IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2746 of 2015 (O&M)

The New India Assurance Company Ltd. ...Appellant

Versus

Sushma and others ...Respondents

FAO No.6601 of 2016 (O&M)

Sushma and others. ...Appellants

Versus

Sukh Pal and others ...Respondents

Date of Decision: January 10, 2018

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Brig.B.S.Taunque, Advocate
for the appellant – insurer in FAO No.2746 of 2015.

Mr.R.S.Mamli, Advocate
for the appellants – claimants in FAO No.6601 of 2016.

***

HARINDER SINGH SIDHU, J.

This order shall dispose of both the above appeals as they arise from the award dated 7.2.2015 of the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari.

FAO No.2746 of 2015 has been filed by the Insurance Company against the award of compensation, whereas, FAO No.6601 of 2016 has been filed by the claimants for enhancement of compensation, who are the widow, father, mother and minor daughter of the deceased Kapil.

Briefly, the facts are that on 25.4.2013, one Prince and Kapil were coming to village Mangoli Jattan from Yamuna Nagar in car bearing registration No.HR-30C-7600 which was being driven by Kapil. At about 6.00 p.m. when they reached near village Kanjnu, a canter bearing No.HR58-9793 being driven by respondent No.1 in a rash and negligent manner came and hit the car, as a result of which, the car rolled into a ditch near the road. Kapil, who got trapped between the steering wheel and seat of the car died at the spot, while the other occupant of the car, Prince received grievous injuries. He was initially taken to Hospital at Yamuna Nagar, from where he was referred to PGI, Chandigarh. He died during treatment at PGI, Chandigarh on 28.4.2013.

The accident was witnessed by Ranjit Singh resident of village Mangoli Jattan who was coming on motorcycle No.HR07F-1991 alongwith Jasbir Singh. FIR bearing No.167 dated 25.4.2013 under Section 279, 337, 304-A, IPC was registered at Police Station Radaur regarding the accident.

Two separate claim petitions were filed, one claiming compensation on account of the death of Kapil and another claiming compensation on account of the death of Prince, which were disposed of by a common award.

The present appeals have arisen from the claim petition filed for compensation for the death of Kapil.

The learned Tribunal relying on the evidence of eye witness Jasbir Singh who appeared as PW-2 and the fact that FIR regarding the incident had been registered, charge-sheet filed and respondent No.1 was facing trial, concluded that the accident was caused due to rash and negligent driving of the canter by respondent No.1.

Initially, the claim petition was filed by the widow, father and mother of the deceased. During the pendency of the claim petition, the deceased's daughter, Jeevika was born. An application under Order 1 Rule 10 for impleading her as a claimant was filed. Vide order dated 23.9.2014, the learned Tribunal allowed the application.

The deceased Kapil was working as data entry operator in the office of XEN, UHBVNL and his gross salary was Rs.7500/- per month. As per the MLR, he was 23 years of age. The Tribunal while assessing the loss of dependency, granted increase of 30% in the income towards future prospects. It deducted 1/3rd of the income of the deceased as his personal expenses. Multiplier of 18 was applied and the loss of dependency was assessed at Rs.14,04,000/-. Rs.25,000 was awarded towards 'funeral expenses' and Rs.1 lac was awarded to appellant No.1 Sushma (widow) as 'loss of consortium'. A total compensation of Rs.15,25,000/- was awarded. 50% of the amount was to be given to claimant Sushma (widow) and remaining 50% was to be shared by appellants No.2 and 3, Naib Singh and Roshni, father and mother respectively of the deceased.

Learned counsel for the claimants argued that as the age of the deceased was 23 years, 40% increase on account of future prospects ought to have been granted as against 30% increase granted by the Tribunal. He further argued that as there were four claimants, the deduction on account of personal expenses ought to have been 1/4th instead of 1/3rd.

