IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4312 of 2016 (O&M)
Date of Decision: 01.08.2016

Bajaj Allianz General Insurance Company Limited
......Appellant

Vs

Urmila @ Urmil and others
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Jasjit Singh Chatrath, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant.

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RAJ MOHAN SINGH, J.

CM No.14845-CII of 2016

For the reasons mentioned in the application, delay of 15 days in re-filing the appeal is condoned.

Application stands disposed of.

FAO No.4312 of 2016

[1]. This is an appeal filed by Bajaj Allianz General Insurance Company Limited against the Award dated 25.02.2016 passed by Motor Accidents Claims Tribunal, Narnaul (for short 'Tribunal') whereby the claim petition under Section 166 of Motor Vehicles Act, 1988 (for short 'Act') filed by the claimants was partly allowed.

[2]. Respondents No.1 to 3 filed a petition under Section 166 of the Act for grant of compensation on account of death of Pushkar Lal in a vehicular accident which took place on 24.01.2014. Deceased Pushkal Lal had gone for a morning walk on the road leading from Satnali to Kadma on his feet. He was going on correct side of the road. His brother Surender was following him. At about 7.00 A.M, when he reached near T-Point, the offending vehicle being driven by respondent No.4 came in a rash and negligent manner from behind and hit Pushkar Lal. Respondent No.4 fled away along with vehicle. Pushkar Lal was rushed to private hospital and was referred to Medanta Hospital, Gurgaon where he succumbed to injuries on 16.02.2014. The claimants alleged that the accident was the result of rash and negligent driving of respondent No.4 against whom, FIR No.12 dated 25.01.2014 under Sections 279, 337 and 304-A IPC (added later on) was registered. Deceased Pushkar Lal was enjoying good health. He was running a shop in the name and style of M/s Ram Chander Sant Lal and he was sole proprietor of the said firm. His monthly income was Rs.40,000/-. He was an income tax assessee. The claimants were dependent upon him and therefore, claim was made by them.

[3]. Tribunal on assessment of evidence found that the

accident in question took place on account of rash and negligent driving of the driver/respondent No.4 and deceased Pushkar Lal died on account of injuries received by him in the said accident.

[4]. Deceased Pushkar Lal was 35 years of age. He was running a shop in the name and style of M/s Ram Chander Sant Lal and he was sole proprietor of the firm. His income was Rs.40,000/- per month. The Tribunal held that the plea of running the shop being sole proprietor and being income tax assessee could not be proved for want of evidence as account book or income tax assessment were not produced. Copy of income tax return Ex.P10 was not found to be certified or attested copy, nor the same could be proved by way of examination of any officials of income tax department. Photocopy of the document was not relied. The Tribunal while assessing overall evidence assessed the income of the deceased to be Rs.5600/- per month.

[5]. Since the claimants were three in number therefore, while applying the ratio laid down in ***Smt. Sarla Verma and others Vs. Delhi Corporation and Another, 2009(3) RCR (Civil) 77,*** the deductions to the tune of 1/3rd were applied towards self expenses of the deceased. After deducting Rs.1800/- from the income of Rs.5600 per month, the

dependency was calculated as Rs.3600/- per month and Rs.43,200/- per year (3600 x 12).

[6]. Since deceased Pushkar Lal was 53 years of age, therefore, in view of table provided under ***Smt Salra Verma's case (supra)***, multiplier of 11 was applied and total amount of Rs.4,75,200/- was calculated under the said head. The claimant No.1 was held entitled to an amount of Rs.1,00,000/- towards loss of consortium and an amount of Rs.25,000/- towards funeral expenses of the deceased. Total amount of Rs.6,00,200/- was calculated. In view of expenses spent towards treatment and in view of evidence, an amount of Rs.18,69,426/- was calculated towards treatment, diet and medical expenses of the deceased and the total compensation was assessed to be Rs.24,69,626/-.

