IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 13.12.2018

1. FAO No.1462 of 2014 (O&M)

Reliance General Insurance Company Ltd.

….. Appellant

Versus

Amrik Singh Gill and others ….. Respondents

2. FAO No.1875 of 2014 (O&M)

Amrik Singh Gill and another

….. Appellants

Versus

Ram Murti and others ….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Suman Jain, Advocate for the appellant (in FAO No.1462 of 2014) and respondent No.3 (in FAO No.1875 of 2014).

Mr. Anil Kumar Spehia, Advocate for appellants (in FAO No.1875 of 2014) and respondent Nos.1 and 2 (in FAO No.1462 of 2014).

Mr. Rajneesh Malhotra, Advocate for TATA AIG Insurance Company (respondent No.5 in FAO No.1875 of 2014) and (respondent No.6 in FAO No.1462 of 2014).

None for remaining respondents.

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B.S. WALIA, J. (ORAL)

[1] This order shall decide FAO Nos.1462 and 1875 of 2014 as they arise from common award dated 24.10.2013.

[2] FAO No.1462 of 2014 has been filed by the appellant/Reliance General Insurance company seeking setting aside award of compensation while FAO No.1875 of 2014 has been filed by the appellants/claimants seeking enhancement of the compensation awarded.

[3] Learned counsel for the appellant/ Reliance General Insurance Company contended that finding qua negligence was incorrectly recorded by the learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') inasmuch as from the evidence of the sole eye-witness PW-3 i.e. Gurmeet Singh, it had not been established that the accident occurred on account of negligence attributable to the offending truck insured with the appellant/ Reliance General Insurance Company and further that the notional income of the deceased assessed at ₹20,000/- per month was on the higher side.

[4] Per contra, learned counsel for claimants/appellants in FAO No.1875 of 2014 contended that the negligence of the driver of the offending truck was clear on the face of the record on account of the victim vehicle having rammed into the rear of the truck on account of sudden application of brakes by the driver of the offending truck.

[5] Learned counsel for the claimants/appellants in FAO No.1875 of 2014 further contended that the driver of the offending truck absconded from the scene of accident after abandoning the truck and also did not put in appearance before the learned Tribunal and was consequently proceeded ex parte, besides was declared a proclaimed offender. Learned counsel contends that it is apparent that in the circumstances, the driver of the offending truck did not step into the witness-box to explain the manner in

which the accident took place and why the truck had been stopped all of a sudden in the middle of the highway. Learned counsel contends that the facts of the case go to show beyond an iota of doubt the negligence of the driver of the offending truck. Learned counsel further contended that the learned Tribunal had also categorically recorded in paragraph No.13 of the award on the basis of evidence that the accident took place as a result of rash and negligent driving of the offending truck by respondent No.1-driver and that there was no negligence on the part of the driver of the victim's vehicle and further that it had been duly pleaded and proved by way of evidence that the offending truck was being driven at a very fast speed and in a rash and negligent manner and that the driver of the offending truck suddenly applied brakes as a result of which car in which the deceased was driving rammed into the truck and that although no doubt it was the duty of the driver of a vehicle following another vehicle to maintain a safe distance, but it had neither been pleaded by the respondents before the learned Tribunal nor had even an iota of evidence been led to even suggest that the driver of the victim's vehicle in which the deceased was travelling was not maintaining a safe distance from the truck. Learned counsel further contended that the driver of the truck had not even bothered to step into the witness box to rebut the case of the claimants whereas PW-3, Gurmeet Singh who was travelling in the victim vehicle stepped into the witness box and deposed about the manner in which the accident took place. No doubt in his cross-examination he could not tell as to what was the speed of the car in which they were travelling but the Tribunal held that the same in itself was not sufficient to hold that there was some negligence on the part of the driver of the car also.

[6] In FAO No.1875 of 2014, the appellants/claimants have sought enhancement of compensation on the ground that no amount was awarded on account of future prospects; besides, appropriate compensation had not been awarded on account of conventional heads.

[7] I have considered the submissions of learned counsel for the parties. No doubt it has come in the evidence of PW-3, Gurmeet Singh that the distance between the offending vehicle and the victim vehicle was approximately 10 feet and on the accident taking place, PW-3, Gurmeet Singh lost his consciousness. No doubt the distance required to be maintained between two vehicles on a highway can be said not to have been maintained in the instant case, but the same would not impact upon the compensation to be awarded to the claimants/appellants in FAO No.1875 of 2014 in view of the fact that it was not the deceased who was driving the victim vehicle which was in fact being driven by another person by the name of Naman Sharma who also died in the accident.

