IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-4614-2014 (O&M) with
XOBJC-211-CII-2014

National Insurance Company Ltd.

...Appellant

Versus

Ashwaria Sood and others

...Respondents

(2) FAO-4632-2014 (O&M) with
XOBJC-197-CII-2014

National Insurance Company Ltd.

...Appellant

Versus

Nandini Sood and others

...Respondents

Date of Decision:- 29.11.2019.

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. Swatantar Kapoor, Advocate for the appellant.

Mr. Vipul Sharma, Advocate for
Mr. Navin Saini, Advocate respondent Nos.5 & 6.

Mr. Paul S. Saini, Advocate for respondent No.7.

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H.S. MADAAN, J.

Briefly stated facts of the case are that on the intervening night of 16/17.10.2010, Arvind Sood deceased along with his cousins Sumit Sood, Atul Sood and their friend Ankit Gosain were returning from

Ambala to Ludhiana in a Swift Car bearing registration No.PB-10-CM-0300 (for short 'the car') being driven by Sumit Sood. At about, 2.00 am, when they had crossed Zimidara Dhaba, Sahnewal, a truck bearing registration No.PB06-2811 (for brevity 'the offending truck') being driven in a rash and negligent manner by respondent No.1 Harpreet Singh was going ahead. Respondent No.1 truck driver without giving any signal abruptly brought the truck to a halt. Respondent No.4 Sumit Sood, who was driving the car at a very fast speed not keeping reasonable distance between two vehicles, could not stop the car immediately. Resultantly, the car struck against the offending truck and all the occupants of the car received multiple injuries. Arvind Sood and Atul Sood succumbed to the injuries at the spot. After the accident, respondent No.1 Harpreet Singh alighted from the truck but on observing the people gathered at the spot, he ran away there from. FIR No.237 dated 17.10.2010 was registered regarding the accident. Legal representatives of Arvind Sood deceased i.e. widow Smt. Ashwaria Sood, aged about 28 years, minor daughter Saanvi Sood aged about 2 ½ years, mother Madhu Bala Sood, aged 55 years and father Bal Krishan Sood, aged 64 had brought a claim petition bearing No. MACT No. 30 dated 11.03.2011 under Section 166 of the Motor Vehicles Act, against the respondents i.e. Harpreet Singh-driver, Gurpreet Singh-owner and United India Assurance Company Ltd., Sangrur-insurer of the offending truck. In the said claim petition, they had arrayed Sumit Sood-driver, Ashu Sood-owner and National Insurance Company Ltd.-insurer of the offending car as respondents.

On getting notice, all the respondents had put in appearance and filed written statements, contesting the claim petition. On conclusion of trial, Motor Accidents Claims Tribunal, Ludhiana (for short 'the Tribunal') vide award dated 11.04.2014, accepted the claim petition and awarded compensation of Rs.20,25,000/- to the claimants, directing that the claimants would be entitled to get interest @ 9% p.a. from the expiry of 30 days from the date of accident. The amount would be paid by the insurance company. Respondents No.1, 2, 4 & 5 were directed to pay the said amount within two months from the date of award to the claimants along with interest @ 9% p.a. from the expiry of 30 days from the date of accident, failing which, interest @ 12% p.a. would be liable to be paid by the insurance company on the award amount from the date of filing of claim petition till realization. It was observed that since the vehicles in question i.e. the offending truck and car were duly insured with respondents No.3 & 6 respectively, respondents No.3 & 6 are legally liable and bound to indemnify respondents No.1, 2 and 5. The claimants were directed to file account number in the Court and to supply copy of the same to counsel for the insurance company within 15 days so that the compensation amount could be deposited in the account of the claimants. It was further observed that in case the claimants failed to file the account number in the Court, then, the insurance company would file a bank draft of the compensation amount in the Court within 1 ½ months of the expiry of 15 days granted to the claimants for filing the account number. Respondents No.1, 2, 3 & 6 were jointly and severally held liable to make the payment of compensation. The amount of compensation was ordered to be apportioned among the claimants as under:-

Claimant No.1-Wife = 40%
Claimant No.2-daughter = 30%
Claimant No.3-mother = 20%
Claimant No.4-father = 10%

Share of the minor claimant was ordered to be deposited in the form of FDR with a nationalized bank to be paid to the said claimant on attaining majority. The interest accruing on the amount may be used for upbringing and education expenses of the said minor claimant.

Respondent No.6-insurance company of the car in question felt aggrieved by the award and has approached this Court by way of filing an appeal, praying that the award in question be set aside. Notice of the appeal was given to the respondents, who have put in appearance. The respondents/claimants have preferred Cross Objections seeking enhancement of the compensation.

Similarly, legal heirs/legal representatives of the other deceased, namely Atul Sood i.e. his widow Smt. Nandni, aged about 29 years, minor daughter Yashvi Sood, aged about 04 years, mother Smt. Shobha Sood, aged about 50 years and father Ramesh Sood, aged about 57 years had also brought a claim petition against those very respondents and that claim petition after contest by the respondents was accepted by the Tribunal and compensation of Rs.20,25,000/- was awarded and its apportionment was ordered in the similar manner as in the claim petition case of Smt. Ashwaria Sood and others.

