IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross Objections No. 98-CII of 2016 and FAO No. 1510 of 2015 (O&M)
Date of decision : December 13, 2018

United India Insurance Co. Limited .....Appellant

Versus

Asha Devi and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. D.R. Bansal, Advocate
for the appellant.

Mr. Gopal Sharma, Advocate
for respondents No. 1 to 3/cross objectors.

None for respondents No. 4 and 5.

Mr. A.K. Yadav, Advocate
for respondent No. 6.

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LISA GILL, J.

This judgment shall decide FAO No. 1510 of 2015 as well as Cross Objection No. 98-CII of 2016 filed by claimant-respondents No. 1 to 3.

Present appeal has been filed by the insurance company challenging award dated 22.09.2014 passed by the learned Motor Accident Claims Tribunal, Rewari (hereinafter referred to as the 'Tribunal') primarily on the ground that as the deceased who was riding his motorcycle, struck against the offending vehicle from behind, he was guilty of contributory negligence. No serious challenge has been raised qua quantum of compensation.

Cross objections seeking enhancement of the compensation awarded have been filed by the claimants-respondents No. 1 to 3.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, children and father of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Ramesh Chand on 19.01.2015 in a motor vehicle accident caused due to driving of the offending vehicle Truck (tralla) bearing registration No. RJ-18-GA-1002 by respondent No.1 in a rash and negligent manner. It was averred that Ramesh Chand (deceased) was going from village Roliwal on 19.01.2015 for duty at the Indian Oil Corporation Depot on his motorcycle bearing registration No. HR-36J-8758. He reached near Saharnwas petrol pump on Mahendergarh Rewari road at about 8.00 p.m.. The offending truck was parked in the middle of the road without any indicator or back light in a totally negligent manner. There were glaring flashing lights of the vehicles coming from the opposite direction due to which Ramesh Chand struck against the offending vehicle. He received injuries and ultimately succumbed to them.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 19.01.2015 due to rash and negligent driving of the offending Truck bearing registration No. RJ-18-GA-1002 by respondent No. 1. Learned Tribunal awarded a sum of ₹9,16,868/- with interest at the rate of 6% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹1,8998/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 11 was applied as the deceased was 50 years old at that time. Additionally, a sum of

₹1,00,000/- on account of loss of consortium and ₹25,000/- on account of funeral expenses was awarded. The insurance company is primarily aggrieved of the finding of the learned Tribunal to the extent that the accident is held to be caused due to the rash and negligent driving of the offending vehicle by the respondent – driver.

Aggrieved of the quantum of compensation, claimants have filed the cross objections.

Learned counsel for the insurance company vehemently argues that the deceased admittedly hit the offending stationary vehicle from behind, therefore, contributory negligence is evident on the face of it. Learned Tribunal, in these facts and circumstances, it is submitted has erred in holding respondent No. 1 solely responsible for the accident. In case, any negligence is indeed proved on the part of the offending vehicle, the insurance company can still not be held liable to pay the entire compensation. Deduction has to be effected on account of contributory negligence on the part of Ramesh Chand (deceased). It is, thus, prayed, that the impugned award be modified in this respect.

Learned counsel for the respondents No. 1 to 3, however, refutes the said averments while claiming that there is no question of any negligence on the part of the deceased Ramesh Chand. In fact, compensation awarded by the learned Tribunal is required to be enhanced. It is, thus, prayed that this appeal be dismissed and cross objections be allowed.

I have heard learned counsel for the parties and have gone through the available file.

As per the averments in the claim petition, Ramesh Chand (deceased) was going from village Roliwal on 19.01.2015 for duty at the Indian Oil Corporation Depot on his motorcycle bearing registration No. HR-36J-8758. He reached near Saharnwas petrol pump on Mahendergarh Rewari road at about 8.00 p.m. The offending truck was admittedly parked in the middle of the road without any indicator or back light in a totally negligent manner. There were glaring and flashing lights of the vehicles coming from the opposite direction due to which Ramesh Chand struck against the offending vehicle from behind. He received serious injuries and ultimately succumbed to them.

Learned counsel for the insurance company is unable to deny that the offending vehicle was indeed parked in the middle of the road at 8.00 p.m. in January without any kind of indicators or lights. It has been held by the Hon'ble Supreme Court in the case of **Archit Saini and another versus Oriental Insurance Company Limited and others 2018 (5) RCR (Civil) 80** that merely because a vehicle strikes against a vehicle from behind does not, per se, lead to a presumption of negligence on the part of the vehicle coming from behind. Positive evidence has to be led by the insurance company to prove that the said vehicle approaching from behind was indeed guilty of a rash and negligent act. There is admittedly no such evidence on record to prove the same. Therefore, it cannot be concluded that the deceased Ramesh Chand was rash and negligent in any manner when he hit the offending vehicle parked in the middle of the road. As noted earlier, no serious challenge has been raised to the quantum of compensation awarded to the claimants. There is, thus, no merit in the appeal filed by the insurance company.

In regard to the plea for enhancement of compensation awarded, there is no dispute regarding income of the deceased to be ₹8,998/- per month as assessed by the learned Tribunal and the same is upheld. In view of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase on account of future prospects at the rate of 10% (₹900/-) has to be afforded, as the deceased was admittedly more than 50 years of age at the time of accident, his date of birth being 15.10.1962, which takes income of the deceased to ₹9,898/- per month. There is merit in the argument raised by the learned cross objectors that deduction of 1/4th instead of 1/3rd should have been applied. This is so for the reason that claimants are widow, two children and father of the deceased. Father of the deceased is mentioned to be 100 years of age. Therefore, he necessarily has to be considered as dependant upon the deceased especially in view of the fact that there is no evidence on record to rebut the said contention and claim of the appellants. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of 1/4th is to be applied as number of dependants is four (4), thereby rendering income of the deceased to be ₹7424/-(9898-2474). Applying a multiplier of 11, dependancy of the claimants is, therefore, assessed as ₹9,79,968/- (₹7424x12x11). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018), claimant

– respondents No. 2 and 3 of the deceased are entitled to ₹40,000/- each on account of loss of parental consortium and claimant – respondent No. 4 to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹11,69,968/- detailed as under:-

Loss of dependency(₹7424x12x11)	₹9,79,968/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium (40,000 x 2)	₹80,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹11,69,968/-

The claimant/respondents shall, however, be entitled to interest @ 7.5% per annum on the amount yet to be disbursed from the date of filing of the petition till realisation.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

FAO No. 1510 of 2015 filed by the insurance company is dismissed. With the abovesaid modification in the amount of compensation, cross Objection No. 98-CII of 2016 are disposed of.

(Lisa Gill)
Judge

December 13, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No