

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

105

Cross Objection No.198-CII of 2016 and
FAO No.3435 of 2015 (O&M)
Date of decision:9.1.2019

National Insurance Company Limited

... Appellant

versus

Sabiha Khatun and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Neeraj Khanna and Mr.Ravinder Arora, Advocates,
for the appellant
Mr.Arvind Kashyap, Advocate,
for the cross objectors/respondents no.1 to 4
...

AMOL RATTAN SINGH, J. (Oral)

1. This is an appeal filed by the insurance company that had insured the vehicle found to have been involved in a road side accident that took place on 21.4.2014 in which one Anwar Alam unfortunately lost his life.

The said vehicle was found to be owned and driven by respondent no.5 herein, Dhirender Kumar Jain.

2. The respondents-claimants have also filed Cross Objections No.198-CII of 2016, seeking enhancement of the compensation awarded.

3. The facts are that a claim petition having been filed by respondents no.1 to 4, i.e. the widow, two minor children and mother of the deceased, and notice having been issued, the owner-cum-driver of the

vehicle, as also the insurance company, i.e. the present appellant, filed separate written statements, upon consideration of which the following issues were framed by the learned Motor Accident Claims Tribunal, Panchkula:-

- “1. Whether on 21.04.2014, Anwar Alam died on account of sustaining injuries in the accident in question which took place due to rash and negligent driving of car bearing registration no.HR-49-A-6386, driven by respondent no.1? OPP
2. If issue no.1 is proved, whether the claimants are entitled to any compensation, if so to what amount and from whom? OPP
3. Whether respondent no.1 was not holding a valid and effective driving licence at the time of accident in question, if so to what effect? OPR-2
4. Relief.”

4. The claimants having examined one Mohd.Julphkar as PW1, who is stated to be an eye witness to the accident, the learned Tribunal decided the issue of negligence in causing the accident against respondent no.5 herein, i.e. the driver and owner of the car, on the ground that neither in his cross-examination nor otherwise, the testimony of the said witness could be faulted, and in fact even FIR no.89 dated 21.4.2014 had been registered against respondent no.5 herein immediately after the accident, with the said respondent also having been charge sheeted for causing it.

5. As regards the quantum of compensation to be awarded to the

claimants, though the first claimant, i.e. respondent no.1 herein, Sabiha Khatun (widow of the deceased) testified as PW2 and stated that her husband was running a tyre retreading and puncture booth in front of the H.P. Petrol Pump, near Village Nanakpur, Tehsil Kalka, District Panchkula, and was earning about Rs.12,000/- per month, with the Manager of the Petrol Pump, one Surinder Kumar Sharma, also having testified to that effect as PW3, the Tribunal however still held that there was no proof of the deceased earning Rs.12,000/- per month, but he could still be taken to be a skilled labourer earning Rs.8,000/- per month.

To that amount, 50% was added by way of loss of prospects of an increased income in the future.

Thus, the monthly income (including loss of future prospects) having been found to be Rs.12,000/- per month or Rs.1,44,000/- per annum, 1/3rd of that amount was deducted towards the personal expenses of the deceased and a multiplier of 18 was applied, the deceased being 25 years of age as per his postmortem report.

Consequently, the loss of dependency to the claimants was assessed at Rs.17,28,000/-, with an additional amount of Rs.1,00,000/- given by way of loss of consortium and another amount of Rs.25,000/- towards his funeral expenses, with the total compensation thereby coming to Rs.18,53,000/-, upon which interest @ 7.5% per annum was also awarded, running from the date of institution of the claim petition till the date of realization of the amount.

6. The appellant-insurance company was eventually found liable to pay the compensation, as the insurer of the vehicle owned by respondent

no.5 herein, i.e. a Santro car bearing registration no.HR-49-A-6386.

7. Mr.Khanna, learned counsel for the appellant, had addressed arguments on 5.9.2018, upon which the following order was passed by this Court:-

“Mr.Khanna, learned counsel for the appellant-insurance company submits that the deceased not having been shown to be a skilled labourer, with the only evidence coming in the form of testimony of the owner of a petrol pump, to the effect that he was running a tyre puncture repair shop outside his petrol pump, even if that is to be accepted, he cannot be taken to be more than an unskilled labourer whose minimum wages on the date of accident would be about Rs.6000/-, (i.e. on 21.04.2014).

He however very fairly submits in terms of the arguments raised by learned counsel for the cross objectors-claimants, that the deduction towards personal expenses of the deceased (had he remained alive) would be 1/4th and not 1/3rd as has been applied by the learned Tribunal, the number of dependents being 4 in number, i.e. the widow, 2 children and the mother of the deceased.

Mr.Khanna next submits that the loss of future prospects of income in terms of the judgment of the Supreme Court in *National Insurance Company Limited vs. Pranay Sethi and others, 2017 SC 1270*, would be 40% and not 50% as awarded by the Tribunal and lastly, the total amount to be awarded under

the 'conventional heads' would be Rs.70,000/- and not Rs.1,25,000/- as had been awarded by the learned Tribunal.