[7]. The offending vehicle was found to be duly insured and driving licence of driver/respondent No.4 was found to be valid. The appellant-Insurance Company could not lead any evidence that the driver of the offending vehicle was driving the vehicle in violation of terms and conditions of the Insurance policy. The driver of the offending vehicle and Insurance Company were held liable jointly and severely to pay the amount of compensation in question. The compensation was ordered to be paid along with interest @ 7.5 % per annum from the date of

petition till final realisation of the amount. 50% of the amount was to be shared by claimants No.1 and 2 to be paid to them in cash and remaining amount was ordered to be kept in Nationalized Bank in fixed deposits. Claimant No.3 was minor and her share was ordered to be kept in Nationalized Bank in her name for a period of 2 years or till she attains majority. The petition was allowed with costs.

[8]. I have heard learned counsel for the appellant.

[9]. Learned counsel for the appellant argued that it was a hit and run case and the vehicle was implanted later on in collusion with local police and driver and owner of the vehicle. Learned counsel tried to supplement his arguments and submitted that accident took place on 24.01.2014, but the FIR came to be recorded on 25.01.2014 against unknown driver of unknown vehicle. No type of vehicle was mentioned in the FIR. The alleged eye witness namely Surinder PW 1 got his statement recorded to the police under Section 161 Cr.P.C on 25.01.2014 and his statement was not trustworthy inasmuch as that he reached near the deceased when the accident had already taken place and there was no other person available near the injured at the time of accident and he could not notice the registration number of the vehicle due to fog. The connivance of the alleged eye witness with the driver and the

police was alleged on the strength of recovery memo where respondent No.4 was allegedly produced by the eye witness to the police. The mechanical report of the vehicle did not reveal any damage or sign of damage. All the lights were found in order. The another eye witness was also claimed to be a procured witness as his name was not recorded in the list of witnesses given in the police papers, nor his statement was recorded by the police during investigation. No Test Identification Parade was conducted by the police to identify the driver.

[10]. Compensation under Motor Vehicles Act is a welfare legislation. No strict proof in terms of Evidence Act is required to be followed, nor any strict culpability of beyond reasonable doubt is to be established like criminal trial. Only a preponderance of probability is to be seen while awarding compensation. Lodging of FIR against the driver of the vehicle and prosecution thereof is a prima facie evidence to hold that driver of the offending vehicle was liable in causing accident. In view of ratio laid down in ***Girdhari Lal Vs. Radhey Shyam and others, (1993) 2 PLR 109***, the lodging of FIR was considered to be a sufficient material to hold that the driver of the offending vehicle was negligent in causing damage. The assessment made under different heads cannot be held to be excessive.

The income of deceased has been assessed only Rs.5600/- per month despite the fact the claimants pleaded that deceased was earning Rs.40,000/- per month and for that they adduced some evidence in the form of income tax return of M/s Ram Chander Sant Lal in which the deceased was the sole proprietor.

[11]. The assessment of income to the tune of Rs.5600/- per month in considered opinion of this Court can not be said to be on the higher side and necessary calculations made thereupon in the light of composition of family was also on lawful note in view of ratio laid down in ***Smt. Sarla Verma's case (supra)***. The compensation towards loss of consortium and funeral expenses were also justified in the light of observations made in ***Rajesh Vs. Rajbir Singh, 2013 ACJ 1403***. Apparently, no amount was awarded for loss of love and affection, but the same cannot be appreciated in the appeal filed by the Insurance Company. The amounts awarded for treatment, diet and medical expenses were matter of record which were proved on record and the award of Rs.18,69,426/- was the result of necessary calculations.

[12]. In view of calculations made, the total award made by the Tribunal in considered opinion of this Court cannot be held to be on higher side. The arguments raised by the learned counsel for the appellant in respect of collusion could not be

substantiated with reference to evidence. Since the Tribunal had not awarded any compensation towards loss of love and affection to the minor and compensation under different heads, therefore in the appeal of Insurance Company, compensation under such heads cannot be assessed.

[13]. In view of observations made hereinabove, this appeal is found to be totally bereft of merits and the same is accordingly dismissed.

01.08.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No