IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 1779 of 2015 (O&M)
DECIDED ON: May 06, 2019

ANITA AND OTHERS

APPELLANTS

VERSUS

NINDAR SINGH AND ORS

RESPONDENTS

AND

2. **FAO No. 1838 of 2015 (O&M)**

THE NEW INDIA ASSURANCE CO. LTD.

.....APPELLANT

VERSUS

ANITA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants in FAO No. 1779 of 2015 and
for respondents No.1 to 4 in FAO No. 1838 of 2015

None for driver and owner.

Mr. Vinod Chaudhri, Advocate
for the respondent-New India Assurance Co. Ltd.

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AVNEESH JHINGAN, J (Oral):

The award dated 25.11.2014 passed by the Motor Accident Claims Tribunal, Sonipat (for brevity 'the Tribunal') passed in MACP No. 1244 of 2013 has been assailed by filing two separate appeals. One appeal i.e. FAO No. 1779 of 2015 has been filed by the legal representatives of Suresh Kumar and another by the insurer of Hyba Dumper bearing registration No. HR-64-6167 (hereinafter referred to as the 'offending vehicle'). As both the appeals arise out of same accident and one award, these are being disposed of vide common order.

The facts emanating from the record are that on 02.09.2013 Suresh Kumar (deceased) was driving a car bearing registration No. HR-10S-2138 (hereinafter referred to as 'car'). On his way the car had a head on collision with the offending vehicle. As a result of the impact he sustained grievous injuries and was taken to Sygnus J.K. Hindu Hospital, Sonipat, where he succumbed to his injuries. FIR No. 343, dated 03.09.2013 was registered at Police Station City, Sonipat, on the statement of Rohit Sindhu.

A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act'). 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, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim proceedings, it was pleaded that the deceased was working as a property dealer and was also doing the business of building material. The income tax return of the deceased for the assessment year

2012-13 was exhibited as Ex.P2. On considering Ex.P2 and after deducting the income tax, annual income of the deceased taken as ₹2,49,553/-, 1/4th deduction for self-expenses was made, as the deceased was survived by four dependants; the date of birth of the deceased was 07.07.1968; multiplier of 13 was applied considering the age of the deceased as 45 years 2 months and 5 days. The Tribunal awarded a compensation of ₹25,58,145/- along-with interest @7.5 % per annum. The amount awarded included ₹1,00,000/- for loss of consortium and ₹25,000/- for funeral expenses.

Heard learned counsel for the parties and perused the record produced by them.

Learned counsel for the insurer contends that it is a case of head on collision, negligence should be attributed to the deceased also. The grievance of the insurer is that the amounts awarded under the conventional heads are on higher side. He further argues that the father of the deceased was not dependant upon him and the Tribunal erred in making 1/4th deduction for self-expenses. His grievances is that the driving license was not valid on the date of accident and that there was no route permit.

Learned counsel for the appellants/claimants argues that the rash and negligent driving of the offending vehicle was duly proved by the deposition of Rohit Sindhu-PW-2 and from the contents of the FIR.

Learned counsel for the claimants defends 1/4th deduction for self-expenses, as the deceased was survived by four dependants including the father of the deceased who was 73 years old at the time of accident. The grievance raised is that no future prospects have been awarded and no amount has been awarded for loss of estate. He submits that the multiplier of '13' has wrongly been applied by the Tribunal instead of '14'.

The contention raised by learned counsel for the insurer that the accident was result of contributory negligence lacks merit.

From perusal of the deposition of Rohit Sindhu-PW-2, it is forthcoming that accident was result of rash and negligent driving of the offending vehicle. There was a head on collision but the offending vehicle came from the wrong side and hit the car from the front. FIR was registered on the very next day at the instance of Rohit Sindhu-PW-2. It was specifically recorded that the offending vehicle was coming on wrong side and hit the car from front. The evidence produced by the claimants was not rebutted by the insurer. Nothing was produced on record to establish that there was contributory negligence on the part of the deceased.

Law is well settled that in cases under the Act, onus of proof is not as strict as in criminal cases. The claimants have to establish their case merely on the touchstone of preponderance of probabilities. The Supreme Court in ***Parmeshwari Vs. Amir Chand and others, AIR 2011 SC 1504*** held as under:

> *"The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in* ***Bimla Devi and others Vs. Himachal Road Transport Corporation and others [(2009) 13 SCC 530]*** *are very pertinent.*
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> > *"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused*

> *by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*

In the present case, claimants have been able to prove the involvement of the offending vehicle and the fact that the accident was caused due to rash and negligent driving of the said vehicle.

The argument raised by learned counsel for the insurer with regard to the validity of the driving licence and also that there was a breach of conditions of policy as there was no valid route permit, is not well founded. It would be relevant to note that the issue No.3 was framed by the Tribunal i.e. *"Whether the respondent No.1 was not holding a valid and effective driving licence on the date and at the time of alleged accident and respondent Nos. 1 and 2 have violated the terms and conditions of the insurance policy, if so its effect? OPR-3."*

It was recorded that the driving licence was valid from 06.08.1997 to 18.01.2016 and it authorized driving the vehicles i.e. TRV Rigid Chasis only. The offending vehicle was a dumper, a Heavy Motor Vehicle. No objection was raised by the insurer before the Tribunal with regard to the validity of the driving licence and also of the route permit. The onus to prove that the driving licence was not valid on the day of accident or there was a breach of terms and conditions of the insurance policy, is on the insurer. There is not even an iota of evidence on record to show that these issues were raised before the Tribunal.

The contention raised by the insurer with regard to 1/4th deduction made for self-expenses lacks merit. The deceased was survived by widow, two minor children and old father aged 73 years. The widow-PW-1 specifically stated in her deposition that age of her father-in-law is 73 years. Considering the age of father, it cannot be held that father was not dependant upon the earnings of his son. The deduction for self-expenses was made by the Tribunal is in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

Having due regard to the decisions of the Supreme Court in ***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***; 25% future prospects are awarded as the deceased was in the age group of 40-50 and fell in the category of self-employed or a person having established income.

As per the date of birth of the deceased, the deceased was 45 years 02 months and 05 days. He is to be considered as 45 years and not 46 years. The Supreme Court in ***Sarla Verma's*** case (supra) has given a table. The table is not overlapping table. It deals with the multiplier applied to be 41-45 and 46-50. As the deceased was 45 years and not completed the 46, multiplier of '14' is applied.

As the quantum of compensation is being revisited, it would be appropriate that amounts under the conventional heads are awarded as per decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimants shall be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- is awarded for loss of consortium to the widow.

In view of above discussion, the compensation is re-calculated as under:-

	Head	**Compensation awarded**
(i)	Annual Income	₹ 2,49,553/-
(ii)	Future prospects at 25%	₹ 62,388/-
(iii)	Total Income	₹ 3,11,941/- per month
(iv)	Deduction of personal expenses	₹ 77,985/- (i.e. 1/4th of total income)
(v)	Multiplier	14 (as per age of deceased)
(vi)	Loss of income	2,33,956x14= ₹32,75,384/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹ 40,000/-
	Total Compensation awarded	₹33,45,384/-

The award dated 25.11.2014 is modified to the extent that amount of ₹25,58,145/- awarded by the Tribunal is enhanced to ₹33,45,384/-. The claimants shall be entitled the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal filed by the claimants i.e. FAO No. 1779 of 2015 is allowed accordingly and the appeal filed by the insurer i.e. FAO No. 1838 of 2015 is dismissed.

(AVNEESH JHINGAN)
JUDGE

MAY 06, 2019
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Whether speaking/reasoned ***Yes***
Whether reportable ***Yes***