

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

(1)

FAO No.3250 of 2011 (O&M)

Date of decision : 14.09.2016

National Insurance Company Ltd.

.....Appellant

Versus

Smt. Laxmi Devi and others

...Respondents

(2)

FAO No.5351 of 2011

Date of decision : 14.09.2016

Smt. Laxmi Devi and others

.....Appellants

Versus

Davinder Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Neeraj Khanna, Advocate for appellant-Insurance Company in FAO No.3250 of 2011 and for respondent No.3-Insurance Company in FAO No.5351 of 2011.

Mr. D.D. Gupta, Advocate for respondents No.1 to 4 in
FAO No.3250 of 2011 and for appellants in
FAO No.5351 of 2011.

DARSHAN SINGH, J.

This judgment shall dispose of both the appeals captioned above, which have arisen out of the same award dated 22.12.2010, passed

by learned Motor Accidents Claims Tribunal, Panchkula (hereinafter called the "Tribunal"), vide which the appellants-claimants of FAO No.5351 of 2011 have been awarded compensation to the tune of Rs.13,27,000/- on account of death of Sita Ram in the motor vehicular accident, which took place on 29.03.2009.

2. FAO No.3250 of 2011 has been filed by the National Insurance Company Limited (respondent No.3 in the claim petition) to assail the award, whereas FAO No.5351 of 2011 has been filed by the claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and have gone through the record carefully.

4. Initiating the arguments, Mr. Neeraj Khanna, Advocate, learned counsel for the appellant-Insurance Company contended that deceased himself was negligent in this accident. He contended that the bus in question was coming from the front side but the deceased struck his motorcycle in the bus by going on the wrong side of the road. He contended that the site plan Ex.R2 clearly establishes that the motorcycle had come on the wrong side of the road. Thus, the driver of the bus bearing registration No.HP-64-4201 cannot be held liable or at the most it can be a case of contributory negligence. Contributory negligence of deceased Sita Ram will be much higher than the driver of the bus as deceased has come on the wrong side of the road. Thus, he pleaded that the claimants were not entitled for any amount of compensation.

5. On the other hand, learned counsel for the appellants-

claimants contended that it was established from the evidence on record that respondent No.1 Davinder Kumar the driver of the bus was negligent for causing this accident. He contended that site plan Ex.R2 does not convey the true picture as the spot was inspected by the police on the next day in the evening *i.e.* much after the accident. He contended that there is no rebuttal to the evidence adduced by the claimants on the issue of negligence.

6. He further contended that the learned Tribunal has not awarded the just amount of compensation. The age of deceased has been wrongly determined by the learned Tribunal. He contended that the date of birth of the deceased is mentioned in the salary certificate. As per the said date of birth, he was below 55 years of age. Thus, the multiplier of 11 should have been applied. He further contended that no future prospects have been added to the income of the deceased, though he was a permanent employee. He further contended that just amount has not been awarded by the learned Tribunal towards the other conventional heads.

7. He further contended that less amount of interest has been awarded by the learned Tribunal. The interest should have been awarded at the rate of 12% per annum. He relied upon case ***Puttamma and others Vs. K.L. Narayana Reddy and another 2014(1) RCR (Civil) 443.***

8. I have duly considered the aforesaid contentions.

9. In order to establish that the present accident has taken place due to rash and negligent driving of bus bearing registration

No.HP-64-4201 by respondent No.1 Davinder Kumar the claimants have examined Sanjeev Kumar an eye witness of the occurrence as PW-3. In his affidavit Ex.PA, PW-3 Sanjeev Kumar alias Sanju has categorically deposed that Sita Ram deceased, his father, was going to his duty on motorcycle Hero Honda Splendor bearing registration No.HP-15-6605 from his house. He was driving the motorcycle at moderate speed and on the correct side of the road. He along with his cousin Raj Kumar were also going on the Scorpio jeep bearing registration No.HR-49-9300 towards Kalka for their personal work. When deceased Sita Ram reached near the first curve of village Paploha, Tehsil Kalka, Distt. Panchkula, the bus in question being driven by respondent No.1 rashly and negligently at a very high speed came from Kalka side and hit the motorcycle of Sita Ram from the front side. As a result of which, he fell down on the road and sustained the injuries. He further deposed that the driver of the bus was driving the bus without blowing the horn and without obeying the traffic rules in a very negligent manner and he run away from the spot. This witness was cross-examined at length by learned counsel for respondents but they could not shatter his testimony in the cross-examination on the mode of the accident. The testimony of PW-3 is further corroborated from the fact that respondent No.1 Davinder is facing the prosecution for causing this accident, which is also evident from the statement of PW-1 Pawan Kumar, Additional Ahlmad in the Court of A.C.J.M., Panchkula.

10. There is no rebuttal to the aforesaid evidence adduced by

the claimants. The respondents in their evidence have only examined RW-1 Uday Vir Singh, Clerk-cum-Typist in the Court of A.C.J.M. Panchkula, who has simply brought the record of the criminal case. RW-2 HC Jai Singh was the Investigating Officer of the criminal case and he has proved the site plan Ex.R2. He deposed that the site plan was prepared correctly by him in accordance with the position at the spot in the presence of complainant Sanjeev Kumar and his cousin Raj Kumar. In the cross-examination he admitted that he reached at the scene of occurrence on 30.03.2009 at 03:00/03:15 p.m. At that time, the motorcycle and the bus were available at the spot and the traffic was going on on the road. But he has nowhere stated that deceased was negligent or contributory negligent for causing the accident as per the investigation carried out by him, rather it is evident from the material on record that after carrying out the detailed investigation the report under Section 173 of the Code of Criminal Procedure, 1973 has been presented against respondent No.1 Davinder Kumar.

