

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

FAO No.8677 of 2014 (O&M)

Date of decision: 30.11.2016

Reliance General Insurance Company Limited

... Appellant

versus

Raj Rani @ Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Sanjeev Kodan, Advocate,
for the appellant
Mr.Ishan Sharma, Advocate,
for respondents no.1 and 2
Mr.Arnav Sood, Advocate,
for respondents no.3 and 4.

...

AMOL RATTAN SINGH, J. (Oral)

This is an appeal filed by the insurance company that had insured the vehicle involved in an accident, in which one Kesar Singh unfortunately lost his life. His widow and minor son having filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, before the Motor Accident Claims Tribunal, Hoshiarpur, seeking compensation, such compensation to the tune of Rs.18, 95,000/- was awarded to them vide the impugned Award.

2. The facts, as taken from the Award, are that it was claimed by the respondents (hereinafter to be referred to as “the claimants”), that on 16.01.2013, Kesar Singh along with his nephew Manpreet Singh, was going to the house of one Mr. Shind of village Langeri, on motorcycle bearing registration No.PB-08-AJ-7553. At about 5.00 p.m. when they reached in the

area of the chowk near the house of Sarpanch Manjit Singh, a Hyundai I-10 car, bearing registration No.PB-07-T(Temp) 8288, came and struck against the motorcycle, with Kesar Singh sitting pillion behind his nephew. They were dragged to a distance of 10 to 15 karams, due to which they sustained multiple injuries.

Both the injured were taken to the Civil Hospital, Mahilpur, by Jaswinder Singh and Sukhjit Singh, where Kesar Singh, due to his serious condition, was referred to a hospital in Ludhiana, where he died on 16.02.2013, i.e. one month later.

FIR No.7 dated 17.01.2013 was initially registered for the alleged commission of offences punishable under Sections 279, 337, 338, 427 IPC on the statement of Manpreet Singh. Later, after the death of Kesar Singh, an offence punishable under Section 304A IPC was also added.

2-A. As per the claim petition, Kesar Singh was the sole bread earner of the family, who was 56 years old and was a permanent employee as a Peon in the Government High School, Khera, earning Rs.30,000/- per month.

It was further claimed that Rs.10 lacs were spent on his treatment till his death and that Rs.20,000/- was spent on his transportation and funeral. Consequently, a compensation of Rs.50 lacs was sought, along with interest thereupon.

3. Upon notice issued to the respondents, respondents no.1 and 2, i.e. the driver and owner of the car aforesaid, filed a joint written statement, denying the accident and therefore pleading that the claim petition was not maintainable.

It was also contended that the FIR was a “false one” and that in

any case the car was insured with respondent no.3, i.e. the present appellant-insurance company.

Other averments made in the claim petition were also denied.

4. In a separate written statement, the present appellant also took the plea of the claim petition not being maintainable, respondent no.1 not holding a valid effective driving licence, of the car being plied without a registration certificate and with regard to misjoinder and non-joinder of the necessary parties.

Collusion between the claimants and the first respondent was also alleged, though the vehicle being insured with the company was admitted, “subject to verification”. The compensation amount claimed was also contended to be exorbitant.

5. On the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

“1. Whether death of Kesar Singh took place in road accident on 17.01.2013 in the area of Chowk near the house of Sarpanch Manjit Singh Lalli, caused due to rash and negligent driving of I-10 car No.PB-07-T (Temp) 8268 by respondent no.1. If so, its effect?OPP

2. If issue no.1 proved, to what amount of compensation claimants entitled and from whom?OPP

3. Whether respondent no.1 was not holding valid and effective driving licence and the offending vehicle was not having registration certificate at the time of accident. If so, its effect?OPR3

4. Relief.”

6. The claimants having examined the aforesaid Manpreet Singh as an eye witness (AW-3), his statement to the effect that the car came and hit the motor-cycle from behind, without blowing any horn, was accepted, because of, firstly, the FIR having been lodged promptly after the accident

and further, nothing seen even from the cross-examination of this witness which could establish that the accident did not take place in the manner described. The registration number of the car was also recorded in the FIR and therefore, though no report under Section 173 Cr.P.C. had been filed as per the testimony of RW-2, ASI Surjit Kumar, it was held that the negligence in causing the accident was proved to be that of respondent no.1. It was observed by the learned Tribunal that non-presentation of the challan even 1½ years after the accident was due to the laxity of the police, for which the claimants could not be blamed.

Consequently, the issue of negligence was decided in favour of the claimants.

7. As regards the quantum of compensation, it was found that there was no documentary proof showing that Rs.10 lacs had been spent on the treatment of the deceased, but the testimony of AW-4 established that medical bills to the tune of Rs.2,80,760/- had been submitted for reimbursement of that amount. The reimbursement certificate, Exs.R3 to R-5, along with the form submitted were found to have been proved, though it was recorded that actual reimbursement had still not been made.

Consequently, compensation for medical treatment to the tune of Rs.2,80,760/- was awarded to the claimants.

Kesar Singh was found to be 56 years and 3 months of age at the time of the accident, his date of birth being 17.09.1956, as per his service record proved by AW-2, who also proved his carry home salary to be Rs.20781/- per month.

Holding that income tax was obviously deducted from his carry

home salary with the total salary being Rs.26,546/-, and further holding that since he was 56 years of age, no loss of future prospects of an increased income were awardable, the monthly salary of the deceased was taken to be Rs.20,000/- or Rs.2,40,000/- per annum.

