IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2048 of 2018 (O&M)
Date of Decision: April 25, 2018

United India Insurance Company Limited ...Appellant

Versus

Gurnamo and others ...Respondents

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

Present: Mr.Ram Avtar, Advocate
for the appellant.

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HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal challenging the award dated 13.12.2017 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 10.12.2013 Ram Pal was on his way to village Salempur Bangar from Jagadhri on his motorcycle No.HR-71A-4141, followed by Irshan son of Dost Mohd and Rajbir son of Chetu Ram on a separate motorcycle. At about 8.00 pm, when they reached near Sham Ply factory in the area of village Munda Khera, than a car bearing Reg.No.HR-70A-0873 (hereinafter referred to as 'the offending vehicle), being driven in a rash and negligent manner and at a high speed, came and hit the motorcycle of Ram Pal. In the accident, Ram Pal suffered grievous injuries on vital parts of his body, including the head, which resulted into his death. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered in Police Station Sadar, Jagadhri against Subhash – respondent No.7.

On a claim petition filed by the legal representatives of Ram Pal, the Tribunal assessed the income of the deceased at Rs.5212/- per month, added 40% towards future prospects, deducted $1/4^{th}$ towards his personal expenses, applied the multiplier of 14 (deceased aged 45 years). The loss of dependency was assessed at Rs.9,19,296/-. Besides, a sum of Rs.40,000/- towards 'loss of consortium', Rs.15,000/- as 'funeral expenses' and Rs.15,000/- towards 'loss of estate' were awarded. In all, compensation of Rs.9,89,300/- (rounded off) along with interest was awarded. The appellant – insurer was held liable to pay the compensation.

Challenging the impugned award, Ld. Counsel for the appellant has argued that involvement of the offending vehicle in the accident was not proved on record. He has also argued that there are contradictions in the statements of the alleged eye-witnesses. Accordingly, it is submitted that the appellant – insurer is not liable to pay the compensation. It is also argued that the Tribunal fell in error in awarding 40% future prospects, which should have been 25% as the deceased was 45 years of age at the time of accident. He has relied upon a decision of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680**.

I have heard Ld. Counsel for the appellant and perused the record with his assistance.

The Tribunal framed the following issues on the point of negligence and involvement of vehicle:-

> "*1. Whether the respondent No.1 has caused the accident by driving the offending vehicle bearing registration No.HR-70A-0873 in a rash and negligent manner thereby causing death of Ram Pal? OPP.*"

Two eye-witnesses, namely Irshad and Rajbir Singh appeared before the Tribunal as PW2 and PW5 respectively. Both the witnesses deposed through their respective affidavits in unequivocal words the manner in which the accident was caused by respondent Subhash, by rash and negligent driving of the offending vehicle. They also stated that the offending vehicle fled away from the spot, but both of them chased the same and caught it at Chhachhrauli. On their asking the driver disclosed his name and parentage. They had informed the police about this.

The presence of the above two witnesses at the spot of the accident is also proved from the fact that Jasbir Singh (PW3), who lodged the FIR with the Police, deposed before the Tribunal that the accident was witnessed by Irshad and Rajbir (PW2 and PW5).

The fact of involvement of the offending vehicle is also supported by ASI Hoshiar Singh (PW4), who proved that he had mechanically examined the offending vehicle as also the ill-fated motorcycle on 18.12.2013. A perusal of the mechanical reports (Ex.P9 and P10) revealed that both the vehicles had been extensively damaged in the accident.

Further, the involvement of the offending vehicle in the accident as also the fact that the accident was caused due to its rash and negligent driving, was proved by the document Ex.P11, which is a copy of the report under Section 173 CrPC, filed by the Police. Subhash, driver of the offending vehicle was charge-sheeted for causing the accident. Charges under Sections 279 and 304-A IPC were framed vide order dated 26.2.2014 (Ex.P8), by Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri,

In the light of the above over-whelming evidence to prove the involvement of the offending vehicle in the accident and that the accident was caused due to its rash and negligent driving, there is no ground to interfere in the finding of the Tribunal, which is based on proper appreciation of evidence.

The other argument regarding the future prospects has substance. As settled in **Pranay Sethi's case** (supra), where the deceased, a self-employed, was between the age group of 40-50 years, future prospects @ 25% should have been awarded.

Accordingly, the compensation is re-assessed as under:-

Sr.No.	**Heads**	**Calculation (In Rs.)**
(i)	Monthly Income	5212/-
(ii)	25% of above (i) to be added as future prospects (deceased aged 45 yrs.)	5212+(5212x25/100) = 6515/-
(iii)	Monthly dependency (1/4th of (ii) deducted as personal expenses of the deceased - six dependants)	6515-(6515x1/4)= 4886.25 (rounded off at 4887/-)
(iv)	Loss of dependency after multiplier of 14 is applied	4887x12x14= 821016/-
(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.891016/-***

Hence, the appeal is allowed. The Award of the Tribunal is modified to the extent that the appellant is held entitled to compensation of **Rs.8,91,016/-,** that is, **Rs.98,284/- (989300-891216)** less than the amount awarded by the Tribunal.

The appeal has been disposed of without notice to the respondents – claimants to avoid unnecessary delay and expense. A copy of this order be conveyed to the claimants-respondents No.1 to 6. In the event of the said respondents having any objection, they may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

April 25, 2018 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No