[8] Learned counsel for the appellant- Reliance General Insurance Company contended that even the deposition of PW-3, Gurmeet Singh did not point to the sudden application of brakes by the truck in question.

[9] A perusal of testimony of PW-3, Gurmeet Singh reveals his having stated that "I have no idea about the taking of emergency breaks by the driver of the truck". In fact, the aforementioned statement of PW-3 Gurmeet Singh establishes that brakes were suddenly applied by the driver of the truck but that he was not aware that emergency break could be taken by the driver of a truck. This aspect has be to considered in the background of Regulation No.24 of the Road Regulations, 1989 which reads as under:-

> *"24. Abrupt brake – No driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons."*

As per the aforementioned Regulation, no person driving a vehicle shall apply sudden brakes except for safety reasons. However, as has been noted above, the driver of the offending truck not only abandoned the truck at the site of the accident but was also proceeded ex parte before the learned Tribunal and did not step into the witness box to lead any evidence to explain the reason for the sudden application of brakes or the manner in which the accident took place.

[10] At this stage, learned counsel for the appellant- Reliance General Insurance Company further contended that since it had been accepted by this Court that distance of 10 feet between two vehicles on the highway was not adequate distance, therefore, some negligence was attributable to the driver of the offending vehicle, consequently, the liability qua compensation to be paid to the claimants/appellants in FAO No.1875 of 2014 be apportioned amongst the two Insurance Company.

[11] Per contra, learned counsel for the respondent- TATA AIG Insurance Company contends that firstly, there is not even a whisper of allegation of negligence by the driver of the victim vehicle by the appellant-Insurance Company in its written statement before the Tribunal nor was any evidence in respect thereto led before the Tribunal, therefore, it is not open to the appellant-Insurance Company to raise this plea at this stage before this Court. Learned counsel further referred to paragraph No.8 of the evidence by way of affidavit of PW-3 Gurmeet Singh which reads as under:-

> *"That the accident is caused due to the negligence of respondent No.1, who was driving the impugned vehicle in a*

rash and negligent manner without following the traffic rules, he has fled away from the spot, after leaving the truck there, I came to know from the police that the said truck was driven by Rammurti son of Sh. Nathu Singh R/o Vasatpur, Distt. Mainipuri, U.P. As per the knowledge the police has not arrested him and he was declared P.O. by the Court."

to contend that the accident occurred due to the negligence of respondent No.1 who was driving the offending vehicle in a rash and negligent manner without following the traffic rules and that he fled away from the spot after leaving the truck there; besides, he had been declared proclaimed offender by the Court. Learned counsel further referred to the cross-examination of PW-3 Gurmeet Singh, relevant extract of which is reproduced as under:-

"It is incorrect to suggest that the accident was solely result of rash and negligent driving of Naman Sharma driver of a car with an unknown truck in which he had struck his car in its back side".

On the basis of the same, learned counsel for respondent-TATA AIG Insurance Company contended that it was not even suggested to PW-3 that the accident had taken place on account of contributory negligence, therefore, it was not open to the appellant to take up the plea of contributory negligence before this Court.

[12] I find merit in the plea of learned counsel for the respondent-TATA AIG Insurance Company and in view of the position as noted above, the plea for apportionment of compensation to be paid amongst the two Insurance Companies is rejected especially since there was no allegation of negligence by the driver of the victim's vehicle by the appellant-Insurance Company in its written statement before the Tribunal nor was any evidence in respect thereto led by the appellant/Insurance Company before the

Tribunal nor was it suggested by the appellant to PW-3 Gurmeet Singh in his cross-examination that the accident had taken place on account of contributory negligence.

[13] In the circumstances, the plea of the appellant-Reliance General Insurance Company of negligence not having been proved does not merit acceptance. As regards the plea that notional income of the deceased assessed at ₹ 20,000/- is on the higher side, it needs noticing that the deceased was not only a qualified Engineer having passed B.Tech Engineering Course in Electronics and Communications but was also doing MBA at Amity University, Noida. Apart from making a bald assertion that the notional income of the deceased has been assessed at a higher rate, learned counsel for the appellant/Reliance General Insurance Company has not been able to substantiate the basis for the said plea.

