IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1550 of 2010 (O&M)
Date of Decision: 19.09.2018

Sunehri Devi and others

.... Appellants

Versus

Narender Singh and others

..........Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Parminder Singh, Advocate for the appellants.

Mr. Surender Saini, Advocate for respondent Nos.1 and 2.

Mr. D.P.Gupta, Advocate for respondent No.3/Insurance Co.

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MAHABIR SINGH SINDHU, J.

Present appeal has been filed by the claimants/appellants *(for short 'appellants')* under Section 173 of the Motor Vehicles Act, 1988 *(for short 'Act')* for enhancement of compensation on account of death of Puran Singh *(for short 'deceased').*

Appellants filed a claim petition under Section 166 of the Act before learned Motor Accident Claims Tribunal, Kaithal *(for short 'Tribunal')* with the averments that deceased was 58 years of age, working as Chief Manager, Oriental Bank of Commerce, Currency Chest Branch, Rohtak and his monthly salary was ₹ 34,737/-.

(2) On 17.03.2008, deceased along with his son-Rajesh Kumar (appellant No.2) was going from Kaithal to Rohtak in his Alto Car bearing registration No.HR-08-G-6238. At about 10:30 AM, when they reached near

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Village Bhagwantipur, District Rohtak, then a Jeep bearing registration No.HR-56-T-6493 *(for short 'offending vehicle')* came from the opposite side, driven by respondent No.1-Narender Singh in a very rash and negligent manner and hit their Car. Due to the impact, deceased sustained multiple injuries on his body and immediately thereafter, he was taken to PGIMS, Rohtak, but could not survive and died on the way. Post Mortem Examination of the deceased was conducted in the PGIMS, Rohtak on the same day. The accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1. An FIR No.58 dated 17.03.2008, under Sections 279 and 304-A IPC, Police Station Lakhan Majra, District Rohtak was registered against respondent No.1.

(3) Upon notice, respondent Nos.1 and 2 filed joint reply and denied the assertions made in the claim petition and submitted that respondent No.1 is not responsible for causing any accident as alleged by the appellants. Even the age and income of deceased were also denied, however, it is admitted that deceased was travelling in his Alto Car and proceeding towards Rohtak. Further submitted that respondent No.1 tried to avoid the accident and he turned his vehicle towards *kacha* path (berm) on left side, but deceased hit the offending vehicle. Registration of FIR is not disputed, but stated to be on account of collusion with the appellants. Also submitted that the offending vehicle was insured with Oriental Insurance Co. Ltd., Rohtak (respondent No.3) at the relevant point of time and as such, they are not liable for any compensation.

Respondent No.3/Insurance Company filed separate reply and denied the claim petition in similar terms to that of respondent Nos.1 and 2. Also submitted that claim petition is the result of collusion between

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appellants and respondent Nos.1 and 2. It is denied that deceased was working as Chief Manager in Oriental Bank of Commerce, Rohtak and was earning ₹ 34737/- per month. Further submitted that insured has violated the terms and conditions of the Insurance Policy and as such, Insurance Company is not liable to indemnify respondent No.2 and prayed for dismissal of the claim petition.

(4) On the basis of pleadings of both the sides, learned Tribunal framed the following issues:-

1. *Whether Puran son of Bir Singh died in a motor vehicular accident which took place on 17.3.2008 in the area of police station Lakhan Majra district Rohtak on account of rash and negligent driving of respondent no.1 while driving Jeep bearing No.HR56T-6493? OPP*
2. *If Issue no.1 is proved, what amount of compensation the claimants are entitled to and from whom? OPP*
3. *Whether there is any violation of terms and conditions of Insurance Policy, if so its effect? OPR*
4. *Relief.*

(5) Claimants/appellants, in order to prove their case, examined Siri Pal, Clerk, O/o Oriental Bank of Commerce, Rohtak as PW-1; Sunehri Devi (appellant No.1) as PW-2 and Rajesh Kumar (appellant No.2) as PW-3 and produced documentary evidence (Ex.P-1 to P-6).

On the other hand, respondents tendered in evidence copy of driving licence as Ex.R-1 and copy of Insurance Policy as Ex.R-2.

(6) Learned Tribunal, while deciding Issue No.1, came to the conclusion that deceased died in the motor-vehicular accident on 17.03.2008 in the area of Police Station Lakhan Majra on account of rash and negligent driving of the offending vehicle by respondent No.1.

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While deciding Issue No.2, learned Tribunal found that on the date of accident, deceased was 58 years of age as his date of birth is recorded as 03.07.1949 as per PAN Card. Salary Certificate of deceased was produced on record as Ex.P-1 for the Financial Year 2008-2009; Ex.P-2 is the Certificate of last drawing salary for 17 days in the month of March, 2008, whereas Ex.P-3 is the Salary Certificate for the month of February, 2008, which shows the gross salary of deceased as ₹ 34737/- and carry home salary was ₹ 18,829/-, which was rounded of to ₹ 18,900/-.

