IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214 **FAO-447-2013 (O&M)**

Date of Decision:23.04.2018

National Insurance Company Limited .....Appellant

Versus

Smt. Sudama and others .....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Ms. Vandana Malhotra, Advocate,
for the appellant.

Mr. R.N. Mourya, Advocate,
for respondent Nos.1 to 3.

Mr. Vikram Bali, Advocate,
for respondent Nos.4 and 5.

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<u>HARI PAL VERMA, J.(Oral)</u>

Appellant-National Insurance Company Limited has filed the present appeal against the award dated 03.10.2012 passed by learned Motor Accident Claims Tribunal, Chandigarh (for short “the Tribunal”), whereby in a claim petition filed by respondent Nos.1 to 3-claimants under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has awarded a total compensation of ₹8,20,000/- on account of death of Harish Sharma, son of claimants-respondent Nos.1 and 2 in the accident.

The claim petition was filed by parents and unmarried sister of the deceased Harish Sharma. The motor vehicular accident took place on 14.01.2011, wherein Harish Sharma, aged 20 years had died. He was a

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bachelor at the time of his death. As per the claim petition, Harish Sharma (since deceased) was working as a Peon with Berkley Automobiles Limited, Mohali. On 14.01.2011, when the deceased and his friend Avdhesh Chaudhary were going on their bicycles from their work place i.e. Berkley Automobiles Limited, Mohali, in connection with their domestic work and have reached at chowk of Phase V/VIII Mohali, a tractor bearing registration No.PB-65-K-2811 being driven by its driver, at a very fast speed, in a rash and negligent manner, hit the deceased. In this accident, the deceased suffered serious injuries all over his body and was taken to Cheema Hospital, Mohali and from there he was taken to General Hospital, Sector 16, Chandigarh. He remained under treatment till 16.01.2011 and died because of the injuries suffered by him in the accident.

Though, the claimants have pleaded that the deceased was earning ₹7,000/- per month while working as a Peon with Berkley Automobiles Limited, Mohali, however, as no such evidence was produced by the claimants, in support of income of the deceased, the Tribunal has considered his income as ₹5,000/- per month considering him a daily wager and applied 50% deduction, as he was unmarried. A sum of ₹5,000/- on account of last rites and funeral expenses and another sum of ₹5,000/- towards loss of estate were also granted. Applying multiplier 18, the Tribunal has awarded a total compensation of ₹8,20,000/- vide award dated 03.10.2012.

The appellant-Insurance Company has filed the appeal on the ground that the awarded compensation is on the higher side. Learned counsel for the appellant-Insurance Company has argued that the claimants have failed to prove that the deceased was drawing salary as ₹5,000/- per

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month. Even at the relevant time, the minimum wages as fixed by the Govt. were ₹4,502/- per month. She has further argued that the driver of the offending vehicle was not holding a valid driving licence as there was no endorsement in the driving licence to that effect. Therefore, in the absence of endorsement in the driving licence, a tractor-trolley cannot be used as a transport vehicle. She has further argued that the Tribunal has awarded addition of 50% towards future prospects, whereas as held by the Hon'ble Apex Court in case **National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009,** this addition should have been 40% towards future prospects. The Berkley Automobiles Limited, Mohali, has issued a certificate on 23.11.2011 to the effect that the deceased, who died in the accident on 16.01.2011 was drawing salary ₹3,500/- per month.

Learned counsel for the appellant-Insurance Company has relied upon the judgments of the Hon'ble Apex Court in cases **New India Assurance Company Limited Versus Prabhu Lal, 2008(1) R.C.R. (Civil) 198** and **Fahim Ahmad and others Versus United India Insurance Company Limited and others, 2014(2) R.C.R. (Civil) 470.**

On the other hand, learned counsel for respondent Nos.1 to 3-claimants has argued that the deceased was working with Berkley Automobiles Limited, Mohali, and drawing salary of ₹7,000/- per month, though, the Company has not issued any such certificate of salary. The Tribunal has assessed the income of the deceased as ₹5,000/- per month which is certainly not on the higher side as argued by the Company. He has further argued that as held by the Hon'ble Apex Court in case **New India Assurance Company Limited Versus Gopali and others, 2012 (3) R.C.R.**