11. Mere site plan Ex.R2 is no ground to establish the negligence or contributory negligence on the part of the deceased. RW-2 HC Jai Singh the Investigating Officer of the criminal case has admitted that he has inspected the spot on the next day at about 03:00/03:15 p.m. *i.e.* after more than 24 hours of the accident. The place of accident is a public road. The site plan Ex.R2 shows that both the vehicles were lying on the side of the road. It may be possible that someone might had shifted the vehicles to the side of the road in order to clear the road for traffic.

Moreover, the site plan never depicts the true position of the vehicle after the accident. Nobody can predict as what would be the position of the vehicle after the impact. Respondent No.1 Davider Kumar, the driver of the bus was the best witness to prove the negligence or contributory negligence on the part of the deceased but he has not been examined, which raises an adverse interference against the respondents. Thus, there is nothing to disbelieve the evidence adduced by the claimants, which clearly establishes that the present accident has taken place due to rash and negligent driving of bus bearing registration No.HP-64-4201 by respondent No.1 Davinder Kumar and the plea raised by learned counsel for the appellant-Insurance Company with respect to the negligence or contributory negligence of the deceased has no substance.

12. I found substance in the contentions raised by learned counsel for the claimants that the just amount of compensation has not been awarded to the claimants. The learned Tribunal has correctly taken the income of the deceased to be Rs.22,000/- per month *i.e.* Rs.2,64,000/- per annum on the basis of the salary certificates and other evidence brought on record.

13. Now we have to determine the age of the deceased. Learned counsel for the claimants contended that he was below 55 years of age as per the date of birth mentioned in the salary certificate. I have perused the salary certificate Ex.P2. The date of birth of the deceased is mentioned as 17.03.1954 on the upper part of the salary certificate, which is an unusual aspect as the date of birth of an employee is never

mentioned in the salary certificate. Ex.P30 is the copy of the ration card, which shows the age of the deceased as 52 years as on 14.08.2004. This accident has taken place on 29.03.2009. Thus, as per the age of the deceased mentioned in the ration card, he was more than 56 years of age. So, the learned Tribunal has rightly taken the age of the deceased to be 56 years.

14. The learned Tribunal has not added any future prospects to the income of the deceased. As the deceased was in the age group of 50 to 60 years, so 15% of the income of the deceased should have been added towards the income of the deceased. Thus, the monthly income of the deceased comes to Rs.25,300/- (22,000 + 3300) *i.e.* Rs.3,03,600/- per annum. 1/4th of the income of the deceased is to be deducted towards his personal and living expenses. The remainder comes to Rs.2,27,700/- (3,03,600 - 75,900). In view of the age of the deceased, the multiplier of 09 shall be applicable. The loss of dependency comes to Rs.20,49,300/-.

15. The learned Tribunal has rightly awarded a sum of Rs.25,000/- towards treatment and transportation expenses. Learned Tribunal has awarded very less amount of Rs.5000/- to claimant No.1 towards loss of consortium and Rs.10,000/- towards funeral and last rites expenses, which are required to be enhanced. Hence, claimant No.1 shall be entitled to a sum of Rs.1,00,000/- towards loss of consortium. The claimants are also entitled to a sum of Rs.25,000/- towards loss of funeral and last rites expenses. Learned Tribunal has not awarded any amount to the children of deceased towards loss of love and care. No amount has

been awarded to the parents of the deceased *i.e.* proforma respondents No.4 and 5 towards loss of love and affection of their son. Thus, in addition to the aforesaid amount, the appellants-claimants No.2 to 4 and proforma respondent No.6, the children of the deceased shall also be entitled to Rs.1,00,000/- towards loss of love, care and guidance. Proforma respondents No.4 and 5 the parents of the deceased shall also be entitled to a sum of Rs.1,00,000/- on account of loss of love and affection of their son. Total amount of compensation payable to the claimants comes to Rs.23,99,300/-.

16. The plea raised by learned counsel for the appellants-claimants that less rate of interest has been awarded by the learned Tribunal is without any substance. I have carefully gone through case ***Puttamma and others Vs. K.L. Narayana Reddy and another*** (supra) relied upon by learned counsel for the appellants-claimants. The Hon'ble Apex Court in that case has categorically mentioned that rate of interest must be just and reasonable depending upon the facts and circumstances of the case which should be decided after taking into consideration the relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case remained pending. In the instant case, the accident has taken place in the year 2009. The claim petition was decided by the learned Tribunal in December, 2010 *i.e.* within two years of the accident. It is also a fact of common knowledge that now a days even the nationalized banks are granting interest on the fixed deposits ranging from 7.5% to 8.5%. The

learned Tribunal has awarded the interest at the rate of 7.5% per annum which is quite just and reasonable.

17. Thus, keeping in view my aforesaid discussion, FAO No.3250 of 2011 preferred by the appellant-Insurance Company has no merits and the same is hereby dismissed. FAO No.5351 of 2011 preferred by the appellants-claimants is hereby partly allowed. The amount of compensation payable to the appellants-claimants is enhanced to Rs.23,99,300/- from Rs.13,27,000/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount of compensation and apportionment amongst the claimants shall remain as determined by the learned Tribunal in the main award.

14.09.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No