IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 821 of 2018 (O&M)
Date of Decision: October 23, 2019

The Oriental Insurance Co. Ltd.

...... Appellants(s)

Versus

Swaran Lata and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mrs. Shamsher Kaur, Advocate
for the appellant.

Mr. Inderjit Sharma, Advocate
for respondents no.1 to 5.

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LISA GILL, J.(oral)

This appeal has been filed by the appellant-insurance company challenging the award dated 15.07.2017, passed by learned Motor Accident Claims Tribunal, SAS Nagar (Mohali) (hereinafter referred to as 'the Tribunal).

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, three minor children and aged mother of the deceased Bharat Kumar Paswan filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Bharat Kumar Paswan, due to the injuries sustained by him in a motor vehicle accident, which took place on 01.07.2015. Claimants pleaded that on

01.07.2015 Bharat Kumar Paswan was returning from Morinda to his house, situated at Noorvilla-2, Village Khanpur, District SAS Nagar on his Splendor motorcycle, bearing registration No.PB-65-Q-7426. At about 10:00 P.M., when he reached near Modern Valley, a truck bearing registration No. HR-63-B-0740, being driven by its driver respondent -Sunder Singh, in a rash and negligent manner, came from behind and in the process of overtaking the motorcycle being driven by Bharat Kumar Paswan, hit the left front side of the truck against the motorcycle of Bharat Kumar Paswan. As a result thereof he fell on the road and suffered multiple injuries. Bharat Kumar was shifted to Civil Hospital, Kharar from where he was referred to PGI, Chandigarh, but he died on the same night during the course of treatment. Compensation of Rs.45 lakhs was claimed by the claimants.

Respondents no.1 and 2/driver and owner of the truck filed a joint written statement resisting the claim petition while taking preliminary objections including that of maintainability of the petition. They denied the occurrence of accident. It is stated that a false FIR was got registered in connivance with the police. Respondent no.3-insurance company filed a separate written statement. Dismissal of the claim petition was sought.

Rejoinder was not filed. Following issues were framed by the learned Tribunal on the basis of the pleadings:-

1. Whether Bharat Kumar Paswan son of Tribhuvan Paswan died in road accident on 01.07.2015? OPP

2. Whether the road accident caused due to the rash and negligent driving of respondent no.1 ? OPP

3. Whether the claimants are entitled to claim compensation, if so, to what extent? OPP

4. Whether the present claim petition is maintainable? OPP

5. Whether present claim petition filed by the claimants in collusion with respondent no.1 and 2? OPR-3

6. Whether the respondent no.1 was driving the vehicle in contravention to insurance Policy? OPR-3

7. Relief.

Learned Tribunal on considering the evidence on record concluded that the Bharat Paswan died due to the injuries received by him in the motor vehicle accident, which took place on 01.07.2015, due to the rash and negligent driving of the offending truck bearing registration No. HR-63-B-0740, by its driver Sunder Singh-respondent. Learned Tribunal while assessing income of the deceased to be Rs.15,000/- per month, calculated the compensation towards the claimants to be Rs.34,65,000/-, which is detailed as under: -

Sr. No.	Heads	Amount
1.	Income 15,000 x 12	1,80,000/- per annum
2.	Income after addition of 50% on account of future prospects	1,80,000 + 90,000 = Rs.2,70,000/-
3.	Income after deduction of 1/4th on account of personal and living expenses of the deceased	2,70,000/- - 67,500/-= Rs.2,02,500/-
4.	Dependency after applying multiplier of 16	2,02,500 x 16 = 32,40,000/-
5.	Loss of love and affection	1,00,000/-
6.	Loss of consortium to widow	1,00,000/-
7.	Funeral expenses	25,000/-
	Total	**34,65,000/-**

However, while observing that the matter in respect to grant of increment towards future prospects stood referred to a Larger Bench of the Hon'ble Supreme Court in ***National Insurance Company Vs. Pushpa, 2015(9) SCC 166,*** learned Tribunal also calculated the compensation without the increment towards future prospects, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income 15,000 x 12	1,80,000/- per annum
2.	Income after deducting 1/4th as personal living expenses of the deceased	1,80,000 - 1/4th = 1,35,000/-
3.	Dependency after applying multiplier of 16	1,35,000 x 16 = 21,60,000/-
4.	Loss of love and affection	1,00,000/-
5.	Loss of consortium to widow	1,00,000/-
6.	Funeral expenses	25,000/-
	Total	**23,85,000/-**

Learned Tribunal directed that the claimants are entitled to a sum of Rs.34,65,000/- but till the decision of the Hon'ble Supreme Court in ***National Insurance Company Vs. Pushpa***, the amount of Rs.10,80,000/- i.e. under the head of future prospects would remain deposited in the shape of FDR in the nationalized bank in the safe custody of District Nazir. Amount of Rs.23,85,000/- was directed to be disbursed to the claimants.

Present appeal has been filed by the insurance company challenging the quantum of compensation besides raising the plea of contributory negligence on the part of the deceased.