In that case also, respondent-insurance company of the offending car was aggrieved and had filed a separate appeal, notice of which was given to the respondents, including the claimants and they have appeared and filed Cross Objections, seeking enhancement of compensation.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the factual and legal position, in the light of the evidence available on the record had arrived at the conclusion that respondent No.1 Hapreet Singh being driver of the truck and respondent No.4 Sumit Sood being driver of the car in question were equally negligent in the ratio of 50-50 in driving their respective vehicles and the deceased died due to composite negligence of respondent Nos.1 & 4. While arriving at this conclusion, the Tribunal has considered the ocular evidence available on the record. It was also taken note of that, respondent No.4 driver of the car had lodged the FIR regarding the accident, in which, the entire blame for the accident has been put on the truck driver. The Tribunal has pointed out that the FIR was registered at the instance of driver of the car, whose first instinct would have been to save himself from the liability, if any, rising from the accident. Therefore, it was natural for the author of the FIR to remain silent about his own speed. However, the Tribunal, considering the manner in which the accident had taken place, came to the conclusion that drivers of both the vehicles were at fault. The truck driver had suddenly brought the truck to a halt, thereby showing lack of care and caution on his part, whereas, driver of the car was also driving it at a fast speed without keeping the safe distance and had rammed the car into the truck from behind. The impact being so much that even the truck had overturned. The Tribunal was justified in drawing such conclusion, considering all the facts and circumstances of the case. The detailed reasoning for arriving at such conclusion has been given and I do not see any reason to differ with the Tribunal on that point. It being so, the drivers, owners and insurance companies of both the vehicles are liable to pay the compensation to the legal representatives of the deceased, who had lost their lives in the accident. The Tribunal has rightly apportioned the liability equally i.e. 50% on the driver, owner and insurance company of the truck and remaining 50% on the driver, owner and insurance company of the car. Therefore, the insurance company of the car, which is appellant in the present appeals, cannot come up with a plea that it is not liable to pay any compensation in the present case.

As a matter of fact, the award does suffer from certain infirmities, which has affected both the sides i.e. claimants as well as respondents. The Tribunal while quantifying the compensation payable to the claimants has not added any amount to the income of the deceased towards future prospects. Every earning person is expected to make earnest efforts, so as to increase his income for better living and income cannot remain stagnant for a very long time. The Apex Court has considered this aspect in several judgments and in judgment **National**

Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009, has observed that when the deceased was aged below 40 years and was self employed, then, addition of 40% is to be made towards future prospects. In this case, the Tribunal had assessed income of the deceased to be Rs.1.50 lacs per year, considering the evidence brought on file by the claimants. The only omission done by the Tribunal is non addition of any amount towards future prospects. That error requires to be rectified. Doing that, making addition of 40% of the income, the total income of the deceased can be calculated as 1,50,000 + 60,000 = 2,10,000/- p.a.

Considering the number of dependent family members, 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased. Doing that the dependency of the claimants comes out to Rs.1,40,000/-

Keeping in view the age of deceased, multiplier of 16 was rightly adopted by the Tribunal. Doing that, the total compensation is calculated as Rs.22,40,000/-.

In view of the judgment **Pranay Sethi's** (supra), a sum of Rs.70,000/- is to be awarded under the conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses. Thus, the total compensation payable is arrived at Rs.23,10,000/-.

In the present case, the Tribunal has awarded a sum of Rs.1 lakh each to daughter, mother and father to assess the loss of affection, whereas, Rs.1 lakh has been awarded to the widow of the deceased on account of loss of consortium. However, as already mentioned above, in view of judgment **Pranay Sethi's** (supra), the claimants are entitled to get a sum of Rs.70,000/- only under the conventional heads.

The enhanced amount of compensation, thus, comes out to Rs.2,85,000/- (23,10,000 – 20,25,000/-). The directions with regard to apportionment, the mode and manner of payment and liability to pay the compensation shall remain the same as in the original award.

Applying the same yardstick in case of other connected matter with regard to death of Atul Sood, the claimants in cross objection are entitled to get additional compensation of Rs.2,85,000/-. The directions with regard to apportionment, the mode and manner of payment and liability to pay the compensation shall remain the same as given in the impugned award.

One more thing to be noticed is that the Tribunal has awarded interest from the expiry of 30 days from the date of accident and has further directed that if amount of compensation is not paid within two months, the rate of interest would be @ 12% p.a. on the award amount from the date of filing of petition till realization of amount. I find that it would be proper and appropriate if such directions are modified and interest @ 7.5% p.a., is granted to the claimants on the total compensation amount of Rs. 23,10,000/- from the date of filing of claim petition till actual realization. Accordingly, the appeals filed by the insurance company i.e. FAO-4614 and 4632-2014 lacks merit and the same are dismissed, whereas, the Cross Objections i.e. XOBJC-211-CII-2014 and XOBJC-197-CII-2014 filed by the claimants in both the appeals are allowed, in the manner as detailed above.

29.11.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No