IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 891 of 2015 &
Cross Objection No. 181-CII of 2015
Date of decision:- 02.12.2019

Magma HDI General Insurance Co Ltd. ...Appellant

Versus

Meenu and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vishal Aggarwal, Advocate, for the appellant.

Mr. J.S. Dadwal, Advocate
for respondent No. 5

Mr. Ajay Kumar Sharma, Advocate
for cross objector/respondent No. 1 to 4

RITU BAHRI J. (Oral)

1. Appeal and cross objection, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned award dated 13.11.2014 passed by the learned Motor Accident Claims Tribunal, Patiala.

2. The facts which are not in dispute are that on 24.04.2013, deceased Anil Kumar was going to his workshop from his house on motorcycle bearing registration No. PB-11AR-2445. Kanwal Kumar brother of the deceased was following the motorcycle of the deceased on his motorcycle bearing No. PB-11AM-1848 and Sravan Vasan was the pillion rider on the motorcycle of the brother of the deceased. At about 9 A.M, a truck bearing No. PB-11AH/8489 being driven in a rash and negligent manner came from rear side and struck against the motorcycle of the deceased due to which the deceased fell on the ground and received multiple injuries. The deceased received multiple and grievous injuries and

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was taken to Rajindra Hospital, Patiala and was declared dead. F.I.R No. 90 dated 24.04.2013 under Sections 279/304-A/337/427 IPC was registered at P.S. Kotwali, Patiala.

3. While assessing the compensation, the Tribunal took the income of the deceased-Ajay Kumar at Rs.1,95,000/- per annum and 1/3rd was deducted towards personal expenses. Thereafter, the Tribunal applied the multiplier of 13**.** Further the Tribunal awarded Rs.10,000/- towards funeral expenses and Rs.1,00,000/- towards loss of consortium. The total compensation awarded to the claimants was Rs.18,40,000/-.

4. Learned counsel for the appellant-Insurance Company contends that the compensation awarded by the learned Tribunal is on the higher side and deserves to the reduced. The Insurance Company has challenged the award on account of the income taken by the learned Tribunal, as the accident in the present case occurred on 24.04.2013 and the Tribunal has taken the income tax of the deceased which was submitted on 07.05.2013 i.e after the death of the deceased.

5. Further it has been argued that the offending vehicle was being driven in contravention of the terms and conditions of the Insurance Policy, as the driving licence of the driver was from Nagaland. The address of driver was Kheri Musal Maniar, District Patiala wherein he has shown to be permanent resident of the said address and for the sake of issuance, the driver has been shown as resident of Wokha Town as temporary address. The driver of the offending vehicle in his cross examination admitted that he is neither a resident of the said area i.e Nagaland nor has any residence proof of the same. The driving licence for the purpose of LMV/HMV is renewed for a maximum period of three years, however, in the present case,

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the same has been renewed for a more than three years, which in itself renders invalid.

6. On the other hand, the learned counsel for the cross objector-respondent No. 1 and 2/claimants submits that the compensation awarded by the Tribunal is on the lower side, as no future prospects have been awarded.

7. I have heard learned counsel for the parties and perused the record.

8. With regard to the appeal filed by the Insurance Company, it is liable to be dismissed as the Tribunal has taken the income same, as the claimants have placed on record the income tax returns filed by the deceased as Ex A-1 to A-5. A bare perusal of the income tax returns for the year 2009-2010 to 2013-2014 shows that there was constant increase in the annual income of the deceased. Thus, even if the deceased died on 24.04.2013, the income of the deceased as on 31.03.2013 has rightly been taken by the Court by taking into account the income tax return for the year 2013-2014.

