208(I)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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1. FAO No.3451 of 2013 (O&M)
Date of Decision: 08.01.2019

The New India Insurance Company Ltd.

Appellant

Versus

Chuni Lal and others

Respondents

2. FAO No.2226 of 2013 (O&M)

M/s Diwakar Cotton Mills Nuohar Road

Appellant

Versus

Chuni Lal and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. D.K. Prajapati, Advocate and
Mr. Raghujeet Singh Madan, Advocate
for the appellant [in FAO No. 3451 of 2013]
for respondent No.4 [in FAO No.2226 of 2013].

Mr. Vineet Choudhary, Advocate for
Mr. Parminder Singh, Advocate
for respondents No.1 and 2 [in FAO No.3451 of 2013].

Ms. Divya Godara, Advocate
for the appellant [in FAO No.226 of 2013].
for respondent No.4 [in FAO No.2351 of 2013].

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AVNEESH JHINGAN, J (Oral):

The award dated 01.03.2013 passed by the Motor Accident Claims Tribunal, Karnal [hereinafter referred to as 'the Tribunal'] in MACT Case No. 17 of 2013 has been assailed in two appeals, one by the Insurer of Tata Canter bearing registration

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No.HR-57-1505 [hereinafter referred to as 'offending vehicle'] and another by its registered owner, who had sold the offending vehicle.

The grievance of the insurer of the offending vehicle is regarding quantum of compensation and the registered owner has disputed its liability to pay the compensation. Since both the appeals arise from the same accident and same award, these are being disposed of by a common order.

The brief facts necessary for adjudication of the present appeals are that on 28.06.2009, Gore Lal alongwith Babu Lal was going from M.D. Rice Mills to Shiv Shakti Rice Mills, Nissing on a motor cycle bearing registration No. HR-05X-0716, being driven by Gore Lal. When they reached near Tara Rice Mills, the motor cycle was struck by a rashly and negligently driven offending vehicle. As a result of the impact, Gore Lal sustained grievous injuries and lost his life. FIR was registered.

A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] by the parents of the deceased. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, registered owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal assessed the monthly earning of the deceased as ₹4,500/- per month. The Tribunal awarded a sum of ₹10,15,380/- alongwith

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interest @ 7% per annum. The said amount included ₹4,500/- awarded under the conventional heads.

In the claim petition, it was pleaded that the deceased was working as a Mason and was earning ₹7,500/- per month. But, the claimants failed to substantiate the occupation and earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹4,500/-; 1/5th deduction for self-expenses was made; multiplier of '18' was applied and 30% future prospects were awarded.

Heard learned counsel for the parties, perused the paper book and the record.

Learned counsel for the insurer contends that the Tribunal erred in assessing the monthly income of the deceased as ₹4,500/- as the claimants failed to prove the occupation and earning of the deceased. He argues that the deceased was unmarried and 20 years old at the time of accident, thus 1/5th deduction for self-expenses has been wrongly made.

Learned counsel for the registered owner submits that the offending vehicle was sold two years prior to the date of accident as proved by agreement to sell [Ex.R1], hence, the Tribunal erred in holding that registered owner is liable to pay the compensation.

Learned counsel for the claimants argues that the deceased was working as a Mason. His grievance is that Tribunal wrongly awarded 30% future prospects as the deceased was 20 years old at the time of accident. He further argues that the amounts

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awarded under the conventional heads are on the lower side.

No serious dispute was raised with regard to the occupation of the deceased, albeit income was not proved. In the case where claimants failed to substantiate the monthly income of the deceased, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. As the deceased was working as a Mason, it would be appropriate to treat him as a semi-skilled labourer. The minimum wages for a semi-skilled labourer were ₹4,000/- per month in the State of Haryana at the time of accident. The compensation shall be calculated considering the monthly income of the deceased as ₹4,000/-.

The Tribunal has rightly applied the multiplier of '18'. Having due regard to the decision of the Supreme Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, ½ deduction for self-expenses is to be made as the deceased was unmarried at the time of accident.

As the quantum of compensation is being revisited it would be appropriate to award compensation in conventional heads and add future prospects in consonance with the decision of the Supreme Court in cases of ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are to be awarded. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate.

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In view of above discussion, the compensation shall be re-calculated later in the order.

The contention raised by learned counsel for the registered owner lacks merit. It has not been disputed by her that even on the date of accident, the offending vehicle was registered with the registering authorities in the name of the registered owner (respondent No.4). In such circumstances, for the purpose of the Act, the registered owner continues to be owner and is liable to pay the compensation. The issue that the registered owner continues to be the owner and liable to pay the compensation under the Act, if the vehicle is registered with the registering authorities in its name is no longer *res-integra.*

The Supreme Court in case of ***Naveen Kumar vs. Vijay Kumar and others, 2018(3) SCC 1*** has held that for the purpose of the Act, the person in whose name the motorcycle vehicle stands registered would be treated as an owner for purpose of the Act. The relevant portion of the judgment is quoted below:-

> *"12. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2 (30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but*

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continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2(30) making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in ***Reshma and Purnya Kala Devi."***

Further, the Supreme Court in ***Prakash Chand Daga Vs. Saveta Sharma and others 2019(1) RCR (Civil) 372*** has held as under:

9. The law is thus well settled and can be summarised:-

"Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person … … … Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

In view of settled proposition of law, the appeal of the

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registered owner is rejected.

The compensation is re-calculated as under:-

Particulars	***Amount (in ₹)***
Monthly income of the deceased	4,000/-
40 % Future Prospects	1,600/-
Sub Total	5,600/-
1/2 deduction for self expenses	2,800/-
Monthly Dependency	2,800/-
Annual Dependency	33,600/-
Applying multiplier of 18	**6,04,800/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**6,34,800/-**

The award dated 01.03.2013 is modified to the extent that amount of ₹10,15,380/- awarded by the Tribunal is reduced to ₹6,34,800/-.

In the appeal filed by the insurer, execution of the award beyond ₹6,00,000/- was stayed vide order dated 05.07.2013. The claimants shall be entitled to the balance amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

Both the appeals are disposed of in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

January 08th, 2019
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1. Whether speaking/reasoned : Yes/ No
2. Whether reportable : Yes/ No

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