IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 5487 of 2015

Date of Decision: March 25 , 2019.

Nikita Dhiman and others ...... APPELLANT(s)

Versus

Pardeep Kumar and others ...... RESPONDENT (s)

2. FAO No. 6114 of 2015

United India Insurance Company Ltd. ...... APPELLANT(s)

Versus

Nikita Dhiman and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Shakti Mehta, Advocate
for the appellants in FAO No.5487 of 2015 and
for respondents No.1 to 5 in FAO No.6114 of 2015.

Mr. Harsh Aggarwal, Advocate
for the appellant in FAO No.6114 of 2015 and
for respondent No.3 in FAO No.5487 of 2015.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This judgment shall dispose of FAO No.5487 of 2015 (Nikita Dhiman and others v. Pardeep Kumar and others) and FAO No.6114 of 2015 (United India Insurance Company Ltd. v. Nikita Dhiman and others) which arise out of impugned award dated 06.05.2015 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as, the 'Tribunal').

FAO No.5487 of 2015 has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal vide impugned award dated 06.05.2015. FAO No.6114 of 2015 has been filed by the Insurance company challenging the quantum of compensation awarded to the claimants by the learned Tribunal. It is further claimed that deceased-Pawan Kumar was guilty of contributory negligence, therefore, necessary deduction should be effected in the compensation awarded to the claimants.

Brief facts necessary for adjudication of this case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Pawan Kumar, who lost his life in a motor vehicle accident which took place on 08.01.2014. FIR No.9 dated 08.01.2014 (Ex.P9) under Sections 279/304A IPC was registered at Police Station Sadar, District Bilaspur against respondent No.1 at the instance of one Sukh Ram son of Nikka Ram.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of bus bearing registration No. HP-69-1837 by its driver respondent-Pardeep Kumar. It is further concluded that Pardeep Kumar was not holding a valid and effective driving licence at the time of the accident. The Insurance company was given right to recover the amount of compensation from the respondent-driver.

It is relevant to note at this stage that FAO No.5335 of 2015

(Pardeep Kumar v. United India Insurance Company Ltd. and others) filed by the driver of the offending vehicle was partly allowed by this Court on 28.02.2018. It was held that the Insurance company is not entitled to any recovery rights from the driver of the offending vehicle.

Deceased-Pawan Kumar was held to be 37 years old at the time of the accident by the learned Tribunal. Income of Pawan Kumar was assessed as ₹27,652/- per month. Addition in income at the rate of 40% was afforded towards future prospects. Deduction to the extent of 1/3rd on account of personal expenses was effected. Multiplier of 15 was applied. ₹1,00,000/- was awarded on account of loss of consortium, besides, ₹25,000/- on account of funeral expenses. A total sum of ₹47,70,440/- was awarded to the claimants by the learned Tribunal.

Learned counsel for the Insurance company vehemently argues that the deceased-Pawan Kumar was a polio stricken person, therefore, driving licence could not have been issued to him. In this situation, it is the deceased-Pawan Kumar who was responsible for the accident in question. It is further submitted that the deceased was coming downhill on his motorcycle, whereas the bus in question was going uphill. Due to the affliction suffered by the deceased, it is submitted, he could not stop his motorcycle in time. He lost control over the same and failed to apply brakes, therefore, he slipped under the bus. It is further argued that PW3 Sushil Kumar is not proved to be an eye-witness of the accident in question. Sukh Ram, propounder of the FIR has not been examined. Thus, no eye-witness of the accident has been examined to prove that the accident, in question, occurred due to the rash the negligent act of the respondent-driver

Pardeep Kumar. RW1 Rajinder Sharma and RW2 Dinesh Kumar, who were passengers in the bus have duly testified to the extent that it was the fault of motorcyclist due to which the accident occurred.

Learned counsel for the Insurance company further contends that income of the deceased has been wrongly assessed as ₹3,31,828/- per annum. The amount earned by the deceased as over-time should have been deducted from the said amount. It is also contended that excessive compensation has been awarded under the head of loss of consortium and funeral expenses. It is thus prayed that appeal filed by the Insurance company be allowed and that of the claimants be dismissed.

Per contra, learned counsel for the claimants submits that affliction suffered by the deceased was not such which would render him incapacitated for driving a motorcycle. The driving license (Ex.R1) in question was issued by the Licensing Authority after proper verification. Moreover, stand of the respondent-driver himself shows that the accident in question took place due to the rash and negligent driving of the offending bus. There is, thus, no question of contributory negligence on the part of the deceased.

Learned counsel for the claimants further submits that income on account of overtime should not be deducted for the reason that it is admittedly the earning of deceased-Pawan Kumar who was working as an Engineering Associate with Abbott Healthcare Private Limited at Baddi. The claimants are the widow, minor children and the dependant parents. It is urged that the compensation under the conventional heads be awarded in terms of the judgments of the Hon'ble Supreme Court in **National Insurance Company Limited v.**

Pranay Sethi and others, ***2017(16) SCC 680*** and **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.**, ***2018(4) RCR(Civil) 333***. It is thus prayed that the amount of compensation awarded to the claimants be enhanced accordingly.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Perusal of the record reveals that the accident in question is admitted. The question is whether deceased-Pawan Kumar is guilty of any contributory negligence in this case. PW3 Sushil Kumar specifically stated that he was travelling in the offending bus at the relevant time. He witnessed the accident in question. It is pertinent to note, at this stage, that not even a suggestion was put to PW3 Sushil Kumar that he was not travelling in the offending bus. There is indeed no evidence, whatsoever, to doubt the credibility of this witness. PW3 Sushil Kumar specifically narrated the events as they unfolded. He categorically stated that the accident in question took place due to rash and negligent driving of the offending bus. PW3 stated that the bus was being driven at a high speed. Deceased-Pawan Kumar alongwith the motorcycle was dragged upto 30-35 ft.

