IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.6612 of 2014 (O&M)
Date of decision : 04.07.2018

The New India Insurance Company Limited

...Appellant

Versus

Smt. Nirmala Devi and others

...Respondents

2. FAO No.5959 of 2014 (O&M)
Date of decision : 04.07.2018

Sonal Sharma and another

...Appellants

Versus

Parveen Kumar and others

...Respondents

3. FAO No.7954 of 2014 (O&M)
Date of decision : 04.07.2018

Smt. Nirmala Devi

...Appellant

Versus

Parveen Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate

for the New India Insurance Company Limited.

Mr. Sandeep Kumar Yadav, Advocate for the appellant
(In FAO No.7954 of 2014) &
for respondent No.1 (In FAO No.6612 of 2014)

Mr. B.K. Bagri, Advocate for the appellants
(In FAO No.5959 of 2014) &
for respondent Nos.3 and 4 (In FAO No.6612 of 2014)

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ANIL KSHETARPAL, J. (ORAL)

By this judgment, three appeals arising from the same accident and same claim petition, shall stand decided.

One appeal has been filed by the Insurance Company whereas two other appeals have been filed by the claimants. A young man aged about 31 years, namely late Sh. Ashish Kumar died in a motor vehicular accident on 23.07.2011. He had left behind a widow, minor son who was 1½ years of age at the time of the accident and widowed mother.

Learned Motor Accident Claims Tribunal, after appreciation of the evidence available on the file held that the driver of the offending vehicle was rash and negligent and, therefore assessed the compensation to be payable at ₹38,21,240/-.

This Court has heard the learned counsel for the parties at length and with their assistance gone through the judgment passed by the Motor Accident Claims Tribunal and the record.

Learned counsel for the Insurance Company has submitted that author of the FIR i.e. Hitesh Kumar, the alleged eye-witness has not been examined. He has further submitted that another witness was introduced i.e. Phool Singh on 20.08.2011 who is stated to have noted down the vehicle number and identified the accused driver. He submitted that Phool Singh who has been examined as PW7 is not reliable witness and, therefore, his evidence has been wrongly relied upon. He has further submitted that in the Criminal Court, the case has been closed as witnesses did not support the prosecution.

On the other hand, learned counsel for the claimants have drawn attention of the Court to the statement of Hemant Kumar recorded under Section 161 Cr.P.C. on the day of accident which is part of the police file which has been produced before the Motor Accident Claims Tribunal. On 23.07.2011, statement of Hemant Kumar has been recorded wherein he states that he was also going at the same time in the same direction and he saw the accident but he could not note the complete number of the vehicle. However, he requested another motorcyclist to chase the vehicle which had caused the accident. In the statement of Hemant Kumar, make of the car and half of the registration number of the vehicle i.e. HR-36E has been recorded. Thereafter, Phool Singh who is said to have been requested by Hemant Kumar to chase the vehicle got recorded his statement before the police on 20.08.2011 and disclosed the complete number of the offending vehicle HR-36E-3936. Sh. Phool Singh has been examined in the Court as PW7. On evaluation of the evidence, Motor Accident Claims Tribunal has held that the driver of the offending vehicle was rash and negligent.

Argument of the learned counsel for the appellant-Insurance Company that the claimants have not led sufficient evidence is without any basis. In view of the statement of Hemant Kumar and Phool Singh, non-examination of Hitesh Kumar, the author of the FIR before the Tribunal would not make any difference particularly when Hitesh Kumar when got recorded his statement which resulted into the FIR has only stated that he had seen the accident but could not note the vehicle number. In such circumstances, non-examination of Hitesh Kumar cannot result in dismissal of the claim petition.

Next argument of the learned counsel that the criminal case has been closed, would also not come to its rescue because the motor accident claim is to be decided by the Tribunal on the basis of the evidence produced before it. It is not in dispute that the police after investigation had filed a challan against the driver of the offending vehicle. It is not the case of the Insurance Company that the driver of the offending vehicle and the claimants had colluded. In such circumstances, this Court does not find any good ground to interfere with the findings of the Motor Accident Claims Tribunal with regard to the rash and negligent driving.

Accordingly, the appeal filed by the Insurance Company is dismissed.

Now let us deal with the two appeals filed by the claimants.

Learned counsel for the appellants-claimants has pointed out that as per Ex.P2, gross salary of the deceased was ₹56,022/- per month as he was working with the Honda Cars India Limited. They also submitted that net pay of the deceased was ₹37,939/-. However, the Motor Accident Claims Tribunal has assessed the income at ₹29,579/-. Hence, they submitted that the income assessed by the Motor Accident Claims Tribunal is erroneous.

