IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 13.12.2017

FAO No.792 of 2016 (O&M)

Mukesh & others ...Appellants

Vs.

Sandeep Kumar & others ...Respondents

FAO No.2936 of 2016 (O&M)

Reliance General Insurance Co. Ltd. ...Appellant

Vs.

Mukesh & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sudhir Hooda, Advocate,
for the appellants in FAO No.792 of 2016; and
for respondents No.1 to 4 in 2936 of 2016.

Mr. R.K.Bashamboo, Advocate,
for the appellant in FAO No.2936 of 2016; and
for respondent No.2 in FAO No.792 of 2016.

RAJIV NARAIN RAINA, J. (ORAL)

1. This order will dispose of aforementioned two appeals i.e. FAO No.792 of 2016 and FAO No.3733 of 2016 arising out of award dated 20.10.2015 passed in MACT Case No.154 of 2014, whereby Motor Accident Claims Tribunal, Rohtak (for short ‘the Tribunal’) awarded

compensation of ₹12,50,677/- in favour of the legal heirs/claimants of the deceased Harvir, who died on account of fatal injuries suffered in a motor vehicular accident, which occurred on 08.08.2014. The deceased succumbed to injuries on 25.08.2014. FAO No.792 of 2016 is preferred by the claimants for enhancement of compensation, while FAO No.3733 of 2013 is preferred by the Reliance General Insurance Company (insurer of Hyundai Car bearing registration No.HR12L 5656) for setting aside the award. Since the facts are the same in both the cases, the same are disposed of by this common order.

2. The brief facts are that on 08.08.2014, when the deceased (Harvir) was going to his Village Karontha from Rohtak in a car bearing No.HR12L-5656, Sandeep Kumar – driver hit the car against the divider of the road while driving rashly and negligently. As a result thereof, the deceased fell out of the offending vehicle and received fatal injuries. Initially, he was taken to PGIMS, Rohtak, but after medico legal examination, he was shifted to Mansarover Hospital, Rohtak, where he succumbed to injuries on 25.08.2014.

3. After considering the entire oral and documentary evidence on record, the Tribunal took the salary of the deceased as ₹6000/- per month in the absence of any document although his widow has stated that he was running a Dhaba and was earning ₹12,000/-. The Tribunal while applying the ratio in Sarla Verma & others Vs. Delhi Transport Corporation & another, 2009 ACJ 1298, deducted 1/4th towards personal expenses since claimants are four and rightly adopted the multiplier of 15, deceased being 37 years of age, to compute the loss of dependency. After adding notional

sums towards non-pecuniary damages i.e. ₹1,00,000/- on account of loss of consortium; ₹25000/- towards funeral expenses; and ₹3,15,677/- incurred towards treatment of the deceased, the total compensation worked out to ₹12,50,677/-. Respondent No.1 – driver and respondent No.2 - Insurance Company are made jointly and severally liable to pay compensation to the claimants.

4. Before this Court, Mr. Hooda, learned counsel appearing on behalf of the claimants has submitted that the Tribunal has gone wrong in law in assessing the income of the deceased to be on the lower side, as the deceased was running a Dhaba and his wife made deposition that the deceased was earning Rs12,000/- per month. Hence his submission is that the income of the deceased should be taken at ₹12,000/- per month. Still further learned counsel submits that the claimants have not been granted the benefit of future prospects. To support his argument, the learned counsel placed reliance on the latest judgment of the Hon'ble Supreme Court rendered in the case of <u>National Insurance Company Limited Vs. Pranay Sethi & others, 2017 ACJ 2700</u>. Mr. Hooda submitted that no compensation has been granted on account of loss of estate. Accordingly, the enhancement of the amount is prayed for.

5. On the other hand, Mr. Bashamboo, learned counsel representing the Insurance Company submits that:

(i) The Tribunal did not return any finding on negligence on part of the driver of the offending car as required in a petition under Section 166 of the Motor Vehicles Act,

1988. Proof of negligence was sine qua non for grant of compensation;

(ii) On the point of future prospects, learned counsel submits that the matter has been considered by the Supreme Court in *Pranay Sethi* (supra) and as per that judgment the benefit of future prospects can be granted only in case of 'established income'. He submits that since the income has not been proved on record by leading documentary evidence, no benefit of future prospects can be granted in the present case.

(iii) The compensation on account of funeral expenses and loss of consortium is also on the higher side and the same deserves to be in tune with *Pranay Sethi* case (supra).

6. I have heard learned counsel for the parties at considerable length.

7. As regards the contention of Mr. Bashamboo that the negligence of the offending vehicle has not been proved to claim the compensation under Section 166 of the Motor Vehicles Act is concerned, I am of the view that the same is not sustainable. It is conceded position on record that the deceased-Harvir died in a motor accident.

