

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.4586 of 2013 (O&M)
Date of decision: 25.11.2019

Shri Ram General Insurance Company Ltd.

....Appellants

Versus

Smt. Paramjit Kaur and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Sharma, Advocate,
for the appellant.

Mr. Saurabh Kapoor, Advocate,
for Mr. Ashit Malik, Advocate,
for respondent Nos.1 to 3.

RITU BAHRI J. (Oral)

CM No.19254-CII of 2013

For the reasons mentioned in the application, same is allowed
and delay of 182 days in filing of the appeal is condoned.

CM No.9596-CII of 2016

Delay of 691 days in filing of the cross-objections is condoned.

Misc. application stands allowed.

FAO No.4586 of 2013 &
Cross-Objection No.119-CII of 2016

FAO No.4586 of 2013 has been filed by the Shri Ram General Insurance Company Ltd.-appellant against the award dated 17.12.2012 passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.11,91,400/- has been awarded in favour of claimants-respondent Nos.1 to 3 on account of

death of Vinod Kumar in a motor vehicular accident which took place on 11.08.2011. Claimants-respondent Nos. 1 to 3 are parents and brother of deceased Vinod Kumar.

On the other hand, claimants-respondent Nos.1 to 3 have filed **Cross Objection No.119-CII of 2016** seeking enhancement of the compensation awarded by the Tribunal vide aforesaid award.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 11.08.2011, Vinod Kumar (since deceased) was going from Railway Station, Kesri towards his village on a motorcycle bearing No. HR-01-P-7325. He was being followed by Satish Kumar and Ram Singh. When Vinod Kumar reached in front of the Rice Sheller of Satpal in the area of village Kesri, a motorcycle (Bajaj Caliber) bearing registration No.HR-07-E-4298, being driven by Satish Kumar-respondent No.4 (respondent No.1 in claim petition) in a rash and negligent manner, came from the opposite side and struck against the motorcycle of Vinod Kumar, as a result of which, he (Vinod Kumar) fell down and received injuries. Unfortunately, he succumbed to the injuries. With regard to the accident, FIR No.129 dated 11.08.2011, under Sections 279/304-A IPC was registered at Police Station, Saha against respondent No.1. Consequently, the claimant-respondent Nos.1 to 3 herein filed a claim petition under Section 166 of the Act before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle by Satish Kumar-respondent

Kumar. This finding was rightly given on the basis of deposition of Satish Kumar (PW-1), who was eye witness of the accident and on whose statement, FIR Ex.P6 was registered. Further, the claimants have also proved on record copy of report under Section 173 Cr.P.C. Ex.P1 and charge sheet Ex.P5.

On the basis of evidence adduced by the claimants, income of the deceased was assessed by the Tribunal as Rs.5400/- per month. In this income 50% addition was made on account of future prospects and total income of deceased came to Rs.8100/- per month i.e. Rs.97,200/- per annum, out of which, one-third amount was deducted towards his personal expenses. By doing so, the total income of deceased came to Rs.64,800/- per annum. The deceased was 21 years of age at the time of death/accident. Accordingly, multiplier of 18 was applied by the Tribunal. After applying the multiplier of 18, dependency of claimants came to Rs.11,66,400/- (64,800/- x 18). In addition to it, Rs.10,000/- were awarded on account of loss of estate, Rs.10,000/- as funeral expenses and Rs.5000/- towards transportation. Hence, the claimants were found entitled to total compensation of Rs.11,91,400/- along with interest @ 6% per annum from the date of filing of the petition till realization.

Feeling dissatisfied with the impugned award, Insurance Company-appellant has preferred the present appeal, whereas claimants-respondent Nos. 1 to 3 have filed the cross-objection.

Learned counsel for the appellant (Insurance Company) has argued that the deceased was a bachelor and hence, one-half (50%) deduction should have been made from his income instead of one-third

On the other hand, learned counsel for claimants-respondent Nos. 1 to 3 has argued that the deceased was student of Polytechnic College, Ambala and was earning Rs.7000/- per month by doing tuition work. He further stated that income of the deceased at Rs.5400/- per month, as assessed by the Tribunal, is on the lower side.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Parties are not in dispute with regard to the finding given by Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver. As per certificate Ex.P8, deceased had passed 10+2 and he was pursuing his further studies. Therefore, his income is being assessed as Rs.6500/- per month. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgment passed by Hon'ble the Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77, National Insurance Company Limited vs. Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017), and Magma General Insurance Company Ltd. vs. Nanu Ram alias Chuhru Ram and others, Civil Appeal No.9581 of 2018, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.6500/- per month
(ii)	40% of (i) above is added as future prospects	6500 + 2600 = Rs.9100/-

(iii)	50% of (ii) above deducted as personal expenses of the deceased	9100 – 4550 = Rs.4550/-
(iv)	Compensation after multiplier of 18 is applied	Rs.4550/- x 12 x 18 = Rs.9,82,800/-
(v)	Loss of filial consortium to the parents i.e. claimant Nos.1 and 2	Rs.80,000/- (Rs.40,000/- each)
(vi)	Loss of filial consortium to the brother i.e. claimant No.3	Rs.40,000/-
(vii)	Loss of estate	Rs.15,000/-
(viii)	Funeral expenses	Rs.15,000/-
	TOTAL COMPENSATION AWARDED	Rs.11,32,800/-

The total amount of compensation of **Rs.11,32,800/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The 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 vs. Shyam Singh Varma and others**, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019). Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the impugned award stands modified to the above extent and the present appeal (FAO-4586-2013) as well as Cross Objection No.119-CII of 2016 stand disposed of.

(RITU BAHRI)
JUDGE

25.11.2019
ajp

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