IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 03.08.2018

FAO No.1943 of 2014 (O&M)

Cholamandalam M.S. General Insurance Co. Ltd. ... Appellant

Versus

Nisha Sodhi and others ... Respondents

FAO No.994 of 2014 (O&M)

Nisha Sodhi and others ... Appellants

Versus

Lakhwinder Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Vandana Malhotra, Advocate
for the insurance company.

Mr. Vikas Chatrath, Advocate
for respondents No.1 to 4 in FAO No.1943 of 2014.

Mr. Kushagra Mahajan, Advocate
for the appellants in FAO No.994 of 2014.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.994 and 1943 of 2014 as these have emerged out of the same award dated 02.04.2013 passed by the Motor Accidents Claims Tribunal, Amritsar whereby compensation has been awarded on account of death of Jatinder Singh in a motor vehicular accident that took place on 14.04.2011.

FAO No.994 of 2014 has been filed by the claimants seeking enhancement of compensation whereas the second appeal has been preferred by Cholamandalam M.S. General Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company').

Counsel for the insurance company has assailed findings of the Tribunal on issue No.1 attributing rashness and negligence to Lakhwinder Singh, driver and owner of balero car No.PB02-BF-9772, by relying upon testimony of Sukhraj Singh @ Raju RW3 who was one of the travellers in ill-fated zen car No.DL-1CF-0294 driven by Jatinder Singh. It is argued that the occurrence in question took place after midnight at about 2.00 am. Sukhraj Singh was one of the travellers in the car, therefore, he had ample opportunity to watch as to how the zen car was driven by Jatinder Singh that led to the accident. It is further argued that even if Jatinder Singh is not attributed entire negligence for the occurrence, it is certainly a case of contributory negligence of the deceased and claimants are not entitled to compensation to the extent of negligence attributable to Jatinder Singh.

Counsel for the claimants has supported findings of the Tribunal on issue no.1 with the submission that testimony of Balwinder Kumar, an eyewitness to the occurrence and author of FIR No.37 dated 15.04.2011 lodged at Police Station Sadar, Banga against Lakhwinder Singh driver of the offending vehicle is more than sufficient to establish plea of the claimants that accident occurred due to exclusive rash and negligent driving of offending balero car by Lakhwinder Singh. In addition, it is submitted that on due investigation of the FIR, Lakhwinder Singh was charge-sheeted and put to trial, as has been so admitted by Lakhwinder Singh in his cross examination.

With regard to compensation assessed by the Tribunal, counsel for the claimants has submitted that the deceased was working as LDC in PSEB now known as Punjab State Power Corporation Ltd. at a salary of Rs.30,000/- per month but the Tribunal has wrongly assessed his income at Rs.25,277/- per month. He has prayed that adequate compensation may be allowed under conventional heads.

Counsel for the insurance company, on the contrary, would urge that income tax payable by the deceased is liable to be deducted, out of annual loss of income.

I have heard counsel for the parties, perused the paper book and records.

Balwinder Kumar, brother-in-law (sala) of Jatinder Singh (since deceased) was examined to discharge onus of issue No.1 with regard to the accident being the result of rash and negligent driving of balero car. He tendered into evidence his duly sworn affidavit Ex.PW3/A. As per testimony of Balwinder Kumar, he was travelling in car No.HP-17A-0099 from Chandigarh to his place of residence and followed car No.DL-1CF-0294, driven by Jatinder Singh, husband of his sister and in the said car Pardeep Singh son of Ajit Singh, Alwin son of Jagir Massih, Alwin's sister Saroj and Raju son of Baldev Singh were travelling. He has reiterated version of the claimants that the balero car came on wrong side of the road and struck against car of Jatinder Singh and occupants of the car sustained serious injuries and injured were shifted to Guru Nanak Mission Hospital, Dhahan Kaleran where Jatinder Singh was declared dead. The witness was subject to cross examination but nothing tangible and material has been elicited in his cross examination to impeach his credibility. It is also an admitted fact that Lakhwinder Singh was put to trial after due investigation of FIR lodged at the behest of Balwinder Kumar. As Lakhwinder Singh has faced criminal proceedings, he has every reason to deny his liability for having caused the accident. However, one of the occupants of the car Sukhraj Kumar @ Raju son of Baldev Raj @ Baldev Singh RW3 appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.RW3/A. In paras 1 and 2 of the affidavit, he has given a detailed account as to how Jatinder Singh came on the driving seat and his negligent driving resulted in accident. He would depose that Jatinder Singh was not driving the car properly and he was also sleeping while driving.