At this stage, it is gainful to refer to the stand taken by the respondent-driver. RW3 Pardeep Kumar stated that he was driving the bus slowly and when they reached near village Daddibhari, there was a U-turn from where the bus was going upward as it was a hilly area. Deceased-Pawan Kumar approached all of a sudden from the opposite direction and was driving his motorcycle in a rash and negligent manner. Deceased-Pawan Kumar approached from the unmetalled (Kaccha) part of the road at the U-turn and lost his control. There is merit in the argument of learned counsel for the claimants that the very fact that the motorcyclist was stated to be on unmetalled part of the road and the bus was taking a U-turn at the 'U-point', reveals the rash and negligent manner of the driving of the bus. There is no averment or evidence to show that the motorcyclist was not on his correct side of the road. Moreover, the fact that the offending vehicle was going uphill and still it dragged the motorcycle for upto 30-35 feet, itself reflects the rash manner of driving of the bus. Furthermore, RW1 Rajinder Sharma and RW2 Dinesh Kumar have admitted that they are not summoned witnesses. RW1 Rajinder Sharma specifically stated that he came alongwith respondent-Pardeep Kumar to depose before the learned Tribunal. RW2 Dinesh Kumar has categorically stated that he came to depose on the asking of respondent-Pardeep Kumar i.e., driver of the bus. Much credence cannot be placed on the testimony of RW1 Rajinder Sharma and RW2 Dinesh Kumar in this situation

Another argument vehemently raised by learned counsel for the Insurance company is that the deceased was polio stricken, therefore, unable to drive the motorcycle. It is not denied that the driving license (Ex.R1) was duly issued to the deceased. PW2 Nikita Dhiman, widow of the deceased specifically stated that deceased-Pawan Kumar was afflicted with polio, but it was a mild affliction, slightly affecting his right foot. In the absence of any specific evidence to the contrary, it cannot be presumed that the deceased was unable to drive or negotiate the motorcycle and it is on this count that the accident took place. Thus, deceased-Pawan Kumar cannot be held guilty of any contributory negligence in this case.

The claimants in a petition under Section 166 of the Act are to prove their case on the touchstone of preponderance of probabilities. The Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Company Ltd. and others**, ***2018(5) SCC 656*** and **Sunita v. RSTRC**, ***2019(2) RCR (Civil) 209***, observed that the claimants in the present proceedings are required to prove their case on the touchstone of preponderance of probabilities. In Sunita's case (supra), it was held that just because one of the eye-witnesses was not examined, cannot be a ground to reject the claimants version in the light of cogent evidence available on record. In the present case, the claimants have succeeded in proving that the offending bus was driven in a rash and negligent manner due to which the accident in question was caused.

Deceased-Pawan Kumar was admittedly working as an Engineering Associate with Abbott Healthcare Private Limited at Baddi, earning a sum of ₹3,31,828/- per annum. Account statement of the deceased is on record as Ex.P4. Some of the monthly salary slips are also available on record as Ex.P5 (collectively). His salary/income was duly proved by PW1 Bharat Taneja, Manager HR of Abbot Health Care Private Ltd. PW1 Bharat Taneja has proved the salary certificate (Ex.P3). There is no ground, whatsoever, for any deduction to be effected in the salary as urged by learned counsel for the Insurance Company. Thus, learned Tribunal has rightly assessed income of the deceased as ₹27,652/- per month.

There is no dispute regarding age of the deceased. As per Ex.P8 i.e., certificate of Matriculation Examination, date of birth of deceased-Pawan Kumar is 20.03.1975. Therefore, he was about 39 years old at the time of the accident.

Addition in income at the rate of 40% on account of future prospects has been rightly afforded in tune with the judgment of the Hon'ble Supreme Court in Pranay Sethi's case (supra). Multiplier of 15 has been correctly applied as well. However, deduction to the extent of 1/4th instead of 1/3rd is to be effected as the number of dependants in this case are five. Instead of ₹1,00,000/- awarded to the claimant-widow on account of loss of consortium, she is held entitled to ₹40,000/-. Minor children of the deceased are held entitled to ₹40,000/- on account of loss of parental consortium and aged parents too are entitled to ₹40,000/- for loss of filial consortium. Reference in this regard can gainfully be made to Magma General Insurance Company Limited's case (supra) as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others). Instead of ₹25,000/- on account of funeral and last rites, ₹15,000/- each is awarded to the claimants on account of funeral expenses and loss of estate.

Claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	3,31,828/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	3,31,828 + (3,31,828 **x** 40%) = 4,64,559
3.	Net income after 1/4th deduction on account of personal expenses	4,64,559 – (4,64,559 **x** 1/4) = 3,48,419
4.	Total dependancy after applying a multiplier of 15	(3,48,419 **x** 15) = 52,26,285
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium to appellant No.1	40,000

8.	Loss of parental consortium to appellants No.2 and 3	40,000
9.	Loss of filial consortium to appellants No.4 and 5	40,000
	Grand Total	₹53,76,285/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

FAO No.5487 of 2015 filed by the claimants is accordingly disposed of. FAO No.6114 of 2015 filed by the Insurance company is dismissed.

(LISA GILL)
JUDGE

March 25 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No