IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-7880-2014(O&M)

Reliance General Insurance Company Ltd.

...Appellant

Versus

Madan Lal and others

...Respondents

(2) FAO-7881-2014(O&M)

Reliance General Insurance Company Ltd.

...Appellant

Versus

Madan Lal and others

...Respondents

(3) FAO-7899-2014(O&M)

Reliance General Insurance Company Ltd.

...Appellant

Versus

Niku Ram and others

...Respondents

Date of Decision:-19.9.2019

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

Present: Mr.Sandeep Suri, Advocate
for the appellant – insurance company
in all three appeals.

Mr.Vivek Khatri, Advocate
for respondents No.1 and 3 to 5 in FAO-7880-2014 and
for respondent No.1 in FAO-7881-2014.

****

H.S. MADAAN, J.

By this order, I shall dispose of three FAOs i.e. FAO-7880-2014, FAO-7881-2014 and FAO-7899-2014 filed on behalf of appellant – insurance company, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 8.3.2012 at about 2:30 p.m. Madan Lal son of Amar Chand along with his wife Krishna and one Sunil Kumar son of Niku Ram were standing on the side of the road in front of LIC House, a little ahead of Hisar Octroi, Hansi and they were talking with each other; Sunil Kumar was standing near motorcycle bearing registration No.HR-21D/7812 make Hero Honda, in the meanwhile, a car of white colour bearing registration No.HR-26BP/4999(hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Anshul Yadav in a rash and negligent manner came and struck against all the three persons, as a result all three of them suffered multiple injuries of serious nature; after the accident respondent No.1 ran away from the spot leaving the offending vehicle behind; the injured were taken to General Hospital, Hansi, where they were medico legally examined, however Smt.Krishana and Sunil Kumar had succumbed to the injuries suffered by them; postmortem examination on their dead bodies was conducted; formal FIR No.129 dated 8.3.2012 for the offences under Sections 279, 337, 304-A and 427 IPC was registered with Police Station City, Hansi against respondent No.1 on the basis of statement of complainant – Ashok Kumar.

Petitioner/claimant Madan Lal injured had filed a claim petition bearing No.52 of 2012 against the respondents i.e. Anshul Yadav – driver, Nisha Rani – owner and Reliance General Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation on account of suffering injuries in the accident.

Similarly, above-said Madan Lal along with his four sons had filed a claim petition bearing No.166 of 2012 against those very respondents, claiming compensation on acocunt of death of Smt.Krishna Devi in the accident.

Since both the two claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Hisar (hereinafter referred to as the Tribunal).

The respondents in both the claim petitions had appeared and offered contest. However, vide award dated 13.11.2013, the claim petitions were allowed partly by the Tribunal and compensation of Rs.57,600/- was awarded to the claimant Madan Lal in claim petition No.52 of 2012, whereas compensation of Rs.7,36,380/- was awarded to the petitioners/claimant Madan Lal etc. in claim petition No.166 of 2012 along with interest at the rate of 7.5% per annum from the date of filing of petitions till realization of the amount. All the respondents were made liable to make the payment jointly and severally.

The details of compensation awarded to the petitioner/claimant Madan Lal in claim petition No.52 of 2012 on account of suffering of injuries are as under:

Compensation on account of expenses incurred upon treatment	Rs.12,600/-
Compensation on account of hospitalization	Rs.10,000/-
Compensation on account of pain and suffering	Rs.10,000/-
Compensation on account of loss of income	Rs.5,000/-
Compensation on account of disability	Rs.20,000/-
Total	Rs.57,600/-

The details of compensation awarded to the petitioners/claimants Madan Lal and others in claim petition No.166 of 2012 on account of death of Krishna Devi are as under:

Expenses incurred on treatment of deceased Krishna Devi	Rs.16,380/-
Compensation on account of hospitalization	Rs.4,000/-
Expenses upon transportation and last rites	Rs.15,000/-
Compensation on account of loss of dependency	Rs.5,76,000/-
Compensation on account of loss of love and affection to all the petitioners	Rs.1,25,000/-
Total	Rs.7,36,380/-

