IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2244 of 2015(O&M) with
XOBJ No.187-CII of 2015
Date of Decision:24.07.2019

United India Insurance Co. Ltd. ....APPELLANT

Vs.

Manpreet Kaur and others

.................RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Sanjiv Pabbi, Advocate for the appellant.

Mr.Rajbir Singh, Advocate for the Cross-objector/respondent Nos. 1 to 5.

None for respondent No.6.

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DR. RAVI RANJAN, J.(Oral Judgement)

This appeal has been preferred by the appellant-Insurance Company, namely, United India Insurance Company Ltd. assailing the Judgment and Award dated 13.11.2014 passed in MACT No.81 of 2013 by the Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'the Tribunal'), by which the Tribunal, after holding that the accident was a result of rash and negligent driving of the offending vehicle driven by Ravinder Gupta, i.e.. respondent No.1-(before the Tribunal), has held that the claimants would be entitled for a sum of Rs.17, 02,000/- by way of compensation alongwith interest @ 7.5% per annum to be calculated from the date of filing of the claim petition till the actual realization of the awarded amount.

Short facts which would be necessary for consideration of the *lis* stand enumerated as under:-

The claimants-Manpreet Kaur and others filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') for grant of compensation of Rs.25,00,000/- on account of death of one Makhan Singh, who is aged about 29 years at the time of accident, in a motor vehicular accident. It is stated that on 30.08.2013, Makhan Singh (since deceased) alongwith Makhan Khan, Bhanta Singh (claimant No.5 in the claim petition) and Tarsem Singh were going to Mansa for work. Deceased and Makhan Khan were on one motorcycle whereas Bhanta Singh and Tarsem Singh were on another motorcycle. The motorcycle of the deceased was going ahead of the motorcycle of Bhanta Singh. When they reached at T Point Bhikhi at about 7.30 A.M., a Chevrolet Car bearing Registration No.HT-24-K-2222 (hereinafter referred to as "the offending vehicle") came suddenly from Budhala side driven by respondent No.1 in a rash and negligent manner and collided with the motorcycle of the deceased from the wrong side. As a result of which, both the occupants of the motorcycle fell down on the road and sustained multiple grievous injuries on their person. They were immediately taken to Civil Hospital, Mansa for treatment but on reaching the hospital, injured-Makhan Singh succumbed to the injuries. It is further averred in the claim petition that the said accident was result of rash, negligent and careless driving of respondent No.1. On statement of claimant No.5-Bhanta Singh, FIR No.66 dated 30.08.2013 was lodged at Police Station Bhikhi, under Sections 304-A and 427 of Indian Penal Code. It is also averred in the claim petition that the deceased was 29 years of age and was quite hale and hearty at the time of alleged accident. He was a skilled mason and doing work on contract basis for constructing the houses and buildings and was earning Rs.25,000/- per month.

Upon such claim having been made, notices were issued to the respondents. In response thereof, respondent No.1, i.e., the driver and owner of the offending vehicle contested the claim petition by filing the written statement. Apart from making certain preliminary objections, he also denied the identity of the deceased and also the fact that his age was 29 years at the time of the accident and he was skilled mason. He claimed that the offending vehicle was actually not involved in the alleged accident rather FIR has been lodged on false ground implicating respondent No.1. By way of alternative pleading, it was stated that the offending vehicle was insured with United India Insurance Co. Ltd. at the time of alleged accident, therefore, even if it is found that the accident took place due to driving of respondent No.1, it would be the duty of the Insurance Company, i.e., respondent No.2(in the claim petition) to indemnify the respondent No.1.

Respondent No.2-Insurance Company also contested the claim petition by filing written statement taking almost similar line that of respondent No.1. It has further been stated that though the offending vehicle was insured with the Insurance Company, however, the liability of the Insurance Company will arise only in the case if it is proved that the driver was holding a valid and effective driving licence at the time of accident and it was not being plied in contravention of the insurance policy terms and conditions as well as the Motor Vehicles Act and the Rules.

