rival contentions of the parties, following issues were settled:-

1. Whether the accident in question, resulting into death of Karam Chand, was caused due to rash and negligent driving of Car bearing registration No.HR-07P-1185 by its driver, respondent No.1, as alleged? OPP.

2. If issue No.1 is proved, to what amount of compensation, the claimants are entitled to and from whom? OPP.

3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident? OPR.

4. Whether the petitioners have no locus-standi and or cause of action to file and maintain the present petition? OPR.

5. Whether the vehicle in question was being driven in contravention of the terms and conditions of the Policy of insurance and also against the provisions of Motor Vehicle Act, 1988? If so, to what effect? OPR.

6. Relief.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the Tribunal partly allowed the claim petition with costs. A sum of Rs.35,00,000/- was awarded as compensation to the petitioners and the respondents were held jointly and severally liable for payment of the said amount alongwith interest at the rate of 6% per annum from the date of filing of the petition.

Being unsatisfied with the amount awarded as compensation vide the award dated 27.11.2012, appellants filed FAO No.918 of 2013. Similarly, being aggrieved, the insurance company (respondent No.3) preferred an appeal vide FAO No.1095 of 2013.

From the arguments submitted by learned counsel for the insurance company as well as from the grounds of appeal of the said appellant-respondent No.3, it transpires that there is no dispute regarding liability of the insurance company to pay the compensation amount being insurer of the offending car. The insurer only seems to be unsatisfied with the quantum of award passed by the Tribunal. It has also raised question regarding entitlement of appellant No.4, father of the deceased to claim compensation.

In the above premises, there appears no necessity for this Court to go into the findings of learned Tribunal as far as Issues No.1 and 3 are concerned, under which it was held that the accident in question, which costed the petitioners life of Shri Karam Chand - deceased had taken place on account of rash and negligent driving of the offending car owned by respondent No.2 and being driven by respondent No.1 under his employment and that the driver was holding a valid and effective driving licence at the time of accident.

The submissions made by Mr. Sagar Aggarwal, learned counsel representing the appellants-claimants and Mr. R.K. Bashamboo, learned counsel representing the appellant-respondent No.3 insurance company have been heard.

Learned counsel for the appellants-claimants argued that although the Tribunal correctly assessed the notional income of the deceased as well as the dependency of the claimants by taking into consideration future prospects and applying the multiplier of 15, but the amount awarded under the head of loss of consortium; of funeral expenses; and loss of estate was on a very low note. No amount was awarded for loss of love and affection to the claimants. To support his argument that the claim deserves to be enhanced on the said counts, learned counsel relied upon ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(2) W.L.N. (SC) 113.***

Learned counsel for the appellants-claimants further argued that for the purpose of deciding net monthly income of the deceased no pecuniary benefit being received by the dependents from the State Government on account of death of their only bread earner who was a government employee, can be made. So much so that even if the widow of the deceased is given service on compassionate grounds, the salary being received by her is not liable for deduction while determining the compensation payable under the Act of 1988. To support his argument, learned counsel relied upon ***Vimal Kanwar and others vs. Kishore Dan and others, 2013(3) Recent Apex Judgments (R.A.J.) 446*** and ***Manasvi Jain vs. Delhi Transport Corporation, 2014(3) R.C.R. (Civil) 313.***

On the other hand, learned counsel for the insurance company argued that it was stated by PW3 Rajesh Kumar, Assistant Sub Inspector of Accounts Branch, S.P. Office, Yamuna Nagar, that on account of death of Shri Karam Chand in the accident the State Government would pay full salary of the deceased to his wife in view of the Haryana Compassionate Assistance Policy formulated by the State. He added that annual increment of 3% on basic pay is also being added regularly to the salary of the deceased being paid to the widow. The basic pay and salary will also be increased as per rules from time to time. Learned counsel contended that as per the Haryana Compassionate Assistance Policy the widow will be entitled to full salary for 12 years as the deceased was in the age group of 35-48 years. Subsequent to that the widow will be entitled to grant of family pension as per the rules and in that manner the claimants did not suffer complete loss of salary of the deceased.

Relying on the formula laid down by this Court in ***Oriental Insurance Company Ltd. vs. Saroj Devi and others, 2012(3) R.C.R. (Civil) 292*** which was upheld by Division Bench of this Court in ***Reliance General Insurance Company Limited vs. Purnima and others, 2013(2) R.C.R. (Civil) 42***, learned counsel asserted that the compensation to which the claimants are entitled to be calculated as per the formula laid down in the said case.

