IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross Objection No.205-CII-2014 in/and
FAO No. 6998 of 2011 (O&M)
Date of decision: 09.02.2016

M/s Reliance General Insurance Co. Ltd.

... Appellant.

versus

Smt. Sona and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Sanamjit Kaur, Advocate for
Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Shiv Kumar, Advocate
for cross objectors-respondent Nos. 1 to 3

K.Kannan, J. (ORAL)

The appeal is by the Insurance Company on the issue of assessment to liability on the basis that the insured vehicle was not wholly liable to the accident but the deceased-claimant himself had contributed to the same. There is a cross-objection by the claimants seeking for enhancement.

The accident had taken place when the deceased was driving the car and dashed against the insured truck going ahead of him. A passenger seated behind the deceased and travelling in the same case gave evidence that the truck was going ahead in zig zag manner and since the driver had suddenly applied the breaks, the deceased could not avert the collision. According to him, the insured driver alone was responsible for the accident. The insurer mounts a challenge to this finding that given the worst situation of the driver being rash and negligent in driving the vehicle, no amount of negligence would be attributed to the claimant. He applied the brakes and the vehicle following him had not given sufficient distance to stave of the collision. The only point that could be stated against the insured driver that he himself was not examined. I cannot visualize a situation when the driver who was following the vehicle had been careful to dash against yet another vehicle. It will be clearly an oxymoron. The collision from behind a vehicle going ahead is a clear instance of the lack of care by a driver who was following another vehicle. Even the Motor Vehicle Act provides that any driver while driving the vehicle shall keep safe distance to avoid any collision. Rule of the Road Regulation, 1989 is stated as under:

> **Regulation No.23. Distance from vehicles in front**-The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop

I would have normally cast a higher percentage of negligence only to the driver who drove the vehicle from behind but in this case I will modify the norm for the lack of evidence on the part of the driver of the insured's vehicle and hence still place higher percentage of responsibility to the driver of the insured vehicle and apportion the negligence between the driver of the insured vehicle and the deceased at 75:25.

On the issue of quantum, the salary certificate produced from an employer showed that the gross income was Rs. 3, 25, 417/-. I will provide for 50% increase as prospect of enhancement of salary in future but provided for 20% deduction for income tax liability. I will rework the compensation and tabulate the various heads of compensation to provide also for Rs. 1,00,000/- for loss of consortium and Rs. 1,00,000/- for love and affection for each child and Rs. 50,000/- for love and affection for the parent and Rs. 10,000/- for loss to estate and Rs. 25,000/- for funeral expenses. The various heads of claim are tabulated as under:

Fatal	Date of accident	26/27.07.2009	
Age	36		
Occupation	Senior Executive		
Claimants	Wife, minor son, minor daughter, mother.		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income	3,32,617/-	3,25,417/-
2.	Add, % of increase,		4,88,125/- (50% increase

	30%/50%		20% deduction income tax)
3.	Deduction, 1/2, 1/3, 1/4,	**(1/4)**	2,92, 875.30
4.	Multiplicand	2,49,463/-	2,92, 875.30
5.	Multiplier	16	16
6.	Loss of dependence	39,91, 408/-	46,86, 004/-
7.	Medical Expenses		
8.	Loss of Consortium	5,000/-	1,00,000/-
9.	Loss of love and affection		2,50,000/-
10.	Loss to estate	5,000/-	10,000/-
11.	Funeral Expenses	5,000/-	25,000/-
	Total	40,06,400/-	50,71, 004/-

The aggregate amount shall be Rs. 50,71, 004/- and if I apply 25% cut for the negligence attributed to the deceased, the amount payable shall be Rs. 38, 03.253.60 which I round of to Rs.38, 03, 250/-. The award stands modified and the appeal by the insurer and the cross objection are disposed of in terms of the modification made above.

The compensation shall be applied in the same proportion as it has been already done by the Tribunal.

(K.KANNAN)
JUDGE

09.02.2016
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