IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 09.07.2019

FAO 1449 of 2015 (O&M)

New India Assurance Company Limited ....*Appellant*

Versus

Suman and others ....*Respondents*

FAO 1450 of 2015 (O&M)

New India Assurance Company Limited ....*Appellant*

Versus

Sudesh and others ....*Respondents*

FAO 4601 of 2015 (O&M)

Sudesh and others ....*Appellants*

Versus

Rajpal and others ....*Respondents*

FAO 5910 of 2015 (O&M)

Suman and others ....*Appellants*

Versus

Rajpal and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Ram Pal Verma, Advocate
for the claimants (FAO No. 5910 of 2015)

Mr. R S Malik, Advocate
for the claimants (FAO No. 4601 of 2015)

Mr. Sudhanshu Sharma, Advocate for
Mr. Chander Shekhar, Advocate
for the driver of Truck No. HR 46A 8738

Mr. Deepak Suri, Advocate
for the insurance Company of Truck HR 46A-8738

Mr. Pradeep Kumar, Advocate
for the insurance company of Car No. DL ICG 2901

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 20.11.2014 passed by the Motor Accidents Claims Tribunal, Sonepat (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Anil and Naresh in a motor vehicular accident that took place on 17.06.2012.

FAO Nos. 1449 and 1450 of 2015 have been filed by New India Assurance Company Limited, insurer of Truck No. HR 46A-8738 whereas FAO No. 4601 of 2015 has been filed by Smt. Sudesh and others seeking enhancement of compensation qua death of Anil and FAO No. 5910 of 2015 by Suman and others for the same relief qua death of Naresh.

FAO No. 1449 and 5910 of 2015

The Tribunal awarded Rs.13,95,500/-, detailed hereunder:-

-Monthly income of the deceased	Rs.5,000/-
-Deduction for personal expenses	1/4th
-Multiplier	17
-Addition in income for future prospects	50%
-Loss of dependency	Rs.11,47,500/-
-Loss of consortium	Rs.1,00,000/-
-Loss of care and guidance to minor	Rs.1,00,000/-
-Funeral expenses	Rs.20,000/-
-Loss of pain and suffering	Rs.25,000/-
-Transportation charges	Rs.3,000/-

Counsel for the insurance company - New India Assurance Company Limited would argue that the present is a case of contributory negligence of the alleged offending Truck and Car bearing No. DL-1CG -2901 driven by Naresh in which Anil other deceased was one of the occupants.

To bring home his contention, it is argued that accident took place because of the aforesaid Car having hit stationary Truck from behind but there is no evidence on record to establish that Naresh, driver of Car had taken reasonable care to avoid collision. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court ***Raj Rani and others vs Oriental Insurance Co Limited and others, 2009 ACJ 2003*** **.**

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No. 1. It is argued that the Truck was parked in middle of the road without any indication in order to give pre-warning to the ongoing traffic and as such, the Tribunal has rightly attributed entire negligence to the truck driver. It is further argued that occurrence in question took place at 8.40 p.m., therefore, there was no opportunity with the car driver to spot the truck.

With regard to compensation assessed by the Tribunal, it is argued by counsel for the claimants that income of the deceased assessed by the Tribunal needs enhancement, in view of salary certificate Ex. P3, produced on record.

Counsel for the insurance company, in reply, would argue that addition in income for future prospects and compensation allowed under conventional heads needs modification, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270.***

Ramesh Kumar, one of the occupants of ill fated car aforesaid appeared in the witness box and tendered into evidence his duly sworn affidavit Ex. PW3/A and copy of FIR Ex.P9. In his examination-in-chief, he has deposed to the following effect:-

> *"At about 8.30 p.m when we reached near Chhotu Ram School in the area of village Rattan Garh Majra, Gohana Road Sonepat, a truck loaded with bricks was wrongly parked on the road without any indicator and without any thing placed behind it to warn the traffic coming from behind and was creating a snag to the traffic coming from back side and thus, the car being driven by Naresh alias Nesha struck with the said truck on back side and thus the accident took place."*

In cross examination, the witness has deposed that "*truck was facing towards Gohana which was seen from a distance of 50 yards. There was a breaker and after crossing the breaker, we had seen truck standing parked on the road. Self stated that the said truck was without indicator and parking light*".