It may be mentioned here that legal heirs of second deceased Sunil Kumar, namely, father – Niku Ram, mother – Smt.Banni Devi and wife – Smt.Manju Rani had also filed separate claim petition bearing No.170 of 8.8.2012 against those very respondents, which after contest was partly accepted by the Tribunal vide award dated 10.2.2014 and compensation of Rs.14,47,000/- along with interest at the rate of 9% per annum from the date of filing of petition till realization of the amount, was awarded to the claimants, payable by respondents No.1 to 3 jointly and severally.

Being dissatisfied with the Awards passed by the Tribunal, respondent No.3 – Insurance company has filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who have appeared through counsel.

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

The first and foremost argument advanced by learned counsel for appellant – insurance company was that it has come in evidence that at the time of accident, the driver of the car had given his name as Varun Saxena, whereas the present claim petitions were filed against Anshul Yadav as driver of the car allegedly involved in the accident. In various applications moved before the police authorities, name of driver of the car was mentioned as Varun Saxena; in the written statement filed by Anshul Yadav, he has denied that he was driving the car in question at the relevant time, which means that the car was being driven by a third person, therefore, the insurance company could not be held to be liable to pay compensation.

Whereas learned counsel appearing for the claimants/respondents has contended that the Tribunal on the basis of evidence adduced before, it has come to the conclusion that respondent No.1 Anshul Yadav had caused the accident by his rash and negligent driving and no fault can be found with such finding.

After hearing learned counsel for the parties and going through the record, I find that the Tribunal in light of the oral and documentary evidence brought on file by the claimants has concluded that respondent No.1 had caused the accident by his rash and negligent driving of the offending car. All the objections now sought to be raised before this Court had been taken before the Tribunal also. Those were discussed and rejected. Paras No.19 and 20 in claim petitions filed by Madan Lal and others are very relevant, which for ready reference are reproduced as under:

> *19. Initially, FIR was registered against some unknown person, who was under the influence of liquor, who left the offending vehicle at the spot and subsequently as per documents furnished by respondent No.3, the name of the driver was revealed as Varun Saxena, against whom applications were given to SHO. P.S.City Hisar, Superintendent of Police, Inspector General of Police. Affidavit of Ashok Kumar and statement of Ashok recorded in complaint titled Ashok Kumar Vs. Varun Saxena also filed. On the other hand, respondent No.2 has submitted copy of statement of Ashok Kumar, recorded in claim petition titled Niku Ram Vs. Anshul Yadav, Motor Accident Claims Tribunal, Hisar, dated 22.10.2013, in which Ashok Kumar deposed that Anshul Yadav was driving the car and he was under the influence of liquor; that he did not file any criminal complaint against Varun Kumar and he never*

visited the court at Hansi. This witness was brother of deceased Sunil. From the evidence so produced, it can not be said that Varun Saxena was driving the vehicle at the time of accident. This was Anshul who was driving the offending vehicle at the time of accident.

20. From the evidence so produced by the petitioners, it is amply proved that the accident took place due to rash and negligent driving of respondent No.1. This issue is decided in favour of the petitioners and against the respondents.

I find myself in agreement with the Tribunal as regards such observations and do not see any reason to disagree with the Tribunal. I do not find any merit in the argument put forward by learned counsel for the appellant – insurance company that a fraud has been played by the claimants with the Court and the Insurance Company. The facts and circumstances of the case do not suggest anything of that type.

One more argument put forward by learned counsel for the appellant – insurance company was that keeping in view the age of deceased Smt.Krishna Devi to be 35 years, multiplier of 16 was used when lower multiplier should have been used.

In terms of judgment *Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil) 77* when the deceased was in the age group of 31 to 35 years, multiplier of 16 is to be applied. Thus this argument is devoid of any merit.

The Tribunal had taken the deceased Smt.Krishna Devi to be a housewife and her income was assessed to be Rs.4,000/- per month. The income so assessed is on lower side.

