

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

F.A.O. No. 6984 of 2016

DATE OF DECISION :- November 13, 2019

Smt. Anjali Baidya Das and others

...Appellants

Versus

Sandeep and others

...Respondents

F.A.O. No. 6408 of 2016

DATE OF DECISION :- November 13, 2019

United India Insurance Company Limited

...Appellant

Versus

Smt. Anjali Baidya Das and others

...Respondents

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

Present:- Mr. Ram Avtar, Advocate for the appellant
in FAO-6408-2016 and for respondent No. 3
in FAO-6984-2016.

Mr. Rajiv Kumar Saini, Advocate for the appellants
in FAO-6984-2016 and for respondents No. 1 and 3
in FAO-6408-2016.

Mr. R.K. Choudhary, Advocate
for Mr. Sukhdeep Parmar, Advocate
for respondents No. 4 and 5
in FAO-6408-2016 and for respondent Nos. 1 and 2
in FAO-6984-2016.

Briefly stated the facts of the case are that on 19.6.2015 Jai Kumar

(deceased) was going on his bicycle on G.T. Road. When he had reached near

T-point Ramba Road, G.T. Road Taraori going on his left hand side in the meanwhile respondent no. 1 Sandeep driving motor cycle bearing registration No. HR-02W-9012 (hereinafter referred to as offending motor cycle) in a rash and negligent manner at a very high speed came from opposite side and hit bicycle of Jai Kumar with the result Jai Kumar fell down on the road and suffered multiple grievous injuries on his body. After the mishap Jai Kumar injured was taken to General Hospital, Karnal where he was medico legally examined and from there he was taken to Arvind Hospital Karnal, he remained admitted there from 20.6.2015 to 24.6.2015 thereafter from there he was taken to Sanjiv Bansal Cygnus Hospital, Karnal. He succumbed to the injuries on 26.6.2015. Post mortem examination on his dead body was conducted at General Hospital, Karnal on 27.6.2015. Legal heirs of such deceased namely his wife Smt. Anjali Baidya Das, aged about 24 years, minor daughter Shriya Das, aged about 5 years and minor son Ayoush Dass, aged about 3 years had brought a claim petition under Section 166/140 of the Motor Vehicles Act against respondents i.e. Sandeep-driver, Chotta Ram-owner and United India Insurance Company Limited- insurer of motor cycle bearing registration No. HR-02W-9012, claiming compensation to the tune of Rs.50 lacs.

As per version of the claimants, the deceased was aged about 26 years and was enjoying good health. He was working as Office Assistant in Century Plyboards (P) Limited, Taraori as a regular employee since 2007. He used to earn Rs.16,603/- per month; that a sum of Rs.3,50,000/- was spent on his medical treatment, transportation and performing last rites.

On being issued notice, all the three respondents put in appearance. Respondents No. 1 and 2 appeared and filed a joint written

statements whereas respondent No. 3-Insurance Company came up with a separate written statement. In the joint written statements filed by respondents No. 1 and 2, they had taken up various legal objections with regard to maintainability of the claim petition, locus standi of the petitioner claimants in filing the same, claimants not approaching Tribunal with clean hands and the petition being bad for non-joinder of necessary parties etc. Such respondents denied that motor cycle bearing registration No. HR-02W-9012 belonging to respondent No. 2 and being driven by respondent No. 1 had caused any such accident rather according to them a false F.I.R. has been got registered against respondent No. 1 by the claimants in collusion with the local police. However, the motor cycle in question was insured with respondent No. 3-Insurance Company at the relevant time and the liability, if any, to pay the compensation is that of such Insurance Company.

Respondent No. 3-Insurance company in the written statement filed by it had also taken various legal objections and statutory defences on merits refuting the assertions in the claim petition contending that respondent No. 1 was not holding a legal and valid driving licence at the time of accident and further terms and conditions of the Insurance Policy were violated absolving such Insurance Company of any liability to pay the compensation. All the respondents prayed for dismissal of the claim petition. On pleadings of the parties following issues were struck by the Tribunal vide order dated 15.3.2016 :-

- “1. Whether the accident took place on account of rash and negligent driving of motor cycle bearing registration No. HR-02W-9012 by respondent No. 1 resulting into death of Jay Kumar, as alleged?OPP

2. If issue No. 1 is proved, whether the claimants are entitled to any compensation, if so, to what amount, from whom?OPP
3. Whether respondent No. 1` was not a skilled driver and was not holding a valid and effective driving licence at the time of accident, as alleged, if so to what effect?OPR3
4. Relief.”