1/3rd amount of that was deducted towards the personal expenses of the deceased, thereby assessing the annual loss of income to the claimants to be Rs.1,60,000/-.

A multiplier of '9' was applied to that sum, thereby coming to a total loss of Rs.14,40,000/-.

Rs.25,000/- was awarded by way of funeral expenses and Rs.50,000/- on account of loss of consortium to the first claimant, respondent no.1 herein.

Another Rs.50,000/- was awarded on account of loss of love and affection and a further sum of Rs.50,000/- on account of loss of estate.

Thus, with Rs.2,80,000/- also having been awarded towards medical expenses, the total compensation awarded was Rs.18,95,000/-.

8. The contention of the counsel for the present appellant was rejected, to the effect that as the first claimant had got employment on compassionate basis and had received a sum of Rs.6,74,888/- as death-cum-retirement gratuity, as also Rs.4,03,948/- by way of general provident fund, the said amounts should be deducted from the compensation awarded.

To hold as above, a judgment of the Supreme Court in **Vimal Kanwar and others Vs. Kishore Dhan and others**, (2013) 7 SCC 476, was cited by the Tribunal, along with judgments of this Court, to the effect that no amount received by claimants by way of provident fund, pension and family

pension, is to be deducted from the compensation payable.

Consequently, the present appeal by the insurance company.

9. Before this Court, Mr. Sanjiv Kodan, learned counsel appearing for the appellant, had argued on an earlier date of hearing, that under the head of loss of earning, the claimants can only claim any amount as is not paid to them by the employer of the deceased, by way of assistance on account of the death of the deceased. In this regard, learned counsel had relied upon a judgment of the hon'ble Supreme Court in **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others**, passed in Civil Appeal No.9654 of 2016, decided on 23rd September, 2016.

This Court had noticed on that date that in the aforesaid case, the deceased had been employed with the Haryana Government and therefore, his widow and other dependents were governed by the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006, by which the family of the employee would continue to draw, by way of financial assistance, a sum equal to the pay and other allowances that was last drawn by the deceased-employee, up till the age of superannuation, subject to the conditions laid down in the said rules.

On the other hand, in the present case, the deceased was an employee of the Punjab Government and consequently, the learned counsel for the appellant had been directed to place on record even by way of additional evidence, the rules governing assistance/ compassionate appointment, in the case of a deceased employee of the Government of Punjab.

In response thereto, learned counsel for the appellant has

produced in Court today a photocopy of the Punjab Civil Services Rules, Volume-II, and has pointed to Section IV thereof, which contains Rule 2.7 and the annexure appended thereto, by which an ex-gratia grant is intended to be provided as relief to the family of a Government employee who dies while in service. However, from the latest edition of the aforesaid Rules, it is seen that the annexure appended thereto also contains a provision to the effect that the grant would be provided at a uniform rate of Rs.1,00,000/- in all cases. Thus, it is apparent that it is a one time grant to tide over the difficulty faced by the bereaved family and it is not a perennial source of income to the family, as may possibly be deductible while calculating the loss of income to them.

10. Learned counsel for the appellant, however, submits that the deceased being 56 years and 3 months old, he would have retired at the age of 60 years and as such, the multiplier of 9 applied by the learned Motor Accident Claims Tribunal, Hoshiarpur, to the carry home salary of Rs.20,000/- per month (Rs.2,40,000/- annually), is highly excessive.

Having considered the aforesaid argument, I find no merit in it, in view of the fact that had the deceased continued to live but for the accident, even after retirement, he would have drawn his full pension, equal to about 50% of his salary, whereas his service itself having been cut short by more than three and half years, his family did not draw the benefit of the full salary for the remaining part of his service, including the increments and dearness allowance that he would have drawn thereupon, and they also did not get the benefit of the full pension that he would have drawn upon superannuation, which would also have been calculated as per his last pay

drawn about three years and nine months after his death.

Learned counsel for respondents 1 and 2 (claimants) has submitted that, in fact, respondent no.1, i.e. the widow, is drawing only 1/3rd of the carry home salary of the deceased.

11. In view of the above, I see no error in the impugned Award passed by the learned Tribunal, by which a multiplier of 9 was applied, in terms of the ratio of the judgment of the Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77, wherein it has been stipulated that if the deceased was between 56 to 60 years of age, a multiplier of 9 should be applied.

In terms of the ratio of the aforesaid judgment, the learned Tribunal rightly also did not apply any loss of future prospects of an increased income to the claimants, even though the deceased was a permanent Government employee.

12. No other point has been argued. However, at the time of the dictation of the judgment, the fact that Rs.2,80,760/- was awarded on account of medical expenses has been noticed, which otherwise would be reimbursable to the respondents-claimants, the deceased having been a Government employee. Yet, a finding has been recorded by the learned Tribunal, as already noticed, that the said amount had not been actually reimbursed to the claimants. No evidence whatsoever has been shown to this Court to the contrary, and hence that finding of the Tribunal is also accepted as such.

13. Consequently, in view of all that has been discussed herein above, I find no error in the impugned Award of the learned Tribunal and

therefore, the appeal is dismissed, with costs of Rs.10,000/-.

The interim order dated 12.1.2015 stands vacated.

The amount of Rs.25,000/- deposited at the time of filing of this appeal shall be refunded to the appellant.

30.11.2016
pk

(**AMOL RATTAN SINGH**)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No