In my view, the argument of the learned counsel that deduction towards personal expenses of the deceased ought to have been 1/4th as there were four claimants is without merit. The claim petition was initially filed by the widow, father and mother of the deceased. Later, the minor daughter of the deceased was impleaded as a claimant. It is well settled that where a deceased is married and has his own family, then in the absence of any evidence to show that the father was actually dependent on the income of the deceased, a father cannot be treated as a dependent entitled to compensation. No such evidence has come on record. In fact, Naib Singh father of the deceased while appearing as PW-3 before the Tribunal had stated that he is an employee with UHBVNL and is getting a salary of Rs.25000/- per month. He also stated that he was maintaining himself and his wife Roshni from his own income. Thus, in my view, the Tribunal had erred in treating the father of the deceased as his dependent entitled to compensation. But that would not make any difference qua the deduction towards personal expenses of the deceased as there would be only three claimants namely, the widow, mother and minor daughter of the deceased. However, instead of awarding compensation, to the father of the deceased the same ought to have been awarded to his minor daughter who had been impleaded as claimant during the pendency of the claim petition. But in the absence of a challenge thereto no direction qua the same is being given in this appeal.

In the light of the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others** SLP (Civil) 25590 of 2014 – **2017 SCC Online SC 1270** the compensation is re-assessed as under:-

Sr.No.	**Heads**	**Calculation (In Rs.)**
(i)	Monthly Income	7500/-

(ii)	40% of above (i) to be added as future prospects (deceased aged 23 yrs.)	7500+(7500x40/100) = 10,500/-
(iii)	Loss of income (1/3rd of (ii) deducted as personal expenses of the deceased - two dependants)	10500-(10500x1/3)= 7000/- per month
(iv)	Compensation after multiplier of 18 is applied	7000x12x18= 15,12,000/-
(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	Rs.40,000/-
(vi)	Loss of Estate	Rs.15,000/-
(vii)	Funeral Expenses	Rs.15,000/-
	Total	***Rs.15,82,000/-***

Brig. B. S. Taunque, learned counsel for the Insurance company in FAO No.2746 of 2015 has argued that the learned Tribunal has erred in fastening the entire lability for the accident on respondent No.1, whereas, as it was a case of head-on collusion, there was contributory negligence to the extent of 50% on the part of the deceased.

It is not possible to agree with the contention of the learned counsel for the appellant as there is no evidence to substantiate the assertion that the accident was a head-on collision. PW-2, Jasbir Singh eyewitness in his evidence clearly stated that the canter bearing registration No.HR58-9793 being driven by respondent No.1 was coming in rash and negligent manner at a very high speed in a zig zag manner and hit the motor car being driven by the deceased on the front side due to which it fell in the ditch near the road. He was witness to the accident and had taken the injured Prince and the deceased, Kapil to the Hospital. Similarly, in the FIR recorded on his statement, it has been stated that the Canter was being driven at high speed rashly and negligently. It came on the wrong side and hit the car which was being driven by the deceased Kapil due to which it fell in the ditch.

In the face of this evidence, it is not possible to accept the assertion of learned counsel for the appellant for the Insurance company that the accident was a head-on collusion and it was a case of contributory negligence on the part of the deceased, who was on the steering wheel of the car. The Tribunal has rightly concluded that the accident was caused due to rash and negligent driving of the Canter by respondent No.1 Sukh Pal. Thus, there is no merit in the appeal of the insurance company (FAO-2746-2015) and the same is dismissed.

The appeal filed by the claimants (FAO-6601-2016) is partly allowed. The Award of the Tribunal is modified to the extent that the compensation is enhanced to Rs.15,82,000/-, that is, Rs.53,000/- (1582000-1529000) over and above the amount awarded by the Tribunal. The enhanced compensation of Rs.53,000/- along with interest at the rate of 7.5% per annum from the date of filing of claim application till realisation, be paid to appellant No.4 Jivika, the minor daughter of the deceased.

January 10, 2018

gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No