In the High Court of Punjab and Haryana at Chandigarh

(I) **FAO No.2604 of 2012 (O&M)**
Date of Decision:-22.5.2018

Pratibha Devi and others ......Appellants

Versus

Sunil Kumar and others .....Respondents

(II) **FAO No.2744 of 2012 (O&M)**

Reliance General Insurance Company Ltd. ......Appellant

Versus

Pratibha Devi and others .....Respondents

CORAM: **HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present: Mr. R.S. Mamli, Advocate
for the appellants in FAO-2604-2012
and for respondents No.1 to 5 in FAO-2744-2012.

Mr. G.C. Shahpuri, Advocate
for respondents No. 1 and 2 in FAO-2604-2012 and
for respondents No.6 and 7 in FAO-2744-2018.

Mr. Rajat Garg, Advocate for
Mr.T.K. Joshi, Advocate
for respondent No.3 in FAO-2604-2012
and for appellant in FAO-2744-2012.

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GURVINDER SINGH GILL, J. (Oral)

1. The judgment shall dispose of the above mentioned two appeals, as it is the same award which is impugned in both the appeals. While the claimants seek enhancement of compensation as awarded by the learned Motor Accidents

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Claims Tribunal, Yamuna Nagar at Jagadhari (hereinafter referred to as 'the Tribunal') vide award dated 05.01.2012, the Insurance Company has filed appeal seeking setting aside of the aforesaid award.

2. Claimants Pratibha Devi and others being the widow, minor children and parents of the deceased Rakesh Kumar had filed a claim petition seeking compensation on account of death of Rakesh Kumar in a vehicular accident which allegedly occurred on account of rash and negligent driving on the part of Sunil Kumar-respondent No.1. The claimants asserted that on 30.08.2010 when deceased Rakesh Kumar, his brother Brijesh Kumar and one Ajay Kumar @ Pintu were going towards Sadhaura from village Marwa Khurd on their separate motorcycles, and when they reached near Chawla Dhaba, a vehicle Trax bearing registration No. HP-18-A-4950 came from Sadhaura side, which was being driven in a rash and negligent manner by respondent No.1 and which hit the motorcycle of Rakesh Kumar after coming on the wrong side resulting in death of Rakesh Kumar. The claimants thus claimed compensation on account of death of Rakesh Kumar.

3. The claim petition was resisted by respondents who filed separate written statements denying all the material averments of the claim petition. The parties were put to proof on the following issues:-

> "1. Whether the accident dated 30.08.2010 resulting into death of Rakesh Kumar took place due to rash and negligent driving of vehicle no. HP-18-4950 by the respondent no.1? OPP
>
> 2. If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom? OPP
>
> 3. Who is liable for payment of compensation? OP-Parties.

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4. Whether the alleged offending vehicle was being driven in violation of terms and conditions of the Insurance Policy, if so, its effect? OPR-3

5. Relief."

4. Upon appraisal of the evidence led by the parties, the learned Tribunal held that Rakesh Kumar had lost life on account of the accident which had taken place due to rash and negligent driving on part of respondent No.1 and awarded compensation to the tune of ₹ 20,65,925/- along with interest at the rate of 7 ½ % per annum payable by respondents No.1, 2 and 3 jointly and severally.

5. The learned counsel for the Insurance Company has assailed the impugned judgment on the ground that at best it was a case of contributory negligence inasmuch as it is a case of head-on collision between the motorcycle and the Trax vehicle and since the road in question was reasonably wide, therefore the accident could have been avoided in case the deceased had taken reasonable care and caution while driving.