The Tribunal, on the basis of rival pleadings of the parties, framed following issues:-

> "1. Whether Makhan Singh son of Bhanta Singh died on 30.08.2013 due to the rash and negligent driving of vehicle, i.e., car bearing No.HR-24K-2222 so driven by the respondent No.1?OPP
>
> 2. Whether the claimants are entitled for compensation, if so to what extent and from whom? OPP
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> 3. Whether the claim petition is not maintainable in the present form? OPR.

4. Whether the respondent No.1 was not having valid driving licence at the time of alleged accident, if so, what effect ? OPR

5. Whether the car bearing No.HR-24-K-2222 is not having a valid fitness certificate and permit at the time of alleged accident? OPR

6. Relief."

In order to support their claim, the claimant No.1-Manpreet Kaur examined herself as CW-1, claimant No.5-Bhanta Singh examined as CW-2, charge-sheet filed by the police under Section 173 Cr.P.C. has been exhibited as Ex.C2, certified copy of *sapurdari* application has been exhibited as Ex.C3. Apart from other documents, the postmortem report which has been exhibited as Ex.C8.

Respondent No.1-Ravinder Gupta, on the other hand, stepped into the witness box as RW-1 and brought on record the Registration Certificate(RC) of the vehicle as Ex.R2 and duplicate copy of the insurance policy as Ex.R3 and closed the evidence on his behalf.

In the additional evidence, claimant No.1 tendered into evidence copy of Voter Identity Card as Ex.C8 and copy of Aadhar Card as Ex.C9 and closed the additional evidence.

The Tribunal, after consideration of the materials on record including the evidence led by the parties and after affording opportunity of hearing to them, decided issue No.1 in favour of the claimants holding that the accident took place due to rash and negligent driving of respondent No.1.

The Tribunal, while deciding issue No.2, took the age of the deceased as 29 years and his monthly income was assessed at Rs.6,000/- per month and after considering the several judicial pronouncements including a decision of Hon'ble Supreme Court rendered in **Sarla Verma and Ors. v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC).** The

Tribunal finally held that the claimants would be entitled for compensation of a sum of Rs.17,02,000/- alongwith interest @ 7.5% per annum.

Hence, the Insurance Company has preferred the present appeal assailing the Judgment and Award of the Tribunal and the claimants(respondents herein) have preferred cross-objections seeking enhancement of the awarded amount granted by the Tribunal.

In the aforesaid background of the factual matrix, I have heard learned counsel for the parties and have perused the records of this case.

Learned counsel for the appellant-Insurance Company assails the Judgment and Award on diverse grounds.

It is contended that even taking the claim of the claimants-respondents that the deceased was a mason to be correct then he was working on daily wage basis, therefore, under the head of future prospects, 40% of the income should have been added rather than 50% which has been done by the Tribunal. It is further urged by learned counsel that Rs.1,00,000/- has been awarded under the head of loss of consortium which is at the excessive side as the Apex Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009,** has held that only Rs.40,000/- is to be granted under such head. That apart, for loss of care and guidance, Rs.2,00,000/- has been awarded which ought not have been done in view of the decisions of Hon'ble Apex Court in **Sarla Verma's case (supra)** and **Pranay Sethi's case(supra).**

Further, under the head of funeral expenses, Rs.25,000/- has been awarded in place of Rs.15,000/-.Apart from the above, it is also submitted that claimant No.5 being father of the deceased could not have been counted as dependent for the necessary purpose.

Per contra, it has been urged on behalf of the claimants/cross-objectors that mason should be treated to be skilled person and, therefore, Rs.6,000/- per month income has wrongly been assessed by the Tribunal and there should be enhancement in that. That apart, it is also been urged by learned counsel for the cross-objectors that they would be entitled for more than Rs.1,00,000/-which has been awarded under the head of loss of consortium.

Now, so far as appellants' submission that claimant No.5 being father and his age of 52 years only, could not have been taken as dependent, especially in view of the observation of the Hon'ble Apex Court rendered in **Sarla Verma's case (supra),** *prima facie* appears to be attractive but on deeper scrutiny, it appears that the issue would not be of much relevance for the reason that even if Bhanta Singh is not taken into consideration as a dependent, there are already four dependents of the deceased being his widow, minor daughter, minor son and mother, therefore, the deduction for personal expenses, in such cases, as per the **Sarla Verma's case (supra),** can only be to the extent of $1/4^{th}$ of the income of the deceased which has already been done by the Tribunal while calculating the compensation amount. However, whether the father would be entitled for filial consortium or not would be discussed later on.