The witness was given suggestions by counsel for respondents before the Tribunal to the following effect:-

> *"It is incorrect that the truck was standing in kachha portion of road or that there was no fault of truck driver or that parking lights were on or that car driver was driving car rashly and negligent with high speed or that truck coming from*

> *opposite and due to reflection of opposite side lights, driver of car could not see the standing truck in kachha portion and dashed the car due to his own rash and negligent driving or that I have lodged the false FIR due to close to claimants in connivance with the police or that I am deposing falsely."*

Perusal of cross examination of Ramesh Kumar would reveal that the truck standing at the road was seen from a distance of 50 yards. His testimony is conspicuously silent as to what effort was made by deceased Naresh in order to avoid collision with standing vehicle. There is nothing on record suggestive of the fact that there were skid marks on the road in order to prove that Naresh applied brakes and took reasonable care to avoid the accident. In the given circumstances, I find merit in contention of insurance company that the present is a case of contributory negligence of drivers of both the vehicles so far as the case of Naresh is concerned. As such, negligence to the extent of 25% is attributed to Naresh and his legal representatives would be entitle to 75% of compensation, to be determined in the later part of judgment. Hence, findings of the Tribunal on issue No. 1 are modified in the aforesaid terms.

The Tribunal assessed income of the deceased at Rs.5,000/- per month. The salary certificate pressed into service has been issued by a private concern. The claimants did not examine a witness to prove employment of the deceased with the said concern. In the given circumstances, the Tribunal has rightly refused to rely upon salary certificate Ex.P3 for assessing compensation. There is no document with regard to educational qualification of the deceased. When the case is examined in the light of notification issued by the State of Haryana fixing minimum wage, there is no scope for enhancement of income of the deceased. The claimants shall be entitle to addition in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. As such, loss of dependency comes to Rs.10,71,000/- (Rs.10,20,000/- i.e. 5,000 x 12 x 17 + Rs.4,08,000 (40% addition) – Rs.3,57,000/- (1/4th deduction)).

Under conventional heads, compensation allowed is modified to the effect that the claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

In view of the above, total compensation is Rs.11,41,000/- and claimants shall be entitle to 75% thereof i.e. Rs.8,55,750/-. Compensation awarded by the Tribunal is reduced to the extent of Rs.5,39,750/- (13,95,500-8,55,750/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed here-in-above, the appeal preferred by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimants is dismissed, leaving the parties to bear their own costs.

FAO Nos.1450 and 4601 of 2015 (O&M)

The Tribunal awarded Rs.12,60,500/-, detailed hereunder:-

-Monthly income of the deceased	Rs.5,000/-
-Deduction for personal expenses	1/4th
-Multiplier	15
-Addition in income for future prospects	50%
-Loss of dependency	Rs.10,12,500/-
-Loss of consortium	Rs.1,00,000/-
-Loss of care and guidance to minor	Rs.1,00,000/-
-Funeral expenses	Rs.20,000/-
-Loss of pain and suffering	Rs.25,000/-
-Transportation charges	Rs.3,000/-

In view of discussion made in the aforesaid appeals, there is no scope for enhancement of income of the deceased. The claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. As such, loss of dependency is calculated at Rs.9,45,000/- (Rs.9,00,000/- *i.e.* 5,000 x 12 x 15 + Rs.3,60,000/- (40% addition) – Rs.3,15,000/- (1/4th deduction)).

Under conventional heads, compensation allowed is modified to the effect that the claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses).

In view of the above, total compensation is Rs.10,15,000/- (9,45,000/- + 70,000) and compensation awarded is reduced to the extent of

Rs.2,45,500/- (12,60,500-10,15,000/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed here-in-above, the appeal preferred by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimants is dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

09.07.2019
Mohan Bimbra

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