In a judgement passed by a Co-ordinate Bench titled ***Cholamandalam MS General Insurance Co. Ltd. Versus Lakhmi Chand and Ors., 2015(4) PLR 405***, the notional income for a housewife was taken to be Rs.5,000/- and no addition was made towards future prospects. In another FAO-1274 of 2014 having title ***Manphool & others Versus Anil and others*** decided on 14.3.2018 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.5,200/- per month. In FAO-5627 of 2014 having title ***Brahmanand and others Versus Rajesh Kumar and others*** decided on 7.12.2016 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.6,000/- per month. In FAO-5697 of 2015 having title ***Sh.Rajinder and others Versus Sh.Jatinder Kumar and others*** decided on 26.11.2018 by a Co-ordinate Bench of the Court, the contribution of a housewife was taken to be Rs.11,000/- per month.

Though the amount awarded in claim petition No.166 of 2012 to petitioners/claimants Madan Lal and others on account of loss of love and affection as Rs.1,25,000/- is on higher side and funeral expenses of Rs.15,000/- have also been awarded. Though in terms of ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, compensation under the conventional heads to the extent of Rs.70,000/- ought to be awarded. But considering the fact that the Tribunal has taken the income of deceased to be somewhat on lower side and has made deduction therefrom towards personal expenses, I find that the compensation awarded is just and equitable and there is no occasion to reduce the same.

Similarly, with regard to the compensation awarded to petitioner/claimants in Claim Petition No.52 of 2012, the same can certainly be not termed as excessive or inflated. Thus no ground is there to reduce the same.

Therefore, **FAO-7880-2014 and FAO-7881-2014** filed on behalf of the insurance company stand dismissed.

As regards the compensation awarded to claimants in Claim Petition No.170 of 8.8.2012 with regard to death of Sunil Kumar, the Tribunal after recording the satisfaction that respondent No.1 Anshul Yadav was author of the accident by his rash and negligent driving of the offending car and that Sunil Kumar had suffered injuries in the accident, to which he had succumbed had quantified the compensation payable to the claimants. The age of the deceased was taken to be 27 years. The version of the claimants that he used to work as a labourer in addition to running a dairy farm and would earn Rs.10,000/- was rejected and his monthly income was assessed as Rs.5,500/- in light of the minimum wages fixed by the State Government at that time. 50% of the amount was added towards future prospects making monthly income to be Rs.8,250/-. But then in terms of ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***, the future prospects to the extent of 40% should be awarded. In that way, monthly salary of deceased comes out to

Rs.7,700 (5500 + 2200). 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased. Doing that the dependency of claimants comes out to Rs.5,134/- per month, annual dependency comes out to Rs.5,134 x 12 = Rs.61,608/-.

The Tribunal has used multiplier of 17, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.61,608 x 17 = 10,47,336/-.

The Tribunal has awarded a sum of Rs.1 lakh each to petitioners Smt.Banni Devi and Smt.Manju Rani for loss of love and affection, Rs.1,00,000/- to Smt.Manju Rani towards loss of consortium and loss of estate and Rs.25,000/- towards transportation and last rites. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under 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, total Rs.70,000/-.

Thus, the total compensation comes out to Rs.10,47,336/- + 70,000 = Rs.11,17,336/-.

The Tribunal has awarded compensation of Rs.14,47,000/- whereas the compensation to which the claimants are found entitled is worked out to Rs.11,17,336/-. Thus, the compensation amount is reduced to Rs.11,17,336/-. The interest awarded to the claimant @ 9% per annum is on somewhat higher side. The claimants would be entitled to get interest @ 7.5% per annum on the compensation amount of

Rs.11,17,336/- from the date of filing of the claim petition till actual realization. Other terms and conditions in the original award shall remain the same except for proportionate reduction in shares. Amount if paid in excess be refunded by the claimants at the earliest.

With such modification, FAO-7899-2014 is allowed partly with costs.

19.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No