IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 22.5.2018

1. **FAO No.5180 of 2014(O&M)**

National Insurance Co. Ltd. ….Appellant

VERSUS

Nisha Devi and others .....Respondents

Present: Mr. G.D. Gupta, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondent No.2.

Mr. M.K. Bhatnagar, Advocate for respondent No.3.

Mr. Sunil Kumar, Advocate for respondent No.4.

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2. **FAO No.5181 of 2014(O&M)**

National Insurance Co. Ltd. ….Appellant

VERSUS

Smt. Shanti Devi and others .....Respondents

Present: Mr. G.D. Gupta, Advocate for the appellant.

Respondents No.1 to 3 already ex parte.

Mr. M.K. Bhatnagar, Advocate for respondent No.4.

Mr. Sunil Kumar, Advocate for respondent No.5.

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3. **FAO No.4586 of 2014(O&M)**

Amar Nath @ Sonu ….Appellant

VERSUS

Smt. Shanti Devi and others .....Respondents

Present: Mr. M.K. Batnagar, Advocate for the appellant.

Mr. Sunil Kumar, Advocate for respondent No.4.

Mr. G.D. Gupta, Advocate for respondent No.5.

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4. **FAO No.4587 of 2014(O&M)**

Amar Nath @ Sonu ….Appellant

VERSUS

Nisha Devi and others .....Respondents

Present: Mr. M.K. Batnagar, Advocate for the appellant.

Mr. Sunil Kumar, Advocate for respondent No.3.

Mr. G.D. Gupta, Advocate for respondent No.4.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.(Oral)

CM No.14699-CII-2014 in
FAO No.5180 of 2014

Prayer in this application is for condoning delay of 11 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Amri Singh, Admn. Officer, National Insurance Co. Ltd., the application is allowed. Delay of 11 days in filing the appeal stands condoned.

Disposed of accordingly.

Main cases

This order will dispose of FAO Nos.4586, 4587, 5180 and 5181 of 2014 as these have emerged out of the same award dated 15.03.2014 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') whereby two claim applications i.e. one filed by

Smt. Nisha Devi and another with regard to death of Rahul Kumar and others by Smt. Shanti Devi and others qua death of Lakhveer Singh in a motor vehicular accident that took place on 04.12.2011 have been allowed and compensation has been granted.

FAO Nos.4586 and 4587 of 2014 have been filed by Sh. Amar Nath @ Sonu – driver of the alleged offending vehicle to assail the award fastening liability against him. The other two appeals have been preferred by the insurance company i.e. FAO no.5180 of 2014 to assail quantum of compensation assessed qua death of Rahul Kumar and FAO No.5181 of 2014 in respect of death of Lakhveer Singh.

FAO Nos.4586 and 4587 of 2014

The sole submission made by counsel for the appellant is that Amar Nath @ Sonu son of Vikram Chand arrayed as respondent No.1 in the applications for compensation was not driver of the offending vehicle, therefore, the Tribunal has wrongly held that the offending vehicle was driven by Sh. Amar Nath at the time of accident and he is liable to pay compensation to the claimants. To bring home his contention, he has relied upon testimony of Parkash Chand owner of the offending car wherein he had stated that car was driven by his son and not by Amar Nath @ Sonu. It is argued with vehemence that the Tribunal has failed to appreciate testimony of Parkash Chand in right perspective and committed an error by holding that offending vehicle was driven by Amar Nath at the relevant time. In addition, he has argued that Amar Nath has been acquitted by the criminal Court of the charge framed against him in regard to the accident in question.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 whereby it has been held that the offending vehicle was driven by Amar Nath and it was because of rash and negligent driving of offending vehicle by Amar nath, Rahul and Lakhveer sustained injuries that proved fatal. It is further submitted that Parkash Chand in his cross examination by counsel for the insurance company before the Tribunal has candidly admitted that the offending vehicle was driven by Amar Nath at the time of occurrence. Further argued that Amar Nath filed written statement and raised the issue against his being driver of the offending vehicle at the time of occurrence. For the reasons best known, he did not appear in the witness box to establish his plea in this regard and an adverse inference is liable to be drawn against Amar Nath for failing to cause appearance as a witness.

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

Indisputably, Amar Nath in para 3 of the written statement has raised certain averments with regard to the vehicle being not driven by him and the circumstances under which he has been indicted in the criminal proceedings by nominating as driver of the offending vehicle. However, Amar Nath did not appear in the witness box to establish his plea raised in the written statement. As per the settled position in law, if a party fails to appear in the witness box without any sufficient reason much less tangible explanation, an adverse inference is liable to be drawn against him.

I have gone through testimony of Parkash Chand, registered owner of the vehicle. When Parkash Chand was cross examined by counsel representing the appellant before the Tribunal, he has towed to the line of appellant by saying that vehicle was driven by his son at the time of accident. However, when he was cross examined by Sh. Rajesh Verma, Advocate, counsel for the insurance company before the Tribunal, he has candidly admitted that respondent No.1 was driving his car on his instructions on the date of alleged accident. Further stated that he is not having any copy of driving licence of respondent No.1 at that stage.

No sooner Parkash Chand in his cross examination by the insurance company has admitted that the vehicle was driven by respondent No.1 at the relevant time coupled with the discussion made hereinbefore, I find it difficult to subscribe to the contention raised by counsel for the appellant or to interfere in findings of the Tribunal answering issue No.1 in favour of the claimants and against the respondents. Acquittal of Amar Nath is of no consequence or avail to interfere in findings of the Tribunal as judgment passed by a criminal Court is not binding upon the civil Court when otherwise standard of proof required in two proceedings entirely stands on different footing. In this view of the matter, the appellant cannot derive any advantage to his contention from the factum of acquittal by the criminal Court.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed. No order as to costs.

