IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.3500 of 2019(O&M)
Date of Decision: 04.09.2019

National Insurance Company Limited

….. Appellant.

Versus

Rajesh Kumari and others ...... Respondents.

AND

F.A.O. No.878 of 2019(O&M)

Rajesh Kumari and others

......Appellants.

Versus

Neeraj Yadav and others ...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Radhika Suri, Sr. Advocate
with Mr. M.S.Kanda, Advocate
for the appellant-Insurance Company (in FAO No. 3500 of 2019) and for respondent no.3 (in FAO No. 878 of 2019).

Mr. Shashi K. Yadav, Advocate
for the appellants (in FAO No.878 of 2019) and
for respondent nos.1 to 7 (in FAO No. 3500 of 2019).

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LISA GILL, J.

This judgement shall dispose of FAO No.3500 of 2019 and FAO No. 878 of 2019 as both these appeals arise from award dated 05.09.2018, passed by the learned Motor Accident Claims Tribunal, Jhajjar (for short 'tribunal').

FAO No. 3500 of 2019, has been filed by the appellant-Insurance Company challenging the quantum of compensation awarded by the learned tribunal, Jhajjar.

FAO No. 878 of 2019, has been filed by the appellants-claimants, seeking enhancement of the compensation awarded by the learned tribunal on account of death of Ashok Kumar in a motor vehicle accident. For the sake of convenience, facts are being extracted from FAO No. 3500 of 2019.

As per the averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Ashok Kumar (deceased) on 11.03.2017, was going to his village Sarola, on a motorcycle bearing registration no. HR-14-H-9837 at a moderate speed and on the correct side of the road. At about, 9.30.p.m., when he reached near Fatehpuri turn on Jhajjar-Kosli Road, a Maruti Car bearing registration no. HR-26-Y-7227, driven by respondent no.1-Neeraj Yadav, in a rash and negligent manner came from the side of Kosli towards its wrong side and struck against the motorcycle of Ashok Kumar. As a result thereof, Ashok Kumar fell down on the road and suffered serious and fatal injuries. Ashok Kumar was taken to General Hospital, Jhajjar and after providing first aid, he was referred to PGIMS, Rohtak, where he was declared 'brought dead'. FIR no. 196 dated 12.03.2017, under Sections 279, 304-A IPC, Police Station Jhajjar, was registered against respondent no.1-Neeraj Yadav, in this respect. The deceased was stated to be serving with Indian Tibet Border Police (ITBP), receiving a salary of ₹50,000/- per month. Compensation was thus claimed.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Neeraj Yadav. There is no challenge to this finding of the learned tribunal.

Learned tribunal awarded a total sum of ₹65,75,920/-, on account of death of deceased-Ashok Kumar, which is detailed as under:-

1.	Income	₹30,120/-p.m.
2.	Total income after additional of future prospects at the rate of 50%	₹5,42,160/-(₹3,61,440 + ₹80,720/-)
3.	Deduction	1/ 4th
4.	Multiplier	16
5.	Loss of consortium	₹40,000/-
6.	Funeral expenses and transportation etc.	₹15,000/-
7.	Loss of estate	₹15,000/-
	Total	**₹65,75,920/-**

Aggrieved therefrom, two appeals have been preferred, one by the appellant- Insurance Company, and another by the appellant-claimants, both challenging quantum of compensation, one seeking reduction and the other for enhancement of the aforesaid compensation.

Learned senior counsel for the appellant-Insurance Company vehemently argues that the learned tribunal has grossly erred in deciding issue no.1, which reads as under:-

> '1. Whether the accident, resulting into the death of Ashok Kumar son of Hoshiyar Singh, had taken place due to the rash and negligent driving of vehicle i.e., Maruti Car bearing registration no. HR-26-Y-7227 by respondent no.1, as alleged?OPP'

It is submitted that involvement of the vehicle i.e., Maruti Car bearing registration no. HR-26-Y-7227, which was insured by the appellant-Insurance Company, is not proved by the evidence on record. The accident in this case is stated to have taken place on 11.03.2017 and FIR was registered on 12.03.2017. It is submitted that the FIR, Ex.P-9, was lodged on the statement of the brother of the deceased, PW-5-Satish Kumar, who was admittedly not an eye witness to the accident in question. The evidence on record it is submitted, is too sketchy, in respect to how PW-5 came to know about the details of the accident. Furthermore, PW-4-Ram Niwas, is not proved to be an eye witness of the accident. In case, he was an eye witness, FIR would have been lodged at his instance. PW-4 admittedly did not know the details about the accident nor he took the deceased to the hospital. Therefore, PW-4, it is contended is a witness introduced at a later stage. It is thus, contended that the present is a case of hit and run and the offending vehicle has been falsely involved in the matter at a later stage. Thus, appellant-Insurance Company is not liable to pay the compensation.

It is further submitted that in case the Insurance Company is held liable, the compensation has been wrongly assessed by the learned tribunal. Income of the deceased is incorrectly assessed as ₹30,120/- per month and 50% increment has been wrongly afforded on account of future prospects. The component of income tax has not been deducted. It is thus prayed that the appeal filed by the Insurance Company be allowed and the impugned award dated 05.09.2018, be set aside.

Learned counsel for the appellant-claimants on the other hand submits that the compensation awarded by the learned tribunal is required to be enhanced. Salary of the deceased-Ashok Kumar has been wrongly assessed as ₹30,120/- p.m., by the learned tribunal, whereas the deceased was in receipt of gross salary of ₹38,073/- per month as per salary certificate, Ex.P-1. Deduction made on account of HRA, Medical reimbursement etc., could not have been effected. Salary of the deceased should be assessed as ₹38,073/- p.m., though it it not disputed that the component of income tax has to be deducted from the same. It is submitted that the component of tax, is ₹4840/- per annum on this account. It is further submitted that compensation under the conventional heads is meagre. It is thus prayed that appeal filed by the Insurance Company be dismissed and that of the appellant-claimants be allowed. Consequently compensation awarded to the appellants be enhanced.