9. Further with regard to the argument that the driving licence was not valid, as the same has been issued by Nagaland Authorities whereas the driver was permanent resident of Patiala, reference at this stage can be made to judgment passed by this Court in a case of ***Ms. Simran (minor) and others v. Ramesh and others, passed in FAO No. 4603-2015 and connected matters, decided on 18.03.2019*** wherein also the Insurance Company has challenged the award on the ground that driver was permanent resident of Kaithal whereas he was issued licence by the District Transport Officer of State of Nagaland and thus, the driver of the offending vehicle

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was not holding and valid driving licence at the time of the accident. The appeal of the Insurance Co was dismissed and it has been observed as under:-

"*From the above discussion, I find that the whole approach of the Tribunal was wrong and erroneous. The onus of proving this issue was on the insurance company. The Tribunal had observed that the driving licence of respondent No.1 Ex.R1 was valid up to 6.2.2014. The accident in this case had taken place on 31.5.2011, that means respondent No.1 was having a valid licence at the time of accident. The Tribunal found fault with the driving licence for the reason that it had been issued by District Transport Officer State of Nagaland while holder of the licence is resident of village Sanch situated in District Kaithal. The driving licence could not be held to be invalid for the said reason. Either copy of licence should have been sent to District Transport Officer, State of Nagaland calling for report by the Tribunal whether it had been issued by the said office and if report was received in negative, then of course, the Tribunal was justified in holding that respondent No.1 was not having a legal and valid driving licence. The Insurance company should have been taken initiative in getting that exercise carried out. The other alternative available was to summon the record from the issuing office to find out as to whether the driving licence Ex.R1 had in fact been issued by said office or not. The Insurance company is not shown to have taken recourse to any of the alternative as such it had failed to discharge the onus of proof placed upon it. The Tribunal rather*

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jumped to conclusion that Ramesh had got the licence prepared from Nagaland State for some extraneous consideration, as such the licence is not legal. There could be a possibility of such person having resided in State of Nagaland for some time and then obtaining the licence . Though it was one of the possibility but that could be ruled out by adopting the proper course, which the Tribunal has not done. In absence of failure of the insurance company to discharge onus placed upon it, the verdict was wrongly given by the Tribunal in favour of the insurance company against the other two respondents i.e. driver and owner of the vehicle.

It being so, the Insurance company is certainly not entitled to have any recovery rights."

10. This judgment is directly applicable to the facts of the present case, as in the present case as well, the Insurance Company has not summoned the record from the issuing office to find out as to whether the driving licence in fact been issued by the said office or not. The Insurance Company has not taken recourse to any alternative as such it had failed to discharge the onus of proof placed upon it.

11. With regard to the cross objection filed by the cross objectors, the compensation is liable to be reassessed by giving future prospects as well.

12. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** *wherein the* issue

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with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is

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an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

13. Further the children and mother are also entitled for compensation of Rs.40,000/- each under the head of loss of consortium, in view of judgment of Hon'ble the Supreme Court of India in a case of ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram, 2018 (4) RCR Civil 837*** .

14. In the present case, the compensation is being reassessed as per the judgments mentioned above:-

Sr. No.	***Heads***	***Calculations***
(i)	Income	Rs.1,95,000/- per annum
(ii)	25% of (i) above to be added as future prospects=	Rs.195000+Rs.48750=Rs.243750/- per annum
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased=	Rs.243750-Rs.81250=Rs.162500/- per annum
(iv)	Compensation after multiplier of 13 is applied	Rs.162500 X 13= Rs.21,12,500/-
(v)	Conventional heads (Loss of estate, consortium and funeral expenses)	Rs.70,000/-
(vi)	Loss of fillail consortium (mother)	Rs.40,000/-
(vii)	Loss of consortium (children)	Rs.80,000/- (Rs.40,000/- each)
(viii)	Total Compensation awarded	Rs.23,02,500/-
	Enhanced amount of compensation	**2302500-1840000=Rs.4,62,500/-** **(rounded of to Rs.4,62,000/-)**

15. The enhanced amount of compensation of Rs.4,62,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% from

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the date of filing of the claim petition, in view of judgment of Hon'ble the Apex Court in ***Civil Appeal No. 4528-2019 titled as Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019***. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

16. Accordingly, the award stands modified to the above extent and the appeal filed by the appellant stands dismissed and the cross objections filed by cross objectors/respondent Nos. 1 to 4 is partly allowed to the extent that the claimants are entitled to enhanced compensation of Rs.4,62,000/- along with 9% interest per annum from the date of filing of the claim petition.

02.12.2019 **(RITU BAHRI)**
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***

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