IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4282 of 2011 (O&M)
Date of decision: 17.10.2018

ICICI Lombard General Insurance Company Ltd.

.... Appellant

Versus

Krishna and others

..... Respondents

2. FAO No.5311 of 2011 (O&M)

Krishna and others

.... Appellants

Versus

Naresh Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr.Mrigank Sharma, Advocate
for the appellant in FAO-4282-2011 and
for respondent No.3 in FAO-5311-2011.

Mr. Abhishek Yadav, Advocate
for the appellants in FAO-5311-2011 and
for respondents No.1 to 5 in FAO-4282-2011.

Mr. Ayuwan Singh, AAG, Haryana
for respondent No.2 in FAO-5311-2011 and
for respondent No.7 in FAO-4282-2011.

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Avneesh Jhingan, J. (Oral)

The insurer and the legal heirs of Jatti Ram have filed two separate appeals against award dated 14.01.2011 passed by Motor Accidents Claims Tribunal (Fast Track Court), Hisar (hereinafter referred to as 'the Tribunal').

2. These two appeals have arisen out of the same accident which has been dealt by a common award and are being decided by a common order.

3. The brief facts as emanating from the record are that on 11.01.2010 Jatti Ram was travelling in a bus bearing registration No.HR-56-2967 (for brevity, 'the offending vehicle'). While he was stepping down from the bus, due to rash and negligent driving of the offending vehicle, he fell down and was crushed under the rear wheel of the bus. He died on the spot. FIR No.17 dated 11.01.2009 was registered at Police Station, Narnaund.

4. Ram Krishan lost his life in the aforesaid accident (though there is discrepancy in the award and in memorandum of parties (MOP) that the deceased at some places have been recorded as Jatti Ram). After referring to the FIR, the name of the deceased is being mentioned in this order as Jatti Ram.

5. The widow and four children of the deceased filed a claim

petition filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act').

6. The Tribunal, after considering the facts and appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹4,65,500/- along with interest @ 6% per annum. The amount awarded included ₹5,000/-each for loss of estate and funeral expenses and ₹10,000/- for loss of consortium.

7. The monthly earning of the deceased was assessed as ₹4500/-, the claimants pleaded that the deceased was an agriculturalist and a milk vendor but they failed to substantiate the earning of the deceased. The deceased was survived by a widow and four children, 1/4th deduction for self expenses was made and multiplier of 11 was applied.

8. Learned counsel for the insurer contended that the Tribunal erred in applying 1/4th deduction for self expenses as it has not come on record that the children were dependent upon the deceased. He further argued that the accident occurred due to contributory negligence of the deceased.

9. Learned counsel for the claimants argued that no future prospects have been awarded by the Tribunal and the amounts awarded under the conventional heads are on the lower side.

10. Rebutting the arguments of learned counsel for the claimants, learned counsel for the insurer and the owner of the offending vehicle

defended the award and resisted any further enhancement.

11. The contentions raised by learned counsel for the insurer deserve rejection.

12. The Tribunal has recorded a specific finding that the deceased was survived by a widow and four children. In such circumstances, in view of the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** 1/4th deduction for self expenses has rightly been made.

13. The contention raised that the accident occurred due to contributory negligence of the deceased, lacks merit. The Tribunal after considering the facts and appreciating the evidence adduced recorded a specific finding that the accident occurred due to rash and negligent driving of the offending vehicle being driven by the driver of the bus. Not only this even during the police investigation, it was concluded that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. No error can be found in the finding recorded by the Tribunal that the accident occurred due to rash and negligent driving of the offending vehicle.

14. The contentions raised by learned counsel for the claimants deserve acceptance in view of the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157, Hem Raj vs. Oriental Insurance Company Ltd. in Civil Appeal No.19603 of 2017, decided on 22.11.2017*** and ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil)***

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15. There is no challenge to the monthly income of the deceased as assessed by the Tribunal. The age of deceased was 55 years at the time of the accident, hence, 15% future prospects are to be awarded. The claimants are entitled to ₹15,000/- each for loss of estate and funeral expenses. ₹40,000/- is awarded for loss of consortium to wife and ₹40,000/-is awarded under the head for parental consortium.

16. In view of the above discussion, the compensation is recalculated as under :-

Monthly income	₹4,500/-
15% future prospects	₹675/-
Total income	₹5175/-
1/4th deduction for self expenses	₹1294/-
Total	₹3,881/-
Annual Dependency (3,881x12)	₹46,572/-
Applying multiplier of 11 (46,572x11)	₹5,12,292/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to widow	₹40,000/-
Loss of parental consortium	₹40,000/-
Total	₹6,22,292/-

17. The award dated 14.01.2011 is modified to the extent that the amount awarded by the Tribunal of ₹4,65,500/-is enhanced to ₹6,22,292 /-. The claimants would be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

18. It is, however, clarified that enhanced amount would be

disbursed in same manner as was held by the Tribunal.

18. The appeal of the insurer is dismissed and appeal of the claimants is partly allowed.

(AVNEESH JHINGAN)
JUDGE

17.10.2018
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1.Whether the order is speaking/reasoned: Yes
2.Whether the order is reportable : Yes