8. A person may lie, but the things/circumstances speak the truth. A person who drives a vehicle has to be careful and vigilant while driving and if he hits the divider of the road even when there was no vehicle near about, that itself proves that the driver was rash and negligent in driving. The factum of accident and involvement of the vehicle in question has not

been denied. It is conceded position on record that the deceased-Harvir died of injuries sustained in a motor accident. The accident took place on the Jhajjar Road, Rohtak, near Lord Krishana Polytechnic, and not in a narrow passage. Had the driver of the offending car been careful while driving, the accident could have easily been avoided. Now the question arises whether in the facts and circumstances of the present case, principle of *res ipsa loquitur* can be applied or not?

9. The normal rule is that it is for the claimant/plaintiff to prove negligence, but as in some case considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove the manner in which or how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. This maxim applies where it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. In such a situation, the accident speaks for itself or tells its own story and therefore, the claimant after proving the accident is not required to prove negligence and it is for the defendant to prove that the accident happened due to some other cause than his own negligence. [see *Pushpabai Purshottam Udeshi and others Vs. M/s Ranjit Ginning & Pressing Co. (P) Ltd. And another (1977) 2 SCC 745*]

10. In view thereof, the burden is on the driver to prove that the accident happened due to some other cause than by his own negligence. Thus, I am of the view that the Tribunal has done well in applying the principle of *res ipsa loquitur* in the facts and circumstances of the present case. Therefore, the insurance company cannot escape its liability from indemnifying the insured and satisfying the amount of compensation.

11. Though the claimants have claimed that the deceased was earning ₹12,000/- per month while running a Dhaba, but in the absence of any documentary proof, I find that the Tribunal has rightly assessed the income at ₹6000/- per month, as the larger figure cannot be accepted on its face value. The Court cannot lose sight of the fact that the deceased was providing livelihood of his family. Even if we take the minimum wages as prevalent at the time of accident, even then the income taken by the Tribunal as ₹6000/- cannot be said to be on higher side.

12. So far as the future prospects is concerned, this point has already been considered by the Supreme Court in Pranay Sethi case *(supra)* and it has been held that the benefit of future prospects cannot be denied to a self-employed person. The Supreme Court has held that in case of a person below the age of 40 years, the benefit of future prospects @ 40% of the established income is to be given. The objection of Mr. Bashamboo that the benefit of future prospect can be granted only if the income is established by the claimants by leading the documentary evidence is not helpful. Although the Supreme Court has used the word '*established income*', but in the same breath the Supreme Court itself has explained the meaning of '*established income*' to mean '*an income which is minus the income tax*'. Therefore, this shows that the Supreme Court has used the

word '*established income'* only to clarify that the income of the deceased, if it exceeds the taxable limit would be taken after the deduction of the applicable taxes. Nothing more can be read in the word "*established income"* than what has already been clarified.

13. The benefit of future prospects cannot be denied on the ground that the Tribunal has assessed the income of the deceased on notional basis and that the claimants have not proved the same by documentary evidence. Once an income is assessed by the Tribunal for the purpose of calculation of the compensation then it cannot be said that the same income is not the established income for the purpose of grant or calculation of future prospects. Hence, the claimants are entitled to the benefit of enhancement on account of future prospects @ 40%. Accordingly, the loss of dependency of the claimants, by applying the deduction and multiplier adopted by the Tribunal, is assessed at ₹11,34,000/- (6300x15x12).

14. The claimants are also entitled to the standardized amounts as laid down in *Pranay Sethi* instead of what has been awarded by the Tribunal. Accordingly, the claimants are held to be entitled to ₹40,000/- on account of loss of consortium; ₹15,000/- on account of funeral expenses; and ₹15,000/- towards loss of estate. However, the amount awarded and spent towards treatment of the deceased i.e. ₹3,15,677/- shall remain intact.

15. In view of the above, the claimants are held entitled to just compensation as follows:

Sr. No.	***Heads***	***Amount***
1.	Loss of Dependency	₹11,34,000/-
2.	Loss of Estate	₹15,000/-
3.	Loss of Consortium	₹40,000/-
4.	Funeral Expenses	₹15,000/-

5.	Expenses incurred on medical treatment	₹3,15,677/-
	Total	₹15,19,677/-
	(Rounded off to ₹15,20,000/-)	

Counsel fee is assessed at ₹15,000/-.

16. In view of the above, both the appeals are disposed of. The award stands modified as per this order. The interest on the amount of compensation is retained at the same rate as was awarded by the Tribunal from the date of filing of the claim petition till realization. The amount be calculated and deposited by the respondent - Insurance Company in the Tribunal/Executing Court within two months from the date of receipt of a certified copy of this order failing which the awarded amount shall attract interest at the rate of 12% p.a. On deposit, the Tribunal would disburse the amount to the claimants without delay after due verification without putting any investment riders thereon as is sometimes the wont.

13.12.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*