Though learned counsel for the cross objectors-claimants submits that in terms of the testimony of the petrol pump owner, to the effect that the deceased was earning about Rs.12,000/- per month, that is the income of the deceased that should have been assessed by the Tribunal, I find no ground to agree with that, in the absence of any kind of documentary proof whatsoever and I also agree with the contention of Mr.Khanna to the effect that the deceased could not have been treated to be more than an unskilled worker.

In terms of the above parameters, what should have been awarded by the Tribunal was Rs.14,30,800/- and not Rs.18,53,000/-. However, since this is a calculation made by this Court 'on the spot', in Court, both learned counsel would determine in terms of the judgment in *Pranay Sethi*, that the aforesaid calculation is correct, taking of course the income of the deceased to be Rs.6000/- per month.

For that purpose, adjourned to 07.09.2018.”

8. It is seen however today that though this Court had taken the wages of the deceased to be that of an unskilled labourer, there is nothing to dislodge the finding of the learned Tribunal that he was actually a skilled labourer, in view of the fact that other than his wife, even the Manager of the petrol pump opposite which he was stated to have been running a tyre repair shop, had testified to that effect. Yet, even if he is taken to be a skilled

labourer, as per the chart of minimum wages maintained by this Court, based on the notifications issued by the Government of Haryana (which has not been refuted), the minimum wages of even a skilled labourer (lower and upper), in three different categories, are shown to be ranging between Rs.5677/- to Rs.6191/-. Hence, the amount of Rs.6,000/- as has been held by this Court to be applicable to the case of the respondents-claimants, need not be altered.

9. Upon the calculation sheet given by learned counsel for the appellant, showing that an amount Rs.14,30,800/- would be only payable and not Rs.18,53,000/- as awarded by the learned Tribunal, in terms of the judgment of the Supreme Court in National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680, learned counsel for the respondents-claimants, though naturally opposes the reduction of the compensation, but could not factually dispute that with the loss of consortium having been restricted by the Supreme Court to Rs.40,000/- and with loss of estate and funeral expenses to be compensated with a payment of Rs.15,000/- under each of those two heads, the amount awarded for loss of consortium as also towards funeral expenses cannot be sustained.

Further of course, the deceased being a self employed person not on a fixed salary, instead of 50% of his income to be added under the head of loss of prospects of an increased income in the future, only 40% is to be added, again in terms of the judgment in Pranay Sethis' case (supra).

Consequently, as regards the compensation payable to the respondents-claimants, it would be Rs.14,30,800/- and not Rs.18,53,300/- as awarded by the learned Tribunal, with the calculation given as below:-

Monthly income	Rs. 6,000/-
Loss of future prospects @ (40% thereof	Rs. 2,400/-
Total monthly income	Rs.8,400/-
Deduction on account of personal expenses	Rs. 2,100/-
Loss of Monthly dependency	Rs. 6,300/-
Annual dependency	Rs.75,600/-
Multiplier	18
Total dependency	Rs.13,60,800 (75,600x18)
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Towards funeral expenses	Rs.15,000/-
Total	Rs.14,30,800/-

10. As regards the issue on negligence, though the appellant-insurance company has challenged the finding of the learned Tribunal under that head too, in its ground of appeal, learned counsel for the appellant could not actually point out any perversity in the finding recorded on that issue by the Tribunal, with Mr.Ravinder Arora and Mr.Khanna simply submitting today that the eye witness, PW1, admittedly was the uncle of the deceased and therefore his testimony cannot be accepted at face value.

I see no reason to accept that argument in view of the fact that, as recorded by the learned Tribunal, his testimony could not be 'dented' either in cross-examination or otherwise and further, even respondent no.5 herein did not actually step into the witness box to give his own version of

the accident, he being the driver and owner of the vehicle involved and, still further, the factum of a charge sheet having been issued against him has not been refuted even now.

Consequently, as regards the finding of the learned Tribunal on the negligence of respondent no.5 herein in causing the accident, I see no reason to interfere with it.

11. In view of the above, this appeal is allowed to the extent that instead of Rs.18,53,000/-, respondents no.1 to 4 herein are held entitled to payment of compensation of Rs.14,30,800 in terms of the ratio of the Supreme Court judgment in Pranay Sethis' case (supra).

12. Learned counsel for the respondents-claimants (cross-objectors) has submitted that since the claimants are obviously poor persons, residents of Bihar, with the deceased having been the sole earning hand running his small tyre repair shop in District Panchkula, and this Court having still reduced the amount of compensation awarded, the rate of interest may be increased.

Though normally this Court would not award more than 7 to 7.50% interest per annum, and in fact usually only 6 to 6.50% interest per annum if the compensation awarded is very high, however keeping in view the aforesaid argument, the contention is accepted and the rate of interest to run on the aforesaid amount of Rs.14,30,800/- would be 9% per annum, running from the date of institution of the claim petition till realization thereof.

The cross objections are also allowed to the aforesaid extent only, as regards interest, though of course substantively they would stand

dismissed as regards the claim for enhanced compensation.

No order as to costs.

9.1.2019
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No