

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 39 of 2013(O&M)
Date of decision: 21.11.2019

M/s. The New India Assurance Company Limited ...Appellant

V/s.

Smt. Preeti Dewan and others ...Respondents

AND

FAO No. 2156 of 2014 (O&M)

Smt. Preeti Dewan and another ...Appellants

V/s.

Sh. Santosh Yadav and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. R.C.Gupta, Advocate
for the appellant in FAO-39-2013
and for respondent No.3 in FAO-2156-2014.

Mr. Kartar Singh, Advocate
for the appellants in FAO-2156-2014
and for respondent No. 1 and 2 in
FAO-39-2013.

Ms. Mehak Sawhney, Advocate
for respondent No. 4 in FAO-39-2013.

RITU BAHRI, J. (Oral).

This order shall dispose of two appeals i.e. FAO No.39 of 2013 filed by the insurance company and another FAO No. 2156 of 2014 filed by the claimants for enhancement of compensation. For the sake of convenience, facts are being extracted from FAO No. 39 of 2013.

The insurance company has come up in appeal against the award of the Tribunal dated 01.10.2012 whereby the claimants have been

awarded compensation of Rs.19,21,000/- on account of death of Yatin Dewan, who died in a road accident which took place on 10.12.2010.

The insurance company is challenging the award on the following grounds:-

- 1.That the driver of the offending vehicle was not having valid driving licence.
- 2.That in the manner, the accident took place, Yatin Dewan was also negligent in driving the car.
- 3.That compensation is on higher side.

Brief facts of the case are that on 10.12.2010, Yatin Dewan was coming in car No. HR-51-S-1681 which was driven by him at a very moderate speed and on correct side of the road. When he reached at Goodyear chowk, G.T.Road, Faridabad, then trailer bearing registration No.NL-ID-6016 (hereinafter referred to as the offending vehicle), driven by respondent No. 1 in a rash and negligent manner and without giving any signal, took a sudden turn towards wrong side i.e. divider of highway and hit with vehicle of Yatin Dewan as a result of which he received injuries in head and brain and died at the spot. Consequently, the claimants filed a claim petition before the Tribunal.

The Tribunal proceeded to give finding on issue No. 1 in favour of the claimants keeping in view that after the accident FIR No. 647 under Sections 279, 337, 338, 427 and 304A IPC was registered at Police Station Sector 7 Faridabad (Ex.PW1/B) against respondent No.1 and he was facing trial in the criminal court.

Learned counsel for the insurance company has argued that even if respondent No. 1 had taken a sudden turn, the driver of the car Yatin

Dewan was also negligent as the car hit the trailer from behind and in this manner some contributory negligence can be attributed to the driver of the car Yatin Dewan.

A perusal of para 10 of the award shows that respondent No. 1 was served in the claim petition but did not appear into witness box to deny his negligence. Further he did not come forward to depose regarding his false implication in the case. The version made by PW2 Anuj and PW3 Shobhit that respondent No.1 all of a sudden took a turn towards wrong side as a result of which the accident occurred, has been accepted by the Tribunal. The absence of respondent No.1 before the Tribunal drew adverse inference against him and this finding has been rightly given in favour of the claimants.

With regard to the liability of the insurance company on the ground that the driver/respondent No.1 was not having valid driving licence, the Tribunal has proceeded to examine copy of driving licence (Ex.RW2/B) of respondent No.1 and RW2 Anil Kumar, Special Power of Attorney of respondent No. 2 who has stated in his affidavit (Ex.RW2/1) that he had taken driving skill test of respondent No.1 before appointing him as driver and after being satisfied, respondent No.1 was directed to show his driving licence which looked genuine as the same was issued by District Transport Officer, Lohardaga, Jharkhand and there was no reason for him to doubt veracity of driving licence. However, as per mark R1 report of investigator and Ex.R3 report of District Transport Officer, Lohardaga, Jharkhad, the licence (Ex.RW2/B) was not issued by District Transport Officer, Lohardaga, Jharkhand and the same was found fake. Since these documents had neither been placed on record nor the

investigator Mukesh Kumar Mishra, who issued report mark R-1 nor any official from office of District Transport Officer, Lohardaga, Jharkhand who issued certificate (Ex.R3) had been produced in evidence, the insurance company cannot be absolved of its liability to make payment of compensation. Hence, the argument of insurance company is rejected.