This Court has carefully seen Ex.P2 wherein total gross income of the deceased has been shown as ₹56,022/-. However it includes the conveyance allowance, attire allowance etc. etc. However, Ex.P3 which is again the salary details issued by the Honda Cars India Limited wherein the deceased was employed shows that the gross salary of the deceased was ₹41,079/- and net pay was ₹37,939/-. Even if one reduces conveyance allowance, attire allowance, Leave Travel Concession etc. still the income of the deceased does not come down to ₹29,579/- as the conveyance allowance is ₹800/-, attire allowance is ₹1,000/- and LTC ₹1,250/-.

Keeping in view the aforesaid evidence available on the file, the income of the deceased is assessed at ₹36,500/- per month. The deceased had left behind three dependents and thus there were in total four family members. For own expenses, a cut of 1/3rd has been imposed which is maintained.

Learned counsel for the appellants has further pointed out that on account of increase in the income due to future prospects, no amount has been added. The deceased was 31 years of age. He was employed on a fixed salary. Thus, as per the judgment in the case, the ***National Insurance Company Vs. Pranay Sethi and others,*** **2017(10) SC 450**, the income is to be increased by 50%. Under the conventional heads, the claimants shall be entitled to ₹70,000/- in total, whereas the learned Motor Accident Claims Tribunal has awarded only ₹35,000/- thus, there will be increase of ₹35,000/- on that account.

It has been brought to the notice of this Court that widow-Sonal Sharma has re-married. Learned Motor Accident Claims Tribunal while apportioning the compensation has directed that ₹10,00,000/- be paid to the widowed mother and ₹15,00,000/- be paid to the widow who has re-married and remaining amount was directed to be paid to the minor son namely Shreyesh.

The widowed mother namely Nirmala Devi, shall be entitled to ₹15,00,000/- in total which includes ₹10,00,000/- already awarded by the Motor Accident Claims Tribunal. Remaining amount shall be payable to the minor son namely Shreyesh son of late Sh. Ashish Kumar.

Keeping in view the aforesaid circumstances, the entire compensation payable to the minor son shall be deposited in the Fixed Deposits in a Nationalized Bank and shall be payable only on attaining the majority. Widowed mother and widow shall be joint guardian and entitled to withdraw the interest for education and other expenses of the minor. If any other amount is required for better education of the child, the claimants shall be entitled to move an application before the Motor Accident Claims Tribunal.

In view of the above, both the appeals filed by the claimants are allowed whereas appeal filed by the Insurance Company is dismissed. The total enhanced amount of compensation i.e. ₹43,25,736 /- as worked out in table above shall be payable alongwith interest at the rate of 7.5% p.a. from the date of the accident till the date of realisation.

In the considered opinion of this Court, keeping in view the facts and circumstances of the present case, it would be more appropriate if the entire enhanced compensation is directed to be paid in the following manner:-

Heads	**Compensation awarded by the High Court**	**Compensation awarded by the MACT**
Income	₹36500/- per month	₹29579/-
Deduction	(-) 1/3rd (₹12166) = ₹24334/-	– (₹9859/-) = ₹19720/-
+ Future prospects	+ ₹24334/- = ₹48668/-	NIL
Annual Dependency	₹48668 x 12 = ₹5,84,016/-	₹19,720 x 12 = ₹2,36,640/-
Income tax deduction		
₹1,60,000/- exempted	NIL	
₹1,60,000/- to 3,00,000/- @ 10%	₹14,000/-	
3,00,000/- to 5,00,000/- @ 20%	₹40,000/-	
5,00,000/- above @ 30%	₹84,016 x 30/100 = ₹25,205/-	
Total	₹79,205	
After tax amount	₹5,04,811/-	
Multiplier	₹5,04,811 x 16 = ₹80,76,976/-	₹2,36,640 x 16 = ₹37,86,240/-
+Conventional Heads		
Loss of love and affection and consortium	₹40,000/-	₹ 25,000/-
Loss of Estate	₹15,000/-	₹ 5000/-
Funeral Expenses	₹15,000/-	₹ 5000/-
Total	₹70,000	₹35,000/-
	₹81,46,976/-	₹38,21,240/-
- Already awarded by the Motor Accident Claims Tribunal	₹38,21,240/-	
Total	₹43,25,736/-	

Amount of ₹25,000/- deposited in this Court be remitted to the learned Motor Accident Claims Tribunal for disbursement.

04.07.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No