IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1)

FAO No.678 of 2013 (O&M)
Date of Decision: July 23, 2016.

The Oriental Insurance Company Limited

.....APPELLANT(s).

VERSUS

Goga Bai @ Goga Devi and another

.....RESPONDENT(s).

(2)

FAO No.1719 of 2013 (O&M)

Goga Bai @ Goga Devi and another

.....APPELLANT(s).

VERSUS

Sukhpal Singh @ Pala and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant in FAO-678-2013 and
for respondent No.2 in FAO-1719-2013.

Mr. Rohit Kumar, Advocate
for respondent No.1 in FAO-678-2013 and
for appellant in FAO-1719-2013.

****

SURINDER GUPTA, J.

The above captioned appeals have been filed by Oriental Insurance Company Limited and claimant Goga Bai @ Goga Devi against the award dated 13.08.2012 passed by Motor Accident Claims Tribunal, Bathinda (later referred to as 'the Tribunal') awarding compensation of ₹6,57,000/- for the death of Ranjit Singh @ Jita (later referred to as 'the deceased') in a motor vehicle accident with motorcycle bearing registration

Sachin Mehta
2016.08.05 15:27
I attest to the accuracy and
authenticity of this document
HIGH COURT, CHANDIGARH

No.PB-03U-0914 (later referred to as 'the offending vehicle'), being driven by Sukhpal Singh @ Pala, respondent No.1.

2. The case of the claimant, in brief, is that on 20.09.2010 at about 07.30 p.m., the deceased was going on his bicycle from Bhucho Chowk to Bhucho Mandi on the extreme left side of the main road. He was being followed by Passi Chand and Mahesh Kumar, who were on their motorcycle. In the meantime, the offending vehicle, which was being driven by respondent No.1 in a rash and negligent manner, came at high speed and hit the bicycle of the deceased, who received multiple injuries and was taken to Civil Hospital, Bhucho Mandi on the vehicle of Sahara Club, but due to his serious condition, he was brought to Bakshi Hospital, Bathinda, and remained admitted there upto 27.09.2010 and then brought to Medicity Hospital, Ludhiana, where he succumbed to the injuries on 05.10.2010.

3. The deceased was 22/23 years of age and was unmarried. He owned a tractor which he was plying for loading and unloading marbles at the shops situated at Bhucho Mandi, thereby earning ₹15,000/- per month. The matter was reported at Police Station Nathana, District Bathinda vide FIR No.147 dated 05.10.2010.

4. In his written statement, respondent No.1, being driver and owner of the offending vehicle, denied that the accident had taken place due to his fault. He was wrongly named in the FIR got registered with the police and the accident was not caused due to rash and negligent driving of his motorcycle.

5. Insurance company, in its separate written statement, denied the

Sachin Mehta
2016.08.05 15:27
I attest to the accuracy and
authenticity of this document
HIGH COURT, CHANDIGARH

accident and alleged that the accident, if any, occurred due to rash and negligent driving of the scooter by deceased.

6. On appraisal of evidence, the Tribunal observed that the accident in question was caused by respondent No.1 due to rash and negligent driving of offending vehicle. It is also pertinent to mention that the plea taken by the insurance company that the accident was caused due to rash and negligent driving of the scooter by deceased, is baseless as no scooter was involved in the accident. The Tribunal did not accept the plea of claimant that the deceased was earning ₹15,000/- per month and assessed his income as a casual labourer @ ₹4,500/- per month and on making deduction of 1/3rd towards personal expenses, by applying multiplier of 13 as per the age of the claimant, assessed the amount of dependency as ₹4,68,000/- to which ₹6000/- were added towards general damages and loss of estate, ₹3000/- on account of funeral expenses and ₹1,79,504/- towards medical expenses, proved on record through medical bills/receipts and awarded total compensation of ₹6,57,000/-.

(For the sake of convenience, learned counsel for the parties will be referred as learned counsel for the claimant and learned counsel for the insurance company, as per the claim petition).