So far as Rs.2,00,000/- which has been awarded by the Tribunal to the claimants for care and guidance is concerned, in my opinion, in decision of the Constitution Bench of Hon'ble Apex Court rendered in **Pranay Sethi's case(supra)** summarizing the heads under which compensation can be granted, the aforesaid head does not find place. Therefore, in my considered view, nothing could have been awarded under such head by Tribunal.

So far as funeral expenses in concerned, the Apex Court has fixed it at Rs.15,000/-, therefore, the Tribunal should not have granted Rs.25,000/-

rather it should have granted only Rs.15,000/-.

However, at the same time, it does not appear that anything has been granted under the sub-head of loss of estate under conventional heads which should be Rs.15,000/- according to the aforesaid decision of Hon'ble Apex Court. Thus, this amount would have to be added.

So far as loss of consortium is concerned, the Apex Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and others, 2018(4) R.C.R. (Civil) 333,*** has held that there are three categories under which the claimants would be entitled for consortium of Rs.40,000/-. First would be spousal consortium, which would be available to the spouse of the deceased. Second would be filial consortium, which would be available to the parents in case of death of their child and the third would be loss of parental consortium for which entitlement would be of the sons or daughters of the deceased who have lost their parents or one of the parents in a motor vehicular accident. This judgment has been rendered by the Apex Court after consideration of the judgment of Constitution Bench rendered in **Pranay Sethi's case(supra).** Thus, in my view, claimants No. 4 and 5 would be entitled for filial consortium, and claimant No.1 would be entitled for spousal consortium and claimants No. 2 and 3 would be entitled for parental consortium.

The next question which arises have been raised in cross-objection is regarding the assessment of income of the deceased.

It is contended by learned counsel for the claimants/cross-objectors that the deceased being 'Mason' should be considered as skilled labourer which has been opposed by learned counsel appearing for the appellant-Insurance Company. According to whom, at best, he can be considered as a semi-skilled person. He appears to be correct. In my view, the deceased at best could be considered as semi-skilled person. Considering the deceased to be semi-skilled labourer as well as considering the enhanced rate of the minimum wages in the State of Punjab issued vide Notification dated 15.03.2013, the date of accident being 30.08.2013, the enhanced rate for semi-skilled person was Rs.6,475/- per month.

In my opinion, rounding it of, the income of the deceased can be assessed at Rs.6500/- per month.

Accordingly, in view of the aforesaid discussion and findings recorded by this Court, the Award of the Tribunal stands modified by making following calculation:-

Sr. No.	**Heads**	**Compensation Awarded**
1.	Annual Income	Rs.6500X12=Rs.78,000/-
2.	Add 40% towards future prospects	Rs.31,200/-(i.e. 40% of the income) (Rs78,000+Rs.31,200)=Rs.1,09,200/-
3.	Deduction ($1/4^{th}$) towards personal expenses.	Rs.1,09,200-27,300=81,900/-
4.	Total Income	Rs.81,900/-
5.	Compensation after multiplier of 17 is applied.	Rs.81,900X17=13,92,300/-
6.	Loss of spousal, parental and filial consortium.	Rs.2,00,000/-(Rs.40,000/- each payable to claimant-respondent No. 1 for spousal consortium, claimants-respondents No. 2 & 3 for parental consortium and claimants-respondents No. 4 and 5 for filial consortium).
7.	Funeral expenses	Rs.15,000/-
8.	Loss of estate	Rs.15,000/-
	Total Compensation	**Rs.16,22,300/-**

In my opinion the claimants would be entitled for the aforesaid amount at the enhanced rate of interest @ 9% per annum to be calculated from the date of filing of the claim petition till the date of passing of the Award. However, the other findings of the Tribunal, i.e., other than discussed as above, remain intact.

In the result, this Appeal and Cross-Objections both are allowed in part to the extent as indicated above. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

24.07.2019
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No