238 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO-6057-2017 (O&M)
Date of Decision: 17.10.2019

1) ORIENTAL INSURANCE COMPANY LIMITED

..... Appellant.

Versus

BIRMATI AND OTHERS

..... Respondents.

With **FAO-8367-2017**

2) BIRMATI & ANR. .....Appellants.

Versus

YASHPAL SINGH & OTHERS .....Respondents

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr. J. S. Chathrath, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant in FAO No.6057 of 2017.

Mr. G. C. Shahpuri, Advocate
for the appellant in FAO No.8367 of 2017 &
for respondents No.1 & 2 in FAO No. 6057 of 2017.

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DR. RAVI RANJAN J. (ORAL)

1. This order shall dispose of both the appeals i.e. FAO-6057-2017 & FAO-8367-2017. FAO-6057-2017 has been filed by the Oriental Insurance Company Ltd. assailing the judgment and award dated 04.07.2017 passed by the Motor Accident Claims Tribunal, Kurukshetra in MACT Case No.371 of 2016 vide which the Tribunal has awarded a sum of Rs.16,45,000/- alongwith interest @ 7.5% per annum to be calculated from the date of filing of the claim petition till the realization of the amount, whereas, the FAO-8367-2017 has been preferred by the claimants for enhancement of awarded amount.

2. As per the claimants, on the fateful day, i.e., 28.07.2016, deceased Vikas was driving a truck bearing registration No.HR-56A-1341 and was going to Nalagarh (Himachal Pradesh) from Mysore (Karnataka) following all

the traffic rules and at a normal speed at the left hand side on the road. The cleaner Rahul @ Nathi was also accompanying him in the truck. When the truck reached ahead of village Ajrawar near Khera on 28.07.2016, at about 2.00 A.M, the offending truck bearing registration No.HP-72-5939 came at high speed, in rash and negligent manner and without observing traffic rules, from the opposite side. On seeing the offending truck, the deceased Vikas slowed down the truck, yet the offending truck hit the truck of Vikas by coming on wrong side of the road. As a result of the motor accident, the driver v.i.z Vikas received multiple grievous injuries on various parts of his body. He was immediately shifted to PHC Ismailabad, from where he was referred to LNJP Hospital, Kurukshetra but he succumbed to his injuries. FIR was lodged under Sections 279/304A IPC in Police Station, Ismailabad. The offending vehicle was owned by the respondent No.2 of the Claim Petition and was insured by the appellant-Insurance Company.

3. Following issues were framed by the Tribunal after appreciation of pleading of the parties.

1. Whether Vikas died due to injuries suffered in the accident caused on 28.07.2016 by rash and negligent driving of Truck bearing registration No.HP-72-5939 by the respondent No.1 as alleged?OPP
2. Whether the claimants in the present petition are entitled to compensation, if so how much and from whom?OPP
3. Whether the respondent No.1 did not have valid and effective driving license at the time of the accident, if so to what effect?OPR3
4. Whether the respondent No.2 has violated the terms and conditions of the insurance policy, if so to what effect?OPR3

5. Relief.

4. The issues were decided in favour of the claimants and a compensation of sum of Rs.16,45,000/- alongwith interest @ 7.5% was awarded in their favour holding that the motor accident causing death of Vikas was the result of rash and negligent driving by the driver of the offending truck. Since the offending truck was insured by the appellant-Insurance Company, the Insurance Company was found liable to indemnify the owner.

5. The Insurance Company has made challenge to the Award at the time of hearing the Tribunal on solitary ground that while calculating the future prospect, the Tribunal has not followed the law laid down by a constitution Bench of the Hon'ble Apex Court in ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors. 2017 (4) RCR (Civil) 1009***, because 50% of the assessed income has been added as future prospect which should have been 40% only.

6. In my view, this assertion made on behalf of the appellant-Insurance Company is absolutely correct and the same should have been taken as 40%. In the result, the Award would be required to be modified accordingly.

7. So far as the appeal of the claimants (FAO-8367-2017) is concerned, learned counsel for the appellants/claimants raises argument that under conventional head only Rs.25,000/- has been given, whereas, as per the same judgment of the Hon’ble Apex Court i.e. Pranay Sethi's case (supra), it should have been given under three heads-first loss of consortium, second funeral expenses and third loss of estate. It is further prayed that as far as loss of consortium is concerned, there should have been a calculation in accordance with law laid down by the Hon’ble Supreme Court in ***Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & Ors, 2018 (4)***

RCR (Civil) 333.

8. I find force in the submission raised on behalf of learned counsel for the appellants-claimants. As per the Pranay Sethi (supra), Rs.15,000/- would be allowed as funeral expenses, Rs.15,000/- as loss of estate and Rs.40,000/- for loss of consortium. However, loss of consortium has been discussed and a classified by the Hon'ble Apex Court in a subsequent decision in Magma General Insurance Company Ltd. (supra) after considering the decision of Constitution Bench of the Hon'ble Supreme Court in **Pranay Sethi's** case (supra). It has been held that consortium would be of three types spousal consortium, which would be available to the living spouse having lost husband/wife. Filial consortium would be available to the parents who have lost their children and parental consortium would be available to the children for loss of their parents.

9. In the present case, Birmati is mother of deceased Vikas whereas Rajinder is father of deceased-Vikas. Accordingly, in my view both of them would be entitled for Filial Consortium of Rs.40,000/- each.

Having held as above the Award of Tribunal stands modified as under:-

Sr. No.	**Head**	**Calculation**
1.	Income# 10,000 x 12	1,20,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	1,20,000 + (1,20,000 x 40%)=1,68,000/-
3.	Income after 50% deduction on account of personal and living expenses of the deceased	1,68,000-(1,68,000 x ½) = 84,000/-
4.	Total dependency after applying a multiplier of 18	84,000/- x 18 = 15,12,000/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Loss of consortium to appellant No.1	40,000/-
8.	Loss of consortium to appellant No.2	40,000/-
	Grand Total	**16,22,000/-**

10. The rate of interest is also enhanced from 7.5% per annum to 9% per annum to be calculated from the date of filing the claim petition till realization. In the result both the appeals are allowed in part and the impugned Award stands modified to the aforesaid extent only.

11. The parties will bear their own costs.

12. This is further made clear that the parties have not raised any issue save as except those which have been considered and decided as above.

A photocopy of this order be placed on the connected case.

17.10.2019 **(DR. RAVI RANJAN)**
Ali **JUDGE**

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