

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1974 of 2017 and
Cross Objection No. 91-CII-2017 (O&M)
Date of decision : 17.7.2019

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New India Assurance Company Ltd.,
Regional Office through its Regional Manager,
Chandigarh

.....Appellant

vs.

Vijay Kumar and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr.Rajneesh Malhotra, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondent/cross
objector Nos. 1 to 3.

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H. S. Madaan, J.

Briefly stated, facts of the case are that petitioner-claimant
Vijay Kumar - husband, aged about 46 years, Master Sorav Kumar
@ Saurav – minor son aged about 11 years, Baby Chehal Verma @
Chehal – minor daughter aged about 7 years, of Smt. Shalu Rani, an
unfortunate victim of a roadside accident, had brought a claim
petition under Section 166 of the Motor Vehicles Act, 1988, against

respondents i.e. State of Haryana, through Secretary Transport Department, Government of Haryana, Chandigarh, General Manager, Haryana Roadways, Ambala Depot, Ambala, Haryana – owner, Anand Singh s/o Raghbir Singh resident of VPO Titoli, District Rohtak, Haryana – driver and The New India Assurance Company Limited, Regional Office, Chandigarh – insurer of bus No. HR-37D-4268 (hereinafter referred to as 'the offending bus'), claiming compensation to the tune of Rs.75 lacs.

As per case of the claimants, on 5.2.2016, at about 6.20 A.M. Deceased, Smt. Shalu Rani was going on foot from Gurudwara Sahib, Bhankharpur to her home on Isapur road, Bhankharpur. She was being followed by her husband Vijay Kumar on foot. When Smt. Shalu Rani deceased was crossing Derabassi -Zirakpur Road highway and had crossed one lane of the road and was in the process of crossing other lane of the road, then the offending bus being driven at a very fast speed, by respondent No.3 Anand Singh, came from Ambala side and struck against Smt. Shalu Rani. Resultantly, she was run over by the wheels of the bus and died at the spot. After the accident, the bus driver had stopped the bus at a little distance ahead, but thereafter he fled from the spot leaving the bus behind. FIR No. 25 dated 5.2.2016 for offences under Sections 279 and 304 A IPC, was got registered by Vijay Kumar husband of the deceased with Police Station Derabassi, SAS Nagar.

As per case of the claimants at the time of her death in the roadside accident, deceased Smt. Shalu Rani was aged about 35 years. She was doing household chores and value of the domestic

services rendered by her to her family was to the tune of Rs.15,000/- per month. On account of her untimely death, the claimants have suffered a huge loss since besides the services which she was rendering to them, they have been deprived of love and affection also.

On notice, all the three respondents appeared. Respondents No. 1 and 2 filed a joint written statement raising preliminary objections that the claim petition was not maintainable; that the accident had taken place due to negligence of deceased herself, since she had suddenly came in front of the bus while trying to cross the road. It was denied that the bus in question was being driven in a rash and negligent manner by its driver Anand Singh.

In the written statement filed on behalf of respondent No. 3 Anand Singh, he had also raised certain legal objections, on merits contending that no accident had taken place due to his negligence, rather the deceased herself was crossing the road in a careless manner and could not negotiate it due to heavy traffic coming on the road and in the process lost her life.

Respondent No.4 – Insurance company in the separate written statement filed by it denied that any accident had taken place with the bus bearing registration No. HR-37-D-4268. Other assertions in the claim petition were denied. All the four respondents prayed for dismissal of the claim petition.

No replication was filed by the claimant-petitioners.

From the pleadings of the parties, following issues were framed:-

1. Whether the accident dated 5.2.2016, resulting into the death of deceased Smt. Shalu Rani had occurred on account of rash and negligent driving of vehicle bearing No. HR-37-D-4268 by respondent No. 3? OPP
2. If issue No. 1 is proved in faovur of claimants, whether claimants are entitled for compensation, if so, how much and from whom? OPP
3. Whether the respondent No.3 was not holding a valid and effective driving licence at the time of accident? OPR-4
4. Relief.

Parties were afforded opportunity to lead evidence in respect of their respective claims.

In support of their claim, petitioners-claimants examined Vijay Kumar – eye witness as PW-1, and thereafter closed their evidence.

On the other hand, respondents did not examine any witness. However, respondents no. 1 and 2 tendered into evidence copies of insurance policy, driving licence of respondent No.3, route permit and registration certificate of bus bearing registration No. HR-37-D-4268 as Exhibits R-1 to R-4. Respondent No.3 Anand Singh vide his separate statement closed his evidence tendering copy of driving licence as Exhibit R-2. Respondent No.4 tendered into evidence copy of Insurance Policy Exhibit RX.

After hearing the arguments, the Tribunal decided issue No.1 holding that the accident in question was caused due to sole negligence of respondent No.3, while he was driving the bus in

question. Issue No.3 was decided holding that there was no violation of terms and conditions of Insurance policy by respondent – insured. Resultantly, the claim petition was accepted and compensation amount of Rs.18,53,000/- with interest @ 7.5% per annum from the date of filing of claim petition till realisation of the amount, was awarded to the claimants payable by the respondents jointly and severally, alongwith costs of the claim petition. The manner in which the amount is to be apportioned, has been given in the award.

The Insurance company was not satisfied with the award passed by the Motor Accident Claims Tribunal, Chandigarh and has filed the present appeal against the said award. Similarly, claimants were dissatisfied with the amount of compensation awarded by the Tribunal and they have filed cross objections seeking enhancement of the compensation amount so awarded.

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

Here is a case where a middle aged woman was going on foot and she tried to cross a busy highway and in the process she was run over by a bus. Now the question arises, due to whose fault the accident had taken place. The Tribunal, after trial has returned the finding that respondent No.3 Anand Singh was author of the accident by his rash and negligent driving of the offending bus and the deceased has not been found to have shown any negligence, leading to the accident.

In my view, the verdict so given by the Tribunal is not

proper. Vehicles like buses ferrying passengers are meant to be driven at speed, especially on highways. Admittedly, speed alone is not the criteria to determine rashness and negligence. To put in simple words, the vehicle driver can be attributed rashness if he drives the vehicle at a very fast speed, aware of the fact that he may not be able to stop the vehicle suddenly if need be and negligence means want of care or caution on his part, while driving his vehicle. Though respondent No.3 bus driver, does come out to be guilty of rashness and negligence to some extent on analysis of the evidence brought on the file by the parties, as well as facts and circumstances of the case, but then it also transpires that he cannot be solely blamed for the accident and the act and conduct of the deceased was such, which attributed to the accident. No doubt the vehicles, especially the big ones cannot be allowed to be driven in a reckless manner, throwing caution to the winds, crushing the innocent commuters under their wheels, but at the same time a pedestrian who wants to cross the road is expected to be careful and cautious, while doing so, ensuring that the vehicular traffic is at a safe distance before trying to cross the road and that too from zebra crossing. While driving on a highway, normally it cannot be expected that some person would try to cross the road in such a manner. Though a vehicle driver should be prepared for any eventuality, but some eventualities are least expected and it has to be taken into consideration that if the bus driver had applied the brakes abruptly and suddenly, that might have led to more serious consequences, including putting the lives of the passengers travelling in that bus

and other persons using the road, in danger. Though running over of the deceased by the offending bus cannot be justified but the Court has to look at all the things in a proper perspective and not to view a particular aspect in isolation. Therefore, the finding recorded by the Tribunal on issue No.1 is not fully correct. The same is modified holding that it was a case of contributory negligence.

Now coming to the quantum part, the deceased as per the case of the claimants was aged about 35 years and she used to do house hold work. They wanted the Tribunal to assess the value of the services rendered by her at Rs.15,000/- per month. The Tribunal however, assessed those values as Rs.9,000/- per month. In my considered view, the amount so taken is somewhat on the higher side. No doubt, a woman does contribute to the family by doing household chores including cooking, cleaning utensils, washing clothes and managing the household affairs and it is difficult to quantify such services rendered by a household lady to the family, however, a reasonable amount is to be taken in that regard. In **Lata Wadhwa and others Vs. State of Bihar and others, 2001(4) RCR (Civil) 673**, the Apex Court had evaluated the contribution of a household wife at Rs.3,000/- per month. It was an accident, which took place in 1989. In a judgment 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.

Learned counsel for the respondent has referred to judgment by a Co-ordinate Bench of this Court in FAO-5697-2015 (O&M) titled as **Sh. Rajinder and others vs. Sh. Jatinder Kumar and others,** decided on 26.11.2018, where the notional income of the house wife was taken to be Rs.11,000/- per month.

However, I find that this judgment does not come to the help of the claimant – respondent. While determining the notional income of a house wife, several factors are to be taken into consideration, which include social and economic background of the family and considering these facts in the present case, it is proper and appropriate to take notional income of the deceased Smt. Shalu Rani to be Rs.6,000/- per month.

Since notional income of the deceased has been taken, as such no deduction on account of personal expenses is to be made. Under the circumstances, no addition is being made towards future prospects.

In that way the annual contribution comes out to be Rs.6,000 X 12 = Rs.72,000/-. Keeping in view age of the deceased, the multiplier of 16 was properly used by the Tribunal. By applying that multiplier, the compensation amount comes out to Rs.72,000 X

16 = Rs.11,52,000/-.

In view of my finding that it was a case of contributory negligence, the negligence of the deceased can be taken to be to the extent of 40% and that of bus driver to be 60%.

Thus the claimants are entitled to compensation to the extent of 60%, which comes out to be Rs.6,91,200/- .

The Tribunal has awarded a sum of Rs.50,000/- to claimants no. 2 and 3 on account of love and affection and Rs.25,000/- towards transportation, funeral and last rites, whereas in terms of ratio of authority *National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009*, the claimants are entitled to get Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- on funeral expenses, totalling Rs.70,000/- under the conventional Heads. The Tribunal seems to have granted higher amount under the conventional Heads, which is modified accordingly, as detailed above.

Thus the total compensation payable to the claimants comes to Rs.6,91,200 + 70,000 = Rs.7,61,200.

This amount is to be apportioned among the legal heirs of the deceased proportionately, as per the direction issued by the Tribunal in the award. Other terms and conditions given in the relief clause of the original award shall remain the same.

The excess amount if already received by the claimants, be refunded to the Insurance company.

With such modification, the appeal is allowed partly.

In view of the above, cross objection No. 91-CII-2017,
filed by the claimants stands dismissed.

17.7.2019
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(H.S. Madaan)
Judge

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