7. Learned counsel for the insurance company has put forth two arguments. Firstly, the Tribunal has wrongly made deduction of 1/3rd towards personal expenses of the deceased, who was a bachelor and as per observations in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** 1/2 of income of the deceased should be deducted towards his personal expenses. Secondly, there is delay

Sachin Mehta
2016.08.05 15:27
I attest to the accuracy and
authenticity of this document
HIGH COURT, CHANDIGARH

of 15 days in reporting the matter to the police. The complainant is non-else than cousin of deceased and there was no reason for him not to report the matter to police immediately after the accident which shows that the version regarding the accident as put forth by the claimant, is not correct.

8. Learned counsel for the claimant has argued that the deceased suffered critical injuries and was firstly taken to Civil Hospital, Bhucho Mandi from where he was shifted to a private hospital at Bathinda and then to Medicity Hospital, Ludhiana, where he ultimately died on 05.10.2010. The first priority of the family was to save the life of deceased and ultimately when their efforts yielded no fruits, they reported the matter to the police. Respondent No.1 has not denied the accident but taken a plea that it was not caused due to his rash and negligent driving. Insurance Company has not taken any plea of collusion between the claimant and respondent No.1. Even while appearing as RW1, the owner and driver of the offending vehicle has stated that the accident had not taken place due to his fault. He has admitted that the police has presented the challan and he is facing the trial in that case. The claimant has examined eyewitness of the accident Passi Chand as PW1, whose statement is unshattered and has been rightly relied upon by the Tribunal.

9. On the point of quantum of compensation, learned counsel for the claimant has argued that the Tribunal has wrongly awarded compensation by applying multiplier keeping in view the age of the claimant instead of age of the deceased, as per the observations in case of ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others 2015(3) RCR (Civil) 447***. The claimant is also entitled to addition in the income of

Sachin Mehta
2016.08.05 15:27
I attest to the accuracy and
authenticity of this document
HIGH COURT, CHANDIGARH

the deceased towards future prospects. Award of compensation for loss of estate, love and affection as ₹6,000/- and towards funeral expenses as ₹3000/- is on lower side. The deceased had struggled for life for 15 days and was shifted from one hospital to the other but the Tribunal has not awarded any compensation towards transportation charges, pain and suffering and attendant charges.

10. Refuting the submissions of learned counsel for the claimants, learned counsel for the insurance company has argued that the matter pertaining to grant of addition in the income of deceased towards future prospects is still pending before Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pushpa and others*** **Appeal (C) No.8058 of 2014 decided on 02.07.2014(MANU/SC/1246/2014).** The Tribunal has taken into account all the bills/receipts produced by the claimant towards medical expenses. As such, claimant is not entitled to any addition on this score. The amount of compensation awarded by the Tribunal is just and reasonable amount calling for no further enhancement.

11. Firstly, I take submission made by learned counsel for the insurance company in FAO No.678 of 2013. This submission that the Tribunal was required to make deduction of 1/2 towards the personal expenses of the deceased as per the observations in case of ***Sarla Verma (supra)*** has merits, as the deceased was unmarried. The Tribunal has wrongly made deduction of 1/3rd towards personal expenses of the deceased.

12. The mere fact that there is delay of 15 days in reporting the matter to the police, is no ground to doubt the testimony of eye-witness of

Sachin Mehta
2016.08.05 15:27
I attest to the accuracy and
authenticity of this document
HIGH COURT, CHANDIGARH

the accident PW1 Passi Chand. The deceased had suffered multiple injuries and was immediately taken to nearest hospital at Bhucho Mandi (Distt. Bathinda)but due to his serious condition, he was taken to a private hospital at Bathinda where he remained admitted upto 27.09.2010. Then he was shifted to Medicity Hospital, Ludhiana, where ultimately, he succumbed to the injuries on 05.10.2010. The primary attention of the claimant was towards the treatment of her son and to make all attempts to save him but she could not succeed. The Insurance Company has not pleaded collusion between respondent No.1 and claimant. In his written statement, respondent No.1 has pleaded that the accident was not caused due to his rash and negligent driving. However, while appearing as RW1 Sukhpal Singh, respondent No.1, has stated that no accident was caused by him but admitted that he is facing trial for causing the accident due to his rash and negligent driving.