The parties lead evidence in support of their respective claims. During the course of arguments evidence of the claimants, Smt. Anjali Baidya Dass PW1 got recorded and tendered into her affidavit Ex.PW-1/A in which she supported case of the claimants on material aspects. The other witness examined by the claimants happened to be PW2 Dr. Waseem Rajadar, PW3 Sh. Ajay Sharma Senior HR Manager, Century Plyboards Private Limited, Taraori, PW4 Parmod Kumar, who had provided the eyewitness account of the accident in his affidavit Ex.PW4/A and PW5 Dr.Veneet Bhai. The claimants tendered in evidence various documents Ex.P1 to Ex.P48. However, no evidence was adduced by the respondents.

The Tribunal on analysis of the evidence produced before it relying upon the eye witness account of the accident provided by PW4 Parmod Kumar, copy of post mortem report of deceased Ex.P11, Copy of F.I.R. No. 162 dated 20.6.2015 for offences under Sections 279, 337, 304A IPC registered with Police Station Taraori as Ex. P9, site plan Ex.P10, Copy of challan filed against respondent No. 1 Sandeep Ex. P8 and taking into consideration the fact that respondent No. 1 had not stepped into the witness box to deny the involvement in the case, returned a finding that the accident in question had taken place on account of rash and negligent driving of motor

cycle bearing registration No. HR-02W-9012 by respondent No. 1 resulting in causing injuries to deceased Sh. Jai Kumar, to which he had succumbed. This finding is proper and appropriate and does not call for any interference. In that way respondent No. 1 being the driver, respondent No. 2-owner and respondent No. 3-insurer of the offending motor cycle are liable to pay compensation to the claimants, who are legal heirs and legal representatives of the deceased. While calculating the compensation payable the claimant had taken age of the deceased to be 26 years. While assessing the income of the deceased testimony of PW3 Ajay Kumar Sharma, Senior HR Manager, Century Plyboards Private Limited, Taraori was taken into consideration. He had stated that deceased was working in their company since 1.10.2007 and was a permanent employee. He was getting Rs.14,000/- salary plus bonus, incentive, leave encashment. The company was also giving 20% bonus to every staff of the family. He had proved on record salary certificate as Ex.PW3/C showing that for the month of May-June, 2015, the gross salary of deceased was Rs.16,603/-. The Tribunal has rightly taken into consideration gross salary payable to the deceased. The Tribunal has added 50% of the amount towards future prospects. It has been rightly done since it has come out from the record that the deceased was holding a permanent job, therefore, his monthly income was taken to be Rs.24,000/- (16,000 + 8000). Keeping in view the number of dependent family members, 1/3rd of the amount was deducted towards personal and living expenses of the deceased. In that way the dependency of the claimants comes out to Rs.16,000/-. Therefore, the annual dependency comes out to Rs.1,92,000 (16,000 x 12). Multiplier of 17 was applied. In that way the amount of compensation comes out to Rs.32,64,000

(1,92,000 x 17). Considering the income tax liability, the amount can be taken to be Rs.29,37,600/-. The Tribunal has awarded a sum of Rs.2,09,579/- on account of medical expenses incurred by the claimants on treatment of the deceased after he had received injuries in the accident before death. Further more the Tribunal has awarded a sum of Rs. 1 lac to claimant Anjali for loss of consortium and claimants No. 2 and 3 have been awarded a sum of Rs. 1 lac each for pain, love and affection as well as care and guidance of their father, a sum of Rs.25,000/- has been awarded towards funeral expenses. However, in view of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*', a sum of Rs.70,000/- is to be awarded. Thus the total compensation is worked out to Rs.32,17,179/-. The Tribunal has awarded compensation of Rs.36,98,579/- which is reduced to Rs.32,17,179/- with interest at the rate of 7.5% per annum. The directions with regard to apportionment and mode of payment shall remain the same as given in the original Award. The excess amount, if paid be refunded.

The appeal bearing F.A.O. No. 6408 of 2016 is allowed partly. Thus there is no scope for enhancement of the compensation, therefore, the appeal bearing F.A.O. No. 6984 of 2016 filed by the claimants seeking enhancement of compensation stands dismissed.

(H.S. MADAAN)
JUDGE

November 13, 2019
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No