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(Civil) 818, the deceased whose income is below ₹5,000/-, rule of 1/3rd deduction from income towards personal expenses should not be applied strictly and only 1/10th deduction is to be made. The concept of 1/3rd deduction applies to rich people, whereas in the case in hand, the deceased was from a poor strata of society. Considering the fact that the deceased was belonging to a poor family, he would not spend 50% of the income upon himself. However, as regards the applicability of multiplier, he has argued that multiplier has rightly been applied vis-a-vis age of the deceased and the Tribunal has awarded a very meager amount of ₹10,000/- on account of last rites, funeral expenses and loss of estate i.e. ₹5,000/- each, whereas as held in **Pranay Sethi's case(supra)**, this amount has to be awarded ₹30,000/-.

I have heard the learned counsel for the parties.

The accident is not in dispute. What is in dispute is the quantum of compensation awardable to the respondents-claimants. The pleaded case of the appellant-Insurance Company that the driver was not holding a valid licence as there was no endorsement in the driving licence to use the tractor-trolley for transportation use. This proportion has already been considered by the Hon'ble Supreme Court in case **Sant Lal Versus Rajesh and others, 2017(3) R.C.R. (Civil) 757,** wherein it has been held that a driver having licence to drive light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement. Hence, there was no breach of the conditions of the policy and this argument of the appellant/Insurance Company is rejected.

So far as the argument put forward by the learned counsel for the appellant-Insurance Company that income of the deceased was ₹3,500/- per month, cannot be accepted for the reason as the said document

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(certificate) was never placed before the Tribunal. Thus, the Tribunal had no access of this evidence before it, but at the same time, this Court finds that the deceased was working as a Peon with Berkley Automobiles Limited, Mohali, is not in dispute. The deceased may not be a skilled worker, but drawing a salary ₹5,000/- per month, is certainly not on higher side. Therefore, this Court does not find any justified reason to disturb the findings given by the Tribunal so far as assessment of income of the deceased as ₹5,000/- per month is concerned.

The argument of learned counsel for the appellant-Insurance Company that as the deceased was working with a private establishment and was of 20 years of age, the Tribunal was required to add 40% towards further prospects instead of 50%, merits consideration. But at the same time, reference may be made to the judgment dated 22.11.2017 passed by the Hon'ble Apex Court in **Special Leave Petition (Civil) No.22134 of 2016** titled as **<u>Hem Raj Versus The Oriental Insurance Company Limited and others</u>**, the Court should not direct refund in such like cases.

No doubt, this Court on 04.02.2013 while issuing notice of motion in the case had stayed the recovery of compensation in excess of ₹4,50,000/-. But this Court has been informed that the claimants have been disbursed an amount of ₹4,25,000/- only by excluding ₹25,000/-, the statutory amount deposited by the Insurance Company.

In the light of judgment in **<u>Pranay Sethi's case(supra)</u>**, the claimants are sentitled to compensation in the following manner:-

Monthly income	:	₹5,000/-
Future prospects (40%)	:	₹2,000/-
Total monthly income	:	₹7,000/-
Annual income	:	₹84,000/-

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Annual dependency (after 50% deductions)	:	₹42,000/-
Total loss of dependency (₹42,000/- x18)	:	₹7,56,000/-
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-
Total amount of compensation	:	₹7,86,000
Amount already awarded	:	₹8,20,000
Total deduction	:	-₹34,000/-

Having considered the argument and the calculation made here-in-above, an amount of ₹34,000/- is awarded excess to the claimants, but as the claim petition was filed on 19.02.2011 and the case is pending since 2013, this Court finds that considering the little difference in the compensation awarded and entitlement of the claimants to order the reduction of compensation at this stage would be too harsh to the claimants, who have already lost their young son.

The award dated 03.10.2012 passed by the Tribunal is therefore maintained and the present appeal filed by the appellant-Insurance Company is hereby dismissed.

April 23, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

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