IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.2252 of 2017 (O&M)

Date of Decision: March 20 , 2019.

Oriental Insurance Company Ltd. ...... APPELLANT(s)

Versus

Urmila Devi and others ...... RESPONDENT (s)

2. FAO No. 3212 of 2017

Urmila Devi and others ...... APPELLANT(s)

Versus

Sunil Kumar and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Satpal Dhamija, Advocate
for the appellants in FAO No.2252 of 2017

Mr. Amandeep Saini, Advocate
for respondents No.1 to 3 in FAO No.2252 of 2017 and
for the appellants in FAO No.3212 of 2017.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This judgment shall dispose of FAO No.2252 of 2017 and FAO No.3212 of 2017 which arise out of the impugned