With respect to quantum of compensation, the Tribunal had observed that the deceased was 21 years of age at the time of accident and was bachelor. He was working with M/s. Thrift Pharmaceuticals Private Limited, at the monthly salary of Rs.38,000/- p.m. However the Tribunal assessed the salary of deceased for the purpose of determining dependency as Rs.24,500/-p.m. after adding basic pay of Rs.18,500/-, bonus of Rs.1,000/- and fixed field working allonwance of Rs.5,000/- and assessed the following compensation:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.24,500/- p.m.
(ii)	½ of (i) deducted as personal expenses of the deceased	24,500-12,250=Rs.12,250/-
(iii)	Compensation after multiplier of 13 is applied, keeping in view the age of parents	12,250X12X13=Rs.19,11,000/
(iv)	Funeral expenses	Rs.10,000/-
	TOTAL COMPENSATION AWARDED	Rs.19,21,000/-

In this way the claimants were found entitled to total compensation of Rs.19,21,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization.

Learned counsel for the insurance company has argued that no income tax deduction was made from the salary and fixed field working allowance of Rs.5,000/- should not have been added for the purpose of determining the dependency.

A perusal of para 14 of the award shows the components of the salary of the deceased, which are reproduced below:-

Components	Rs.(P.M.)	Rs.(P.A.)
BASIC	18500	222000
HRA	4000	48000
VMA (Vehicle		
Maint. Allowance	2000	24000
Kit Allowance	500	6000
Medical Allowance	1000	12000
Bonus	1000	12000
LTA	1000	12000
Fixed Travelling Allowance	5000	60000
Fixed Field Working Allowance	5000	60000
CTC	38000	456000

Learned counsel for the claimants submits that basic of Rs.18,500/-, HRA of Rs.4,000/-, vehicle maintenance allowance of Rs.2,000/- bonus of Rs.1,000/- and fixed travelling allowance of Rs.5,000/- should have been added for the purpose of determining the dependency.

Hence, to meet the ends of justice, the compensation is hereby reassessed keeping in view the judgments passed by Hon'ble the Supreme Court in *Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others*, Civil Appeal No. 9581 of 2018 and *Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income (basic+ HRA+ vehicle maintenance allowance+ bonus+ fixed travelling allowance)	18,500+4,000+2,000+1,000+5,000 = Rs.30,500/-p.m.
(ii)	1/2 of (i) deducted as personal expenses of the deceased	30,500-15,250=Rs.15,250/-
(iii)	40% of (ii) added as future prospects	15,250+6,100=Rs.21,350/-

(iv)	Annual income	21,350X12=Rs.2,56,200/-
(v)	Income tax deduction @10%	2,56,200-25,620=Rs.2,30,580/-
(vi)	Compensation after multiplier of 18 is applied	2,30,580X18=Rs.41,50,440/-
(vii)	Loss of estate	Rs.15,000/-
(viii)	Funeral expenses	Rs.15,000/-
(ix)	Loss of <i>filial</i> consortium	Rs.80,000/- (Rs.40,000/- each to respondents No. 1 and 2 in FAO-39-2013)
	TOTAL COMPENSATION AWARDED	Rs.42,60,440-19,21,000=Rs.23,39,440/-

The enhanced amount of compensation of **Rs.23,39,440/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others***, Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the appeal filed by the insurance company is dismissed and the appeal filed by the claimants is allowed and the award stands modified to the above extent.

Pending application if any, also stands disposed of.

(RITU BAHRI)
JUDGE

21.11.2019
Divyanshi

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