

**In the High Court of Punjab and Haryana at Chandigarh**

**FAO No. 5278 of 2019 (O&M)**

**Date of Decision: 2.9.2019**

**SBI General Insurance Company Limited**

**---Appellant**

**versus**

**Seema Devi and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

Present: Mr. Suman Jain, Advocate  
for the appellant

Mr. Dishant D.Tuteja, Advocate,  
for the caveators-claimants

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**Rekha Mittal, J.**

Challenge in the present appeal has been directed against award dated 2.5.2019 passed by the Motor Accidents Claims Tribunal, Panipat (in short “the Tribunal”) whereby compensation has been assessed on account of death of Deepak Sharma in a motor vehicular accident that took place on 31.12.2016.

Counsel for the insurance company-appellant would inform that appeal has been filed to assail findings of the Tribunal on issue No. 1 and quantum of compensation. To bring home his contention, it is argued that FIR Ex. P1 was registered at the behest of Omkar PW1 against unknown car and unknown driver. Omkar PW1 in his cross examination had admitted that he had not disclosed registration number of the car at the time

of lodging FIR nor he had seen model of the vehicle. The claimants examined another witness namely Raj Kumar alias Raju PW3 to prove that accident was caused due to rash and negligent driving of offending car by Parveen respondent No. 1 therein. It is argued that as per testimony of Raj Kumar alias Raju in cross examination, the car driver stopped his car within the sight of the witness and also alighted from the same but fled away with his car on seeing many people gathered on the spot. It is vehemently argued that had it been true that car driver stopped the car and alighted from the same, there was no reason for the people in the gathering not to catch the driver on the spot. It is further argued that this circumstance alone is sufficient to create doubt in testimony of Raj Kumar alias Raju PW3 that either he was present at the spot or had noticed particulars of the offending vehicle.

The appellant has also challenged quantum of compensation assessed by the Tribunal. It is argued that claim has been preferred by the widow and two children of the deceased but father of deceased has been impleaded as proforma respondent. It is further argued that there is no satisfactory much less cogent evidence on record that father of deceased had any disability to render him dependent on his son, therefore, admissible deduction for personal and living expenses should be 1/3<sup>rd</sup> in place 1/4<sup>th</sup>.

Counsel representing the caveators-claimants, on the contrary, has supported findings of the Tribunal on issue No. 1 as well as assessment of compensation. It is further argued that it has been proved on record that father of deceased was also residing with him, therefore, the Tribunal has rightly applied deduction of 1/4<sup>th</sup> qua personal and living expenses of deceased.

I have heard counsel for the parties and perused the paper book particularly the impugned award.

The Tribunal has taken into consideration testimony of Omkar PW1 and Raj Kumar alias Raju PW3 to record its findings that claimants have successfully discharged onus of issue No. 1 to prove that accident is the result of rash and negligent driving of offending vehicle by Parveen son of Dipti Dass. The Tribunal, in para 18 of the award, has taken a detailed note of testimony of Raj Kumar alias Raju PW3 in his examination-in-chief with the observations that he was cross examined at length but creditworthiness of the witness could not be shattered.

Counsel for the appellant, in response to a query, would fairly inform that no such material has been elicited in cross examination of Raj Kumar @ Raju or by way of evidence in rebuttal that Raj Kumar alias Raju is related to the claimants much less beneficiary in case the claim is allowed. Raj Kumar alias Raju recorded his statement under Section 161 of the Criminal Procedure Code with regard to accident having caused by the offending vehicle. Even there is no material on record to prove that Raj Kumar alias Raju had any animosity against driver of the offending vehicle to get him indicted in criminal proceedings. Admittedly, driver of offending vehicle did not appear in the witness box to counter case of the claimants or testimony of Raj Kumar alias Raju. On due investigation of FIR registered at the behest of Omkar, challan has been presented against Parveen and he has faced criminal proceedings. The strict principles of law of evidence are not attracted in claim proceedings which are summary in nature. Taking a cumulative view of the facts discussed hereinbefore, I find it difficult to say that determination of issue No. 1 by the Tribunal is faulty and merits

intervention. That being so, findings of the Tribunal on issue No. 1 are liable to be affirmed and ordered accordingly.

This brings the court to assessment of compensation by the Tribunal. The insurance company has challenged assessment of compensation on the solitary ground that deduction for personal expenses should be  $\frac{1}{3}^{\text{rd}}$  in place of  $\frac{1}{4}^{\text{th}}$ . The claim application has been filed by the widow and two minor sons of deceased wherein Rattan Lal Sharma, father of the deceased has been arrayed as proforma respondent. Rattan Lal Sharma did not appear in the witness box to say on oath that he has got no source of income or was dependent on income of his son. In the given circumstances, father of deceased is not entitle to loss of dependency and as such admissible deduction for personal expenses would be  $\frac{1}{3}^{\text{rd}}$  viz-a-viz  $\frac{1}{4}^{\text{th}}$  allowed by the Tribunal. As a consequence, loss of dependency is calculated at Rs. 67,18,496/- [  $4,19,906 \times 16 = 67,18,496 + 33,59,248 (50\%) = 10,077,744 - 33,59,248(\frac{1}{3}^{\text{rd}})]$ .

Total compensation is Rs. 67,88,496/- and compensation allowed by the Tribunal is reduced to the extent of Rs. 8,39,824/- (76,28,320-67,88,496). The appeal is partly allowed in the aforesaid terms. However, nothing stated hereinbefore will cause prejudice to right of the claimants in case they file an appeal to challenge apportionment of compensation.

**(Rekha Mittal)**  
**Judge**

**2.9.2019**

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| PARAMJIT | Whether speaking/reasoned | : Yes    |
|          | Whether reportable        | : Yes/No |