13. Keeping in view the above facts and circumstances, the dealy in reporting the matter to police do not reflect any motive or lapse on the part of claimant so as to deprive her of her right to claim compensation under Section 166 of Motor Vehicles Act. This argument of learned counsel for the Insurance Company has no merits.

14. As per the observations in case of ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others (supra)***, it is the age of the deceased which is to be taken into account while applying the multiplier. The deceased was 23 years of age, as such multiplier attracted in this case is 18 instead of 13. As per the observations in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54,*** followed by the Hon'ble Apex Court in

Sachin Mehta
2016.08.05 15:27
I attest to the accuracy and
authenticity of this document
HIGH COURT, CHANDIGARH

case of ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others (supra)***, the claimant is also entitled to addition in the income of the deceased towards future prospects. The matter of addition in the income of deceased towards future prospects has been discussed in detailed in cases bearing ***FAO No.4292 of 2015 decided on 01.09.2015, FAO No.4683 of 2011 decided on 18.12.2015, FAO No.2032 of 2014 decided on 06.04.2016 and FAO No.6595 of 2011 decided on 27.05.2016***. It has been observed that addition in the income of deceased is to be made keeping in view the inflationary trend in which we all are living.

15. The claimant, who is mother of the deceased, is also entitled for the compensation of ₹1,00,000/- (one lac) for the loss of estate, love and affection and ₹25,000/- towards funeral expenses in place of ₹6,000/- and ₹3,000/- awarded by the Tribunal which is a quite meagre amount.

16. Another aspect which has escaped attention of the Tribunal is the grant of compensation for pain and suffering, transportation expenses and attendant charges borne by the claimant. For a period of 16 days after the accident, the deceased remained admitted in various hospitals. It is proved on the file that the deceased was taken to nearby Bhucho Hospital from where he was shifted to a private hospital at Bathinda and thereafter Medicity Hospital, Ludhiana. During this period of 15-16 days, the claimant had undergone lot of agony, pain and suffering. The deceased was also attended in the hospital but the Tribunal has not allowed any compensation towards pain and suffering, transportation charges and expenses for attendant. On all these three counts, a lump sum compensation of ₹50,000/- is allowed.

Sachin Mehta
2016.08.05 15:27
I attest to the accuracy and
authenticity of this document
HIGH COURT, CHANDIGARH

17. In view of my above observations, the claimant is entitled to compensation for the death of Ranjit Singh @ Jita as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased (as assessed by the Tribunal)	₹4500 per month
(ii)	50% of (i) above to be added as future prospects	(₹4500+ ₹2250)= (₹6750 per month)
(iii)	1/2 of (ii) deducted as personal expenses of the deceased as per case of ***Sarla Verma (supra)***	(₹6750-₹3375)= ₹3375 per month
(iv)	Compensation after multiplier of 18 is applied	(₹3375X12X18)= ₹7,29,000
(v)	For loss of love and affection and loss to the estate	₹100000
(vi)	Funeral and transportation expenses	₹25000
(vii)	Pain and suffering, Transportation and attendant charges	₹50000
(viii)	Medical expenses 1,79,504 (rounded of)	₹180000
Total		₹10,84,000

18. As a sequel of my above discussion, the appeal filed by the insurance company bearing FAO No.678 of 2013 is partly accepted so far as the deduction from the income of the deceased towards personal expenses is concerned, whereas the appeal filed by claimant bearing FAO No.1719 of 2013 has merits and is accepted. The award of the Tribunal is modified and and the compensation allowed to the claimant is enhanced from ₹6,57,000/- to ₹10,84,000/- for the death of Ranjit Singh @ Jita. The above enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the petition till actual realization.

(SURINDER GUPTA)
JUDGE

July 23, 2016.
Sachin M.

√
Whether speaking/reasoned : Yes/No

√
Whether Reportable : Yes/No

Sachin Mehta
2016.08.05 15:27
I attest to the accuracy and
authenticity of this document
HIGH COURT, CHANDIGARH