Since deceased was married and maintaining a family, therefore, after imposing a cut of 1/3rd towards his self expenses, net dependency was assessed as ₹ 12,600/- per month (₹ 18900 - ₹ 6300) and annual dependency was calculated as ₹ 1,51,200/- (₹ 12600/- x 12), which was rounded of to ₹ 1,51,000/-. Learned Tribunal after applying the multiplier of 7, awarded the amount of compensation as ₹ 10,57,000/- (₹ 1,51,000/- x 7) to the appellants. In addition, a sum of ₹ 13,000/- was awarded for the last rites of deceased and ₹ 10,000/- to appellant No.1-Sunehri Devi for loss of consortium. Hence, total amount of compensation of ₹ 10,80,000/- was awarded to the appellants, which was apportioned as under:-

Appellant No.1 being widow	:	₹ 6,80,000/-
Appellant Nos.2 & 3 being sons	:	₹ 2,00,000/- each

While deciding Issue No.3, learned Tribunal found that respondent No.3 has failed to prove any violation of terms and conditions of the Insurance Policy. At the same time, learned Tribunal observed that in case, it is found at a later stage that driving licence of respondent No.1 is

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not valid, then Insurance Company would be at liberty to recover the amount of compensation from the insured and decided the Issue accordingly.

Ultimately, while deciding Issue No.4, learned Tribunal allowed the claim petition and awarded total compensation of ₹ 10,80,000/- in the above terms along with interest @ 7.5% per annum from the date of filing the claim petition till its realization. All the respondents were held liable jointly and severally.

(7) It is argued by learned Counsel for the appellants that compensation, awarded by learned Tribunal, is on the lower side in as much as even the multiplier has not been correctly applied in view of the judgment of Hon'ble the Supreme Court in '**Sarla Verma (Smt.) and others** *Versus* **Delhi Transport Corporation and another, (2009) 6 SCC 121**'. Further argued that learned Tribunal has also not properly considered the monthly income of deceased in true perspective. Also argued that appellants are entitled for addition of 15% compensation towards future prospects as well as under other conventional heads in view of the judgment of Hon'ble Supreme Court in ***'National Insurance Company Limited*** *Versus* ***Pranay Sethi and others', (2017) 16 SCC 680.***

On the other hand, learned Counsel for the Insurance Company opposed the contentions raised on behalf of the appellants and submitted that amount of compensation, awarded by learned Tribunal, is absolutely justified and does not require any interference by this Court.

(8) Heard arguments from both sides and perused the record.

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(9) The findings of learned Tribunal to the effect that deceased died in a motor-vehicular accident on 17.03.2008 on account of rash and negligent driving of the offending vehicle by respondent No.1 and there is no violation of any terms and conditions of the Insurance Policy are duly proved. Since the respondents have neither filed any substantive appeal; nor cross-objections against the impugned award to challenge the above conclusion arrived at by learned Tribunal, therefore, the findings to that effect are affirmed.

The only point to be considered and decided in the present appeal is *“as to what should be the just compensation that may be awarded to the appellants in view of the facts and circumstances of the present case? ”*

So far as the age of deceased is concerned, the same is also duly proved on the basis of PAN Card and according to which, date of birth was 03.07.1949 and he was 58 years of age. Salary Certificate for the month of February, 2008 (Ex.P-3) shows that deceased was getting total salary of ₹ 34,737.90/-. As per Ex.P-1, basic pay of the deceased is ₹ 24,140/- + DA ₹ 8342.80/- + HRA ₹ 1569.10/- + FPA ₹ 686/- and out of that, deduction towards income tax is shown as ₹ 4000/- and as such, learned Tribunal has committed an error while considering the monthly income of deceased as ₹ 18,900/- and rather it should have been taken as ₹ 30,737/- (₹ 34,737 - ₹ 4000). Since the deceased was married and there were only three dependents, therefore, a deduction of 1/3rd is to be made towards personal expenses of the deceased i.e. ₹ 20,492/- (₹ 30,737- ₹ 10,245) and annual dependency would be ₹ 2,45,904/- (₹ 20492 x 12). Since the age of deceased was 58 years at the time of accident and as such,

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in view of the judgment of **Sarla Verma's case (supra)**, multiplier of 9 is attracted. Still further, in view of the judgment of **Pranay Sethi's case (supra),** the appellants are entitled for addition of 15% towards annual dependency along with compensation under the other conventional heads i.e. loss of estate, loss of consortium and funeral expenses.

(10) In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that the following amount of compensation would be the "just compensation" which should be awarded to the appellants:-

Sr. No.	***Heads***	***Calculation***
(i)	*Monthly income of the deceased*	*₹ 30,737*
(ii)	*Annual Income of the deceased*	*₹ 30,737 x 12 = ₹ 3,68,844*
(iii)	*1/3rd of (ii) deducted for personal expenses*	*₹ 3,68,844 - ₹ 1,22,948 = ₹ 2,45,896*
(iv)	*15% addition for future prospects*	*₹ 2,45,896 + ₹ 36,884 = ₹ 2,82,780*
(v)	*Net annual income of the deceased*	*₹ 2,82,780*
(vi)	*Multiplier*	*9*
(vii)	*Total Loss of dependency*	*₹ 2,82,780 x 9 = ₹ 25,45,020*
(viii)	*Compensation for loss of estate*	*₹ 15,000*
(ix)	*Compensation for loss of consortium*	*₹ 40,000*
	Compensation for Funeral Expenses	*₹ 15,000*
	Total Compensation	***₹ 26,15,020***

In view of above, the present appeal is allowed and impugned award dated 03.08.2009, passed by learned Tribunal, is modified and amount of compensation is enhanced from ₹ 10,80,000/- to ₹ 26,15,020/-.

Needless to say that amount of compensation, already paid to the appellants, shall be adjusted and remaining balance amount shall be

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paid within a period of six weeks from the date of receipt of certified copy of this order in the same proportionate as awarded by learned Tribunal.

September 19, 2018 **(MAHABIR SINGH SINDHU)**
dkp/Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*

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