The learned Tribunal has rejected testimony of Sukhraj Kumar solely on the ground that he has failed to prove that he is a driver by profession or he was working as a driver on the vehicle in question on 12.04.2011. The Tribunal has failed to appreciate that Balwinder Kumar PW3 has admitted in his testimony that Raju son of Baldev Singh was also travelling in the car bearing No.DL-1CF-0294 and sustained injuries in the occurrence. Raju being one of the travellers in the car driven by Jatinder

Singh was the best person to reveal if any rashness or negligence can be attributed to Jatinder Singh for the occurrence. This apart, Balwinder Kumar being close relative of deceased has every reason to blame Lakhwinder Singh and exonerate his brother-in-law (jija) who was driving the car at 2.00 o'clock after midnight. RW Sukhraj has no hostility against the claimants. As Sukhraj Kumar himself is the victim of accident and sustained injuries in the occurrence, it is difficult to believe that he would take side of driver of the alleged offending vehicle had it been true that accident was caused on account of sole negligence of Lakhwinder Singh, admittedly, driver of balero car at the time of accident. When testimonies of Balwinder Kumar and Sukhraj Kumar are balanced in a scale, there is no escape from concluding that accident is the result of contributory negligence of drivers of both the vehicles involved in the accident and they are to be attributed negligence in equal ratio 50:50. In this view of the matter, findings of the Tribunal on issue No.1 are modified accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has assessed compensation to the tune of Rs.41,60,360/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.25,277/-
2. Addition in income for future prospects	30%
3. Multiplier	14
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.41,40,360/-
6. Expenses on funeral	Rs.5000/-
7. Loss of estate	Rs.5000/-

8. Loss of consortium Rs.10,000/-

The deceased was an employee of Punjab State Electricity Board now known as PSPCL. Sh. Davinder Kumar, UDC, PSPCL, Ajnala Division PW2 brought records of service of Jatinder Singh and attested copy of service record Ex.P3. One of the documents produced by the witness Ex.P2 is copy of salary statement attested by Additional Superintending Engineer of the Department. Perusal of Ex.P2 leaves no manner of doubt that in March, 2011 gross salary of the deceased was Rs.25,277/- but his salary was revised w.e.f January, 2011 and revised pay was Rs.29,073/- out of which an amount of Rs.5926/- towards GPF and LIC was deducted and net payable amount was Rs.23,147/-. The Tribunal has failed to take into account the remarks on the document Ex.P2 with regard to revision of pay and gross emolument at Rs.29,073/- per month. The deductions made from the salary are the benefits available to family of the deceased, therefore, cannot be ignored for computing loss of dependency. The annual income of the deceased is Rs.3,48,876/- (Rs.29,073 x 12). After deducting liability to pay income tax of Rs.15,887/-, net annual income comes to Rs.3,32,989/- (3,48,876 – 15,887). The Tribunal has rightly allowed addition in income for future prospects @ 30% as the deceased was born on 09.04.1971 and more than 40 years of age or to say exactly that he was 40 years and 5 days old at the time of unfortunate occurrence. The multiplier and deduction for personal expenses allowed by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at

Rs.45,45,300/- [(Rs.3,32,989 x 14) + (30% future prospects) – (1/4th deduction for personal expenses)]. The claimants shall be entitled to 50% of loss of dependency i.e. Rs.22,72,650/- as 50% negligence has been attributed to the deceased.

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.23,42,650/- and compensation allowed by the Tribunal is reduced to the extent of Rs.18,17,710/- (41,60,360 - 23,42,650). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeals are disposed of, in the aforesaid terms.

03.08.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No