It was further argued by learned counsel that as laid down in ***Sarla Verma vs. D.T.C. And another, 2009(3) R.C.R. (Civil) 77*** father of the deceased namely Karam Chand (appellant No.4) was not a dependent of the deceased and was not entitled to compensation. Since there were three dependents i.e. widow and two minor children, the deductions towards the personal expenses of the deceased should have been taken as 1/3rd of his annual income.

There appears no merit in the arguments of learned counsel for the insurance company that the amount being paid as GIS, Haryana Roadways bus fare, kit maintenance allowance and ration money etc. should be deducted while assessing the monthly income of the deceased. The amount being paid under the said heads was part of the income of the deceased and no amount under any of the heads is required to be deducted. However, the argument of learned counsel for the insurance company that the father was not to be considered as a dependent of the deceased, has to be accepted in absence of evidence of the petitioners that he was having no independent income of his own. The father, being the head of the family, must be earning for himself and his family and was not a dependent of the deceased as was laid down in *Sarla Verma vs. D.T.C. and another's case (supra)*.

Accordingly, the dependents of the deceased are three in number, namely Sunita-widow, Shyambir minor son and Surbhi minor daughter.

In *Saroj Devi and others' case (supra)* the legal issue before this Court was regarding the measure of compensation that an insurance company or an owner is required to pay, in case of a death having been caused by the use of motor vehicle in a public place, in the face of a compassionate assistance policy formulated by the State (State of Haryana) which enables the claimants i.e. deceased's family, to tide over the financial crisis, resulting from the death of the earning member, by providing full salary for a certain number of years (which is determined by the age of the deceased government employee) followed by family pension for the remainder term.

Admittedly, deceased Shri Karam Chand was employed as Head Constable with Haryana Police. PW3 A.S.I. Rajesh Kumar proved the salary sheet of the deceased for the month of May, 2011 as Ex.P1. As per the said salary sheet the deceased was getting gross salary of Rs.20862/-. Learned Tribunal assessed the monthly income of the deceased as Rs.20800/-.

As stated by PW3, the date of birth of the deceased as per his service record was 06.10.1972 and the date of his retirement was 31.10.2030. The accident took place on 06.06.2011 and Shri Karam Chand died on 07.06.2011. On the date of his death, he was 38 years and 8 months old. He was to retire at the age of 58 years. According to Haryana Compassionate Assistance Policy, the widow-dependent of deceased Karam Chand would get full salary for 12 years. The annual increments as well as the salary will be increased from time to time as per rules. The gross salary of the deceased as per salary certificate Ex.P1 does not cross the income tax exemption limit keeping in kind that the deceased would have made savings as permitted under the Income Tax Rules. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)		Rs.20800/-
2.	Actual age of the deceased		38 years
3.	Notional age (actual age of the deceased + the number of years of full last drawn salary as per Compassionate Rules)		38+12 = 50 years
4.	Increase in future Income as per Sarla Verma case (supra)		Rs.6240/-
5.	Annual dependency		2/3 of Rs.27040 x 12
6.	Multiplier as per Sarla Verma case (supra) (to be broken into 2 parts if multiplier spills over the age of 58 years. Before + after superannuation		13 (8+5)
7.	Compensation for full salary period i.e. upto 58 years (rounded off)		Rs.17,30,560/-
8.	Compensation for pension period i.e. after 58 years (rounded off)		Rs.5,40,800/-
9.	Total		Rs.22,71,360/-

In addition to the amount of Rs.22,71,360/- calculated towards dependency, the amount of Rs.10,000/- awarded under the funeral expenses is enhanced to Rs.25,000/- whereas the amount of Rs.20,000/- awarded towards loss of consortium is enhanced to Rs.1 lac. A further amount of Rs.40,000/- is awarded to the appellants for loss of love and affection. In the above premises, the appellants-claimants are held entitled to compensation of Rs.24,36,360/- as indicated above.

In the above premises, the appeal filed by the claimants as well as the appeal filed by the insurance company are partly allowed. Accordingly, the award dated 27.11.2012 passed by the tribunal is modified. An amunt of Rs.24,36,360/- is awarded as compensation to the appellants-claimants which shall be deposited by the insurance company alongwith interest at the rate of 7.5% per annum from the date of petition till realization. In case the insurance company has already deposited the amount of Rs.30 lacs in compliance of order of this Court dated 18.03.2013, the excess amount, if any, be returned to the insurance company. The amount of compensation with interest as allowed above, will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the tribunal.

(SNEH PRASHAR)
JUDGE

18.08.2015.
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