6. I have considered the aforesaid submission. It will be hazardous to hold that every case of head-on collision has to be treated as a case of contributory negligence. In the present case claimants have led evidence to establish negligence on the part of respondent No.1 and have examined PW-4 Brijesh Kumar who is an eye witness and who has deposed that on 30.08.2010 he along with his brother Rakesh Kumar-deceased and Ajay Kumar @ Pintu were going towards Sadhaura from their Village Marwa Khurd on a separate motorcycles when Rakesh Kumar-deceased was hit by the offending vehicle which was being driven in rash and negligent manner by respondent No.1. The witness was cross-examined at length but nothing substantial could be

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elicited during his cross-examination so as to doubt the veracity of his statement. As against the aforesaid evidence the respondents have not led any evidence to rebut the assertion of the claimants. So much so, even respondent No.1-Sunil Kumar has not stepped into the witness box to deny the factum of accident. As such, this Court has no hesitation in affirming that the accident had occurred on account of rash and negligent driving on the part of respondent No.1.

7. As regards the quantum of compensation, while the learned counsel for the Insurance Company has challenged the quantum by submitting that there is no cogent evidence as regards the income of the deceased, the learned counsel for the claimants has submitted that computation of compensation is not in conformity with the settled principles and that neither the dependency has been correctly worked out nor anything has been added towards "future prospects".

8. The deceased, as per claimants, was earning ₹ 25,000/- per month while serving as Field Officer with A.B.S. Consultants, Gurgaon. The claimants have examined PW-3 Kuldeep Singh, who had brought the summoned record to show that Rakesh Kumar was working in a Company namely A.B.S. Consultants, Gurgaon and was drawing salary of ₹ 24,800/- per month. The salary certificate (Ex.PW-3/A), pay slip for the month of July, 2010 (Ex.PW-3/B) and pay slip for the month of August, 2010 (Ex.PW-3/C) have also been duly proved by him. I find that the learned Tribunal erred in taking into account only the basic salary and HRA while excluding other allowances. All the benefits and allowances attached with the employment of the deceased ought to have been taken into account and it is only the deductions towards income tax which could have been excluded. By rough estimation it can be

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said that the deceased must have been paying at least ₹ 300/- per month towards income tax. Thus after aforesaid deduction, his salary can be taken as ₹ 24,500/- per month.

9. Since the deceased was a young man aged about 35 years, as has been held by the learned Tribunal, some amount towards prospects of increase in income in future is also required to be added to the income of the deceased. Keeping in view the dictum of Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi and Others* AIR 2017 (SC) 5157., and the age of the deceased, an amount equal to 40% of the income is required to be added to the income of ₹ 24,500/-. After adding the aforesaid amount, the income would work out to ₹ 34300/- (₹ 24,500+40%=34,300/-) In view of the number of dependents the deceased could not be expected to be spending more than $1/4^{th}$ on his personal expenses and by deducting $1/4^{th}$ from the above said income, the dependency of the claimants comes out to ₹ 25,725/- per month. In other words, the annual dependency works out to ₹ 3,08,700/- (₹ 25,725 X 12 = 3,08,700/-).

10. Bearing in mind the age of the deceased i.e., 35 years and also in light of the judgment of Hon'ble Supreme Court rendered in *Sarla Verma and Others Vs. Delhi Transport Corporation and Another* (2009) 6 SCC 121., a multiplier of 15 would be appropriate in the present case. By applying the above said multiplier the compensation would work out to ₹ 46,30,500/- (₹ 3,08,700 X 15= 46,30,500/-). Apart from the above said compensation, the claimant No.1 being widow of the deceased is entitled to an amount of ₹ 40,000/- towards loss of consortium. Another amount of ₹15,000/- on account of loss to estate and a sum of ₹ 15,000/- towards funeral expenses also need to be

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added to compensation. Thus the total compensation amount comes to ₹ 47,00,500/-.

11. In view of the discussion made above, the appeal filed by claimants is allowed and the compensation is enhanced from ₹20,65,925/- to ₹ 47,00,500/-, to be paid by respondent Nos. 1 to 3 jointly and severally along with interest at the rate of 7½ % w.e.f. date of filing of claim petition till realisation. The compensation shall be shared by claimants in the same proportion as defined by Tribunal. The appeal filed on behalf of the Insurance Company, being devoid of merits, is dismissed.

(GURVINDER SINGH GILL)
JUDGE

May 22, 2018
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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