IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.2226 of 2014 (O&M)
Date of decision: 12.09.2019

Future Generali India Insurance Co. Ltd. ...... **Appellant**

Versus

Pooja Sharma and others ...... **Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rajan Bhargava, Advocate, for
Mr. Vishal Aggarwal, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondents No.1 to 3.

Respondent No.4 already ex parte.

Mr. Rohit Rana, Advocate, for
Mr. Kunal Dawar, Advocate
for respondent No.5.

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<u>RITU BAHRI, J. (ORAL)</u>

The insurance company has come up in appeal against the award passed by the Tribunal dated 03.03.2014 whereby the claimants have been awarded compensation of Rs.23,25,000/- on account of death of Bhupender who was 28 years of age when he died in a road accident which took place on 15.11.2010.

<u>FACTS NOT IN DISPUTE</u>

Brief facts of the case are that during the intervening night of 15/16.11.2010 at about 3-4.00 AM, Bhupender (deceased) along with his friend Ajay @ Sonu (deceased) was coming on the motorcycle Discover

No.DL-5SW-9572 for photography booking. When they reached at National Highway No.2 near Toll Tax, Sri Nagar, Palwal, in the meanwhile offending vehicle Santro Car No.HR-29Y-1877 being driven by respondent No.1 in a rash & negligent manner came and hit their motorcycle from left side. Due to which both Bhupender and Ajay fell down with their motorcycle and sustained serious and fatal injuries on their persons. Because of serious injuries, both of them died on the spot and then their dead bodies were taken to hospital for postmortem. PMR of Ajay was conducted in GH Palwal and PMR of Bhupender was conducted in Safdarganj Hospital, Delhi. Upon this, an FIR No.456 dated 16.11.2010 u/s 279/304-A IPC was registered in the Police Station Sadar Palwal.

Consequently, claimants/respondents No.1 to 4 filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident took place due to rash and negligent driving of the offending vehicle by its driver.

The parties are not in dispute with regard to finding on issue No.1. The insurance company is challenging the award only on the ground of quantum. The compensation has been awarded after taken the income of the deceased as Rs.10,000/- per month keeping in view the fact that he was running a shop of photography in Delhi as per the photograph Mark 'C'.

Counsel for the Insurance Company has argued that in the absence of any evidence with regard to income, even as per the minimum wages in the year 2010, the income could not be taken more than Rs.5,000/- per month. On a specific query put to counsel for the claimants, he stated that the shop of deceased was located at D-1/526-5, Gali No.13, Ashok

Nagar, Delhi.

The Insurance Company is not disputing the location of the shop. In a place like Delhi, the income is much higher than any other city in Punjab and Haryana. Accordingly, the income can be taken as Rs.10,000/-. No evidence was led by the Insurance Company to rebut this finding that the shop of the deceased was not situated in Ashok Nagar, Delhi. Taking the fact to be correct that the shop was owned by him, the income assessed by the Tribunal at Rs.10,000/- is not on the higher side. Even rent of the said shop is more than Rs.5,000/- per month. Accordingly, the income has been rightly taken by the Tribunal.

Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** *wherein the* issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

> *"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification*

must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as

a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby re-assessed in view of the judgment passed by the Hon'ble Supreme Court in *Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, Civil Appeal No.9581 of 2018*.

In view of the above, the compensation requires to be re-assessed and is as under:

Sr.No.	*Head*	*Amount*
1	Income	Rs.10,000/- per month
2	40% of above to be added as future prospects	Rs.10,000/ + 4,000/- = Rs.14,000/-
3	1/4th deducted as personal expenses of the deceased	Rs.14,000/ – 3500/- = Rs.10,500/-
4	Compensation after multiplier of 17 is applied	10,500 X 12 X 17 = Rs.21,42,000/-
5	Conventional heads (loss of estate and funeral expenses)	Rs.30,000/-
6	Loss of filial consortium	Rs.40,000 X 4 = Rs.1,60,000/-
7	Total compensation to be awarded now	Rs.23,32,000/-
8	Compensation awarded by the Tribunal	Rs.23,25,000/-
9	Enhanced compensation	23,32,000 - 23,25,000 = **Rs.7,000/**

The appellant is directed to disburse the enhance amount of Rs.7,000/- to the claimants within a period of four weeks from the date of receipt of certified copy of this order and inform this Court. The claimants shall also get interest @ 9% in view of judgment of Hon'ble the Apex Court in Civil Appeal No. 4528-2019 titled as ***Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019***. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is disposed of.

(RITU BAHRI)
JUDGE

12.09.2019
D.Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No