<u>FAO No.5180 of 2014</u>

The Tribunal has assessed compensation of Rs.13,21,000/- detailed hereunder:-

Monthly income of the deceased	Rs.6,000/-
Multiplier	18
Addition in income for future prospects	50%
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.12,96,000/-
Expenses on transportation, funeral	

and last rites Rs.25,000/-

Counsel for the insurance company has challenged assessment of compensation primarily on two counts. It is argued that the Tribunal has allowed benefit of future prospects at the rate of 50% as against 40% admissible in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**. Another submission made by counsel is that application for compensation was filed by the mother and younger sister of the deceased but in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**, admissible deduction for personal expenses should be 50%.

Counsel representing the claimants has supported assessment made by the Tribunal. It is further argued that even if this Court finds that compensation assessed by the Tribunal is more than what can be allowed in the light of latest judgment in **Pranay Sethi and others case** (supra), the insurance company should not be allowed to recover the same from the claimants who are widowed mother and younger sister of the deceased. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shalu Sharma and others, 2018 (2) SCC 753.** Further reference has been made to judgment of this Court **Reliance General Insurance Co. Ltd. Vs. Saroj Devi Sethia and others, FAO No.9124 of 2014, decided on 17.04.2018.**

Counsel for the insurance company, in reply, has refuted contention of counsel for the claimants on the premise that compensation to be allowed to the claimants cannot be a source of profit nor bonanza or largesse, therefore, excess payment, if any, received by the claimants is liable to be refunded by them.

I have heard counsel for the parties, perused the paper-book particularly the award.

The Tribunal has allowed benefit of future prospects at the rate of 50%. As has been rightly argued by counsel for the insurance company, the same is restricted to 40% in the light of judgment in **Pranay Sethi and others case** (supra). The Tribunal has allowed deduction of $1/3^{rd}$ for personal expenses of the deceased. Hon'ble the Supreme Court in **Smt. Sarla Verma's case** (supra) has held that if the deceased happens to be unmarried son of the claimant, deduction for personal expenses would be 50%. However, in the concluding lines of para 15 of the judgment, it has been held that where the family of the bachelor is large and dependent on income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. In the case at hand, there is only one sibling i.e. younger sister of the deceased who is one of the claimants in this case. Under the circumstances, there is no justification for deviating from the settled formula of allowing deduction for personal expenses to the extent of 50%. The multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.9,07,200/- [Rs.12,96,000/- (Rs.6000 x 12 x 18) + Rs.5,18,400/- (40% future prospects) – Rs.9,07,200/- (50% deduction towards personal expenses).

Under conventional heads, claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss of estate.

In view of the above, total compensation comes to Rs.9,37,200/- and compensation awarded by the Tribunal is in excess to the tune of Rs.3,83,800/- (Rs.13,21,000/- - Rs.9,37,200/-) .

This brings the Court to the issue if the insurance company should or should not be allowed to recover the excess amount paid to the claimants. Hon'ble the Supreme Court in **Shalu Sharma and others case** (supra) by taking note of the order passed on 12.08.2016 when the Special Leave Petition was entertained by the Court, reproduced in para 6 of the judgment has held that if the amount withdrawn by the claimants in terms of order of this Court dated 12.08.2016, exceeds the amount to which they are entitled under the present judgment, no recovery shall be made. However, it has not been laid down as a ratio *decidendi* that in case the claimants have already recovered compensation more than what has been assessed in appeal, the insurance company shall not be entitled to recover excess payment made to the claimants. In **Saroj Devi Sethia and others case** (supra), this Court by taking into consideration judgments in **Shalu Sharma and others case** (supra) and **Hem Raj Vs. The Oriental Insurance Company Ltd. and others, Special Leave Petition (Civil) No.22134 of 2016** has held that small variations shall not entitle the appellant to effect recovery from the claimants. In the case at hand, variation is approximately Rs.4 lakhs. I do not find any reason to deny recovery of excess payment from the claimants who have already been benefited by getting the amount assessed by the Tribunal along with interest thereon. In this view of the matter, contention raised by counsel for the claimants in this regard is not tenable.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. The excess amount, if already paid to the claimants, can be recovered by the insurance company by filing an appropriate application before the Tribunal.

FAO No.5181 of 2014

The Tribunal has assessed compensation of Rs.14,02,000/- detailed hereunder:-

Monthly income of the deceased	Rs.6,000/-
Multiplier	17
Addition in income for future prospects	50%
Deduction for personal expenses	1/4th
Loss of dependency	Rs.13,77,000/-
Expenses on transportation, funeral and last rites	Rs.25,000/-

In view of submissions made in the aforesaid appeal (FAO No.5180 of 2014) and decision rendered therein, the claimants are allowed benefit of increase in income for future prospects to the extent of 40%. Deduction for personal expenses would be 50% instead of 1/4th. Multiplier allowed by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.8,56,800/- [Rs.12,24,000/- (Rs.6000/- x 12 x 17) + Rs.4,89,600/- (40% future prospects) - Rs.8,56,800/- (50% deduction towards personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss of estate.

In view of the above, total compensation comes to Rs.8,86,800/- and compensation awarded by the Tribunal is in excess to the tune of Rs.5,15,200/- (Rs.14,02,000/- - Rs.8,86,800/-) .

The appeal is partly allowed in the aforesaid terms. The excess amount, if already paid to the claimants, can be recovered by the insurance company by filing an appropriate application before the Tribunal.

MAY 22, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no