[14] Per contra, learned counsel for the claimants/appellants in FAO No.1875 of 2014 contended that in fact in view of the deceased being highly qualified, the income assessed at ₹ 20,000/- per month was on the lower side.

[15] I have considered the submissions of learned counsel for the parties and am of the view that on account of the deceased being a qualified Engineer having passed B.Tech in Electronics and Communications, besides, being a student of MBA, the notional income of the deceased assessed at ₹ 20,000/- per month does not warrant any interference.

[16] In FAO No.1875 of 2014, as regards the claim for future prospects it needs noticing that as per paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009,** where the deceased

was self-employed and was less than 40 years of age, 40% of the established income of the deceased minus tax component is to be added qua future prospects while computing the compensation.

In the instant case deceased was 22 years of age and his notional income was assessed at ₹ 20,000/- per month. Accordingly, 40% of the established income of the deceased minus the tax component is to be added on account of future prospects while computing the compensation.

[17] In FAO No.1875 of 2014 as regards plea for award of appropriate compensation under conventional heads, ₹ 25,000/- was awarded on account of funeral expenses whereas as per Paragraph No.61 (viii) of the decision in Pranay Sethi's case (Supra), a sum of Rs.15,000/- only is payable on account of funeral expenses and like amount on account of loss of estate. However, in a subsequent decision by Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and others decided on 18.09.2018 in Civil Appeal No.9518 of 2018,** while taking note of its earlier decision in Pranay Sethi's case, Hon'ble the Supreme Court held that parents of a deceased son are entitled to loss of filial consortium.

Accordingly, parents of the deceased are held entitled to compensation of ₹ 40,000/- each on account of loss of filial consortium.

[18] In the light of the position as noted above, FAONo.1462 of 2014 filed by the Reliance General Insurance Company Limited is dismissed while FAO No.1875 of 2014 filed by the claimants/appellants is allowed and the claimants/appellants are held entitled to the following compensation:-

Sr. No.	**Heads**	**Amount assessed by the Tribunal**	**Amount assessed by the Court**
1.	Income	₹20,000/-	₹20,000/-

2.	Future Prospects	NIL	40% of 20,000/- = ₹8,000/-
3.	Total Income assessed	₹ 20,000/-	(₹ 20,000/- + ₹ 8000/-) = ₹ 28,000/-
4.	Dependency (Annual)	₹ 20,000/- x 12 = ₹2,40,000/-	(₹ 28,000/- x 12) = ₹ 3,36,000/-
5.	Income tax assessed	NIL	₹ 21,836/-
6.	Total amount assessed after income tax deduction	NIL	₹ 3,36,000/- - ₹ 21836/- = ₹ 3,14,164/-
7.	Multiplier applied	18	18
8.	Deduction (towards personal expenses of deceased)	50% of ₹ 2,40,000/- = ₹ 1,20,000/-	50% of ₹ 3,14,164/- = ₹ 1,57,082/-
9.	Compensation Awarded	₹ 1,20,000/- x 18 = ₹21,60,000/-	₹ 1,57,082/- x 18 = ₹28,27,476/-
10.	Loss of Filial Consortium	NIL	₹ 80,000/- (@ ₹ 40,000/- each of the parents of the deceased)
9.	Loss of Estate	NIL	₹ 15,000/-
10.	Funeral Expenses	₹ 25,000	₹ 15,000/-
11.	Interest	7.5% per annum	7.5% per annum
TOTAL		**₹ 21,85,000/-**	**₹ 29,37,476/-**

[19] Accordingly, as against compensation of ₹ 21,85,000/- awarded by the Tribunal, the appellants-claimants in FAO No.1875 of 2014 are held entitled to compensation of ₹ 29,37,476/- along with interest @ 7.5% per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier. Needless to mention the Insurance Company shall deduct tax liability qua future prospects before

making payment of compensation in terms of the decision in Pranay Sethi's case.

[20] Accordingly, FAO No.1462 of 2014 filed by the Reliance General Insurance Company Limited is dismissed and FAO No.1875 of 2014 filed by the claimants/appellants is allowed by modifying Award dated 24.10.2013 passed by the learned Tribunal, Gurgaon to the extent as noted above.

(B.S. Walia)
Judge

13.12.2018
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.