Learned counsel for the appellant argues that learned Tribunal has wrongly assessed the age of the deceased to be 32 years whereas claimant-widow has specifically deposed in her testimony that the date of birth of the deceased was 21.07.1975. Thus, he was 41 years old at the time of the accident. It is submitted that the quantum of compensation has to be varied accordingly. Learned counsel for the appellant submits that income of the deceased has also been wrongly assessed. It is further submitted that the deceased was not wearing a helmet at the time of the accident, therefore, there is an element of contributory negligence and commensurate deduction in the amount has to be carried out. It is, thus, prayed that the present appeal be allowed and the total compensation awarded to the claimants be reduced.

Learned counsel for the claimants fairly states that the wife of the deceased in her testimony while appearing as PW1, has indeed stated the date of birth of her husband to be 21.07.1975, therefore, compensation on this count needs to be varied accordingly. However, it is disputed that there is any error in the assessment of the income of the deceased. It is submitted that in fact, learned Tribunal has wrongly ignored the income tax returns, which were placed on record by the claimants. The deceased was doing the work of paint, wooden polish, whitewash etc. and was earning a sum of Rs.40,000/- per month. It is further submitted that the claimants are the widow, three minor children and aged mother of the deceased, who have no other source of income. It is denied that there is any element of contributory negligence on the part of the deceased. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute regarding death of Bharat Paswan, due to the injuries received by him in the motor vehicle accident, which took place on 01.07.2015, due to the rash and negligent driving of the offending truck bearing registration No. HR-63-B-0740, by its driver Sunder Singh-respondent. In so far as the age of the deceased is concerned, it is fairly accepted by the learned counsel for the claimants that the deceased was 41 years old at the time of the accident on 01.07.2015 as his date of birth was 21.07.1975. Accordingly, the deceased is held to be 41 years old at the time of the accident and not 32 years as concluded by the learned Tribunal on the basis of the postmortem report Ex.P4. However, as far as the income of the deceased is concerned, I do not find any ground whatsoever to reduce the income of the deceased from Rs.15,000/- per month as assessed by the learned Tribunal. It is relevant to note that as per income tax return of the deceased for the year 2011-2012 (Ex.P5), his annual income was Rs.2,29,189/- and for the year 2012-2013 (Ex.P6), it was Rs.4,68,550/-. Learned Tribunal has observed that as the income tax returns for the subsequent two years prior to the death of Bharat Paswan were not placed on record, it cannot be presumed that the deceased was earning Rs.40,000/- per month. In this view of the matter, income of the deceased was assessed as Rs.15,000/- per month. I have also gone through the statement of the claimant-widow. She has specifically denied the suggestion that income tax returns for the subsequent years were not filed as her husband's income had decreased. As per the income tax returns for the year 2012-2013 (Ex.P6) the deceased was in receipt of Rs.4,68,550/- per annum. In the given facts and circumstances of the case, I do not find whatsoever to further reduce the income from Rs.15,000/- per month as assessed by the learned Tribunal at the instance of the appellant.

At the same time, as the deceased was 41 years old, it is an increment of 25% instead of 50%, which has to be afforded towards future prospects in the present case, in view of the judgment of Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, *2017(16) SCC 680***. Deduction of $1/4^{th}$ was correctly effected by learned Tribunal as there are admittedly 5 dependents. As the deceased has been held to be 41 years old at the time of the accident, multiplier of 14 instead of 16 has to be applied in this case. Instead of a sum of Rs.25,000/- awarded towards funeral expenses, appellants are entitled to a sum of Rs.15,000/- towards funeral expenses besides another sum of Rs.15,000/- towards loss of estate. Instead of Rs.1,00,000/- awarded by the learned Tribunal on account of loss of consortium, appellant no.1 is entitled to a sum of Rs.40,000/- on account of loss of spousal consortium. Instead of Rs.1,00,000/- awarded to the claimants on account of loss of love and affection, appellants no.2 to 4 are entitled to a sum of Rs.40,000/- on account of loss of parental consortium. Appellant no.5 is also entitled to a sum of Rs.40,000/- towards loss of filial consortium. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** **2018(4) RCR Civil 333**, as well as decision dated 14.03.2019 of this Court in FAO-2110-2016, title ***Shri Ram General Insurance***

Company Ltd. Vs. Beant Kaur and others.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income 15,000 x 12	1,80,000/- per annum
2.	Income after deducting 1/4th as personal living expenses of the deceased	1,80,000 - 1/4 = 1,35,000/-
3.	Total income after addition at the rate of 25% on account of future prospects	1,35,000 + 33,750 (1,35,000 x 25%) = 1,68,750/-
4.	Dependency after applying multiplier of 14	1,68,750 x 14 = 23,62,500/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of spousal consortium to appellant no.1 - widow	40,000/-
8.	Loss of parental consortium to appellants no.2 to 4 - children	40,000/-
9.	Loss of filial consortium to appellant no.5 - mother	40,000/-
	Total	**25,12,500/-**

Keeping in view the facts and circumstances as above, the claimants are held entitled to Rs.25,12,500/- instead of Rs.34,65,000/-. A sum of Rs.23,85,000/- has already been ordered to be released to the claimants. The rest of the amount of Rs.1,27,500/- along with interest @ 7.5% from the date of application/petition under Section 166 of the Motor Vehicles Act till its deposit be also released to the claimants.

With the above said modification in the amount of compensation, this appeal is disposed of.

October 23, 2019. **(LISA GILL)**
Sunil **JUDGE**

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