I have heard learned counsel for the parties and have gone through the file with their assistance.

In my considered opinion, there is no ground to interfere in the finding of the learned Tribunal on issue No. 1 to the extent it is concluded, that death of Ashok Kumar took place due to rash and negligent driving of the offending vehicle i.e. Maruti Car bearing registration No. HR-26Y-7227. A perusal of a photocopy of the evidence furnished in Court today reveals that the accident in this case took place on 11.03.2017 at 9.30 p.m. FIR was registered on 12.03.2017 at 1.00 p.m. on the next day. Registration number of the offending vehicle as well as its details are clearly mentioned therein. Satish Kumar brother of the deceased PW-5 specifically mentioned that he reached the place of occurrence after receiving telephonic information of the accident. Statement of one of the eye witness Ram Niwas (PW-4) was recorded by the police on 21.03.2017. I have perused affidavit Ex.PW4/A tendered by PW4-Ram Niwas in evidence as well as his cross examination, which was furnished in Court today by learned counsel. I do not find any merit in the argument that PW-4 Ram Niwas was not an eye witness as it is proved that he had reached the place of occurrence subsequent to the accident. PW-4-Ram Niwas, in his cross-examination has clearly stated that he stayed at the place of occurrence for about 5-10 minutes after the accident. He does not state that he reached the spot 5-10 minutes after the accident. Similarly, I do not find any merit in the argument that merely because the name of Ram Niwas is not mentioned in the FIR, he is not proved to be an eye witness of the accident.

It is relevant to note at this stage that the Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Company Ltd. and others, 2018(5) SCC 656** and **Sunita v. RSTRC, CA No.1665 of 2019 (arising out of SLP (civil) No.33757 of 2018, decided on 14.02.2019**, reiterated that the claimants in proceedings under this Act are required to prove their case on the touchstone of preponderance of probabilities and court is not to be swayed by technicalities, niceties or mystic maybes. In **Sunita's** case **(supra)**, it was held that where one of the eye-witnesses was not examined, it cannot be a ground to reject the claimants version in the light of cogent evidence available on record. It is a settled position that claimants in the proceedings under this Act are to prove their case on the touch stone of preponderance of probabilities and not beyond reasonable doubt. In the present case, the claimants have led sufficient positive evidence to prove the involvement of the vehicle. Finding of the learned Tribunal that the accident in which Ashok Kumar lost his life was caused solely due to the rash and negligent driving of the offending Maruti Car bearing registration No. HR-26-Y-7227, by its driver Neeraj Yadav, is accordingly upheld.

A perusal of the salary slip (Ex.P-1) for the month of March 2017, of the deceased-Ashok Kumar reveals that he was indeed in receipt of ₹38,073/- per month as salary. The amount on account of GPF, HRA etc., could not have been deducted from the salary of the deceased. Reference in this regard can be made to the judgement of the Hon'ble Supreme Court in **Manasvi Jain vs. Delhi Transport Corporation, (2014) 3 SCC 22,** wherein it is observed as under:-

> "12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."

At the same time, the component of income tax necessarily has to be deducted. Thus, income of the deceased-Ashok Kumar while taking his monthly salary to be ₹38,073/-, is assessed as ₹4,52,036/- p.a. (₹4,56,876/- - ₹4840/-).

In view of the observations of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**, increase in income at the rate of 50% on account of future prospects has been correctly afforded. Deduction of 1/ 4^{th} and multiplier of 16 was correctly applied by the learned tribunal.

₹15,000/- each, awarded on account of funeral expenses/transportation and loss of estate, is maintained. However, appellant no.1 is entitled to a sum of ₹40,000/- towards loss of spousal consortium and appellants no.2 to 5, are entitled to a sum of ₹40,000/- for loss of parental consortium and appellants no. 6 and 7, are entitled to a sum of ₹40,000/- on account of loss of filial consortium in terms of the judgement of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) R.C.R (Civil), 333** and decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016, titled as **'Shri Ram General Insurance Company Limited Vs. Beant Kaur and others'**, and other connected matters**.**

Compensation towards the claimants on account of death of Ashok Kumar, is thus re-worked as under:-

1.	Total income of deceased	₹4,52,036/- p.a.
2.	Total income after additional of future prospects at the rate of 50%	₹4,52,036/-(₹4,52,036/- +₹2,26,018/-) i.e. ₹6,78,054/-
3.	Deduction of 1/ 4th on account of personal expenses	₹6,78,054/- (₹6,78,054*1/4=₹1,69,513/-) = ₹5,08,541/-
4.	Annual dependency after applying multiplier of 16	₹5,08,541/- x 16= ₹81,36,656/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Loss of spousal consortium to the appellant no.1	₹40,000/-
8.	Loss of parental consortium to appellants no.2 to 5.	₹40,000/-
9.	Filial consortium to appellants no.6 and 7	₹40,000/-
	Total Compensation =	**₹82,86,656/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount of compensation at the rate of 7.5% per annum from the date of filing of the petition till realization. Manner of disbursement as determined by the learned Tribunal shall remain the same.

With the abovesaid modification in the amount of compensation, FAO No. 878 of 2019 is disposed of and FAO No. 3500 of 2019 is dismissed.

[LISA GILL]
Judge

04.09.2019
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.