

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 3416 of 2017 (O&M)
Date of decision: 20.11.2019

Magma HDI General Insurance Company Limited ...Appellant

V/s.

Smt. Sheela widow of
Late Sh. Ram Avtar & others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Sachin Ohri, Advocate
for the appellant.

Mr. Vikram Lakhlan, Advocate
for respondents No. 1 to 5.

RITU BAHRI, J. (Oral).

The insurance company has come up in appeal against the award of the tribunal dated 09.03.2017 whereby the claimants have been awarded compensation of Rs.25,60,000/- on account of death of Ram Avtar, who died in a road accident which took place on 09.07.2014.

FACTS NOT IN DISPUTE

Brief facts of the case are that the deceased Ram Avtar was driver on dumper bearing registration No. HR-61B-0133 and Anil Kumar was the cleaner. On 09.07.2014, they loaded stones in the dumper and were on their way to Khanak via Loharu. At about 2:00/3:00 a.m., the deceased stopped the dumper near Government College, Loharu. An unknown dumper was already parked there. In the meantime, respondent No.1 came on dumper bearing registration No. HR-61B-6744 (hereinafter

referred to as 'the offending vehicle') in a rash and negligent manner, at a very high speed and struck it against dumper bearing registration No.HR-61B-0133 from behind. Due to the impact, dumper bearing registration No.HR-61B-0133 hit against the unknown dumper which was parked ahead of it. As a result of this accident, deceased came in between both the dumpers and his neck was amputated and he died on the spot. This accident took place due to rash and negligent driving of respondent No.1. Consequently, the claimants filed a claim petition before the tribunal.

COMPENSATION ASSESSED BY THE MACT

The parties are not in dispute with respect to finding on issue No. 1 that the accident took place on account of negligent driving by the driver of the offending vehicle. This finding has been rightly given in favour of the claimants keeping in view FIR No. 169 dated 09.07.2014 under Sections 279 and 304-A IPC was registered at Police Station, Loharu (Ex.P2) against respondent No.1 on the statement of Anil Kumar (PW2), copy of final report under Section 173 Cr.P.C. (Ex.P4), copy of post mortem report (Ex.P1) and copy of charge-sheet (Ex.P5) etc.

As per the post mortem report (Ex.P1) the death was on account of accidental injuries. As per challan, respondent No. 1 was found rash and negligent for driving the dumper and he has also been charged for the same. The above said evidence has gone un-rebutted as respondents No. 1 and 2 did not step into the witness box to deny the facts.

The deceased was 25 years of age at the time of accident as per post mortem report (Ex.P1). The tribunal had assessed monthly income of the deceased as Rs.10,000/- p.m. keeping in view the address mentioned in the driving licence as c/o Jindal Transport of India, which shows that the

deceased was working as a driver and assessed the following compensation:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.10,000/-p.m.
(ii)	50% of (i) is added as furture prospects	10,000+5,000=Rs.15,000/-
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased	15,000-3,750=Rs.11,250/-
(iv)	Compensation after multiplier of 18 is applied	11,250X12X18=Rs.24,30,000/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of estate	Rs.5,000/-
(vii)	Funeral expenses	Rs.25,000/-
	TOTAL COMPENSATION AWARDED	Rs.25,60,000/-

Hence, the claimants were found entitled to total compensation of Rs.25,60,000/- along with interest @ 6% per annum from the date of filing of the petition till realization.

Learned counsel for the insurance company is challenging the award on the ground that the income of the deceased @ Rs.10,000/- p.m. is on higher side. The accident took place in the year 2014 and as per the minimum wages in the State of Haryana of skilled labourer were Rs.6,197/- p.m.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

The deceased was 25 years of age at the time of accident. In para 18 of the award, it has been observed that the address on the driving licence (mark P1) has been mentioned as c/o Jindal Transport of India which shows that the deceased was working as driver. Further as per the

deposition of Ramdhari (PW3), the deceased was working under him and was drawing the salary of Rs.15,000/- per month. He has also proved the salary certificate (Ex.P3). However in the absence of appointment letter, the tribunal has rightly assessed the income of the deceased as Rs.10,000/- p.m. However, 40% future prospects should have been added instead of 50%. Hence to meet the ends of justice, the compensation is hereby reassessed keeping in view the judgments passed by Hon'ble the Supreme Court in *Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others*, Civil Appeal No. 9581 of 2018 and *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	10,000X12=Rs.1,20,000/- p.a.
(ii)	40% of (i) added as future prospects	1,20,000+48,000=Rs.1,68,000/-
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased	1,68,000-42,000=Rs.1,26,000/-
(iv)	Compensation after multiplier of 18 is applied	1,26,000X18=Rs.22,68,000/-
(v)	Funeral expenses	Rs.15,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of <i>filial</i> consortium	Rs.2,00,000/- (Rs.40,000/- each to all the appellants)
	TOTAL COMPENSATION AWARDED	Rs.24,98,000/-

Vide order dated 18.05.2017, recovery of compensation beyond Rs.14,50,000/- was stayed. The remaining amount of Rs.10,48,000/- (Rs.24,98,000-Rs.14,50,000) shall be payable within a period of two months from the date of receipt of certified copy of this order. The remaining amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of *Dara Singh @ Dhara Banjara*

V/s. *Shyam Singh Varma and others*, Civil Appeal No. 4528 of 2019.

Remaining conditions of disbursal of amount shall remain unaltered.

With these observations, the appeal of the insurance company is party allowed. Pending application, if any, also stands dismissed.

(RITU BAHRI)
JUDGE

20.11.2019
Divyanshi

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