IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3178 of 2016 (O&M)
Date of Decision: 11.07.2016

United India Insurance Company Ltd.

......Appellant

Vs.

Shyam Lal and others

.........Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Suvir Dewan, Advocate,
for the appellant.

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AMOL RATTAN SINGH, J.

This is an appeal by the insurance company, that has been held liable to pay compensation of Rs. 7,77,000/- along with interest @ 6% per annum thereupon, to respondent Nos. 1 to 4 herein, for the death of Banke Lal in a motor vehicle accident on 07.11.2014. The aforesaid respondents are the children of the late Banke Lal, respondents No. 1 and 2 being aged 19 and 18 years respectively at the time of filing of the claim petition and respondents No. 3 and 4 aged 9 and 8 years respectively.

2. The facts, as taken from the impugned award of the learned Motor Accidents Claims Tribunal, Mohali, are that on 07.11.2014, Banke Lal had been walking home along with his son, respondent No. 1 herein and at about 6:00 p.m. they started

crossing the Chandigarh-Ambala Road near the Kohinoor Dhaba. After Banke Lal had crossed the road and reached the other side, with his son still standing on the divider in between, a Hero Honda motorcycle bearing registration No. HR-01-AD-1958, driven by respondent No. 5 herein, allegedly in a rash and negligent manner, came from the side of the Chandigarh and struck against Banke Lal, resulting in multiple injuries to him. Respondent No. 5 though had also fallen down, however, allegedly ran away from the spot with his motorcycle, while respondent No. 1 (Shyam Lal) was taking care of his injured father.

Though Shyam Lal took his father to the Government Medical College Hospital, Sector 32, Chandigarh, he was further referred to the PGI, where he succumbed to his injuries on 08.11.2004.

An FIR was got registered on 09.11.2014 against respondent No. 5.

3. It was contended that Banke Lal was aged 48 years and was earning Rs. 15,000/- per month, by selling *pakoras and samosas* from a handcart.

Rs. 40,00,000/- compensation, along with interest thereupon, was prayed for by the claimants.

4. Upon notice issued to them, present respondents No. 5 and 6, i.e. the driver and owner of the aforesaid motorcycle, appeared and filed a written statement, taking preliminary objections with regard to non-maintainability of the petition, etc. and also denying the accident completely, further stating that the deceased was more than 55 years of age.

The present appellant, i.e. the insurance company with which the motorcycle was insured, filed a separate written statement also taking the usual preliminary objections, including the non-validity of the driving license of respondent No. 5 herein, and contravention of the terms and conditions of the insurance policy etc.

On merits, the contents of the claim petition were denied for want of knowledge.

5. Upon the usual issues of negligence in causing the accident, maintainability, amount of compensation payable if any, and the validity of the driving license, having been framed, the learned Tribunal appraised the evidence led by the parties.

The claimants examined present respondent No. 1-Shyam Lal, and one Joginder Singh and also tendered four documents by way of evidence.

The respondents did not lead any oral evidence but tendered copies of the cover note of the insurance policy and the driving license of respondent No. 5 and closed their evidence.

Upon a doubt having been expressed as to the identity of the claimants, they also tendered photocopies of the voter-card of their father and their mother, along with Aadhar Cards issued to respondents No. 1, 3 and 4, upon which their identity stood established.

6. The issue of negligence was held in favour of the claimants, with respondent No. 5 having been found negligent in driving his motorcycle, leading to the death of Banke Lal, which finding is not under challenge by the insurance company, even in this appeal, as only the quantum of compensation has been

challenged.

7. Mr. Suvir Dewan, learned counsel for the appellant-insurance company, submits that the Tribunal erred in awarding 15% of the assessed dependent income of the respondents-claimants, towards loss of future prospects of an increased income of the deceased, inasmuch as the judgment of the hon'ble Supreme Court in Rajesh and others vs. Rajbir Singh and others, (2013) 9 SCC 54, wherein, in the case of a deceased person who was above 50 years of age and was self employed, it has been held that the claimants would be entitled to 15% of such income as aforesaid, has been referred to a larger Bench of the Supreme Court in **National Insurance Company Ltd.** vs. **Pushpa** (2015) 9 SCC 166 and as such, the matter being sub judice before their Lordships, the disbursement of the amount calculated aforesaid, i.e. amounting to Rs. 85,050/- should not have been ordered.

8. Having heard learned counsel for the appellant-insurance company, whereas he is obviously correct in contending that the matter is under consideration of the Supreme Court, having been referred to a larger Bench, in view of the fact that in **Rajeshs' case** (supra), the earlier judgment in **Reshma Kumari and others** vs. **Madan Mohan and another** (2013) 9 SCC 65 was not considered, however, it is seen that in the present case, though undoubtedly, on that ground the disbursement of the aforesaid amount of Rs. 85,050/- should be stayed, however, only Rs. 1,00,000/- has been awarded to respondents No. 3 and 4 herein, i.e. the minor sons of the deceased, towards loss of love and affection and care and guidance of their father, whereas no amount whatsoever has been awarded by the Tribunal to respondents No. 1 and 2, who were also

aged only 19 and 18 years respectively, at the time of death of their father, under that head.

9. As regards the income assessed by the Tribunal, it is seen that the contention of the claimants that Banke Lal was earning Rs. 15,000/- per month was not accepted but on the presumption that even by putting in physical labour, he could be earning Rs. 250/- to Rs. 300/- a day, his monthly income was accepted to be Rs. 7,000/-. I find no ground to interfere with that finding.

10. Though it was contended that Banke Lal age was 48 years, it was taken to be 57 years by the Tribunal, on the basis of a voter identity card of the deceased, in which he was shown to be 36 years of age as on 01.01.1995. Therefore, the accident having taken place almost 20 years thereafter, he was taken to be 57 years of age at the time of his death on 01.11.2014.

Consequently, a multiplier of 9 was applied to his annual income of Rs. 84,000/-, to which 15% was added as loss of future prospects of an increased income, as already discussed hereinabove, coming to the final figure of Rs. 8,69,700/- to be the income of the deceased, from which 1/4th thereof was deducted towards his personal expenses.

Thus, the total loss of dependent income was calculated to be Rs. 6,52,050/-. Respondents No. 3 and 4 herein were awarded another Rs. 1,00,000/- towards the loss of love and affection of their father and all the claimants were also held entitled to Rs. 25,000/- by way of expenses incurred on the last rites of the deceased. Hence, the total compensation awarded came to Rs. 7,77,000/-

11. Now, with respondents No. 1 & 2 not having been awarded any compensation for the loss of love and affection of their father, if even an amount of Rs. 50,000/- each is to be awarded to them, obviously the said amount of Rs. 1,00,000/- would exceed Rs. 85,050/- awarded by the Tribunal, towards loss of future prospects of income.

Consequently, that aspect would be kept in mind in any appeal filed for enhancement of compensation (if any) by the respondents-claimants. However, in view of the fact that though the respondents-claimants may not have been entitled to Rs. 85,050/- by way of loss of future prospects of an increased income of the deceased, [dependent upon the outcome of the ratio of the judgment in **Pushpas' case** (supra)], they still would be, in the opinion of this Court, entitled to an additional total sum of Rs. 1,00,000/-, towards the loss of love and affection of their father.

12. Hence, I find no merit in this appeal, which is dismissed in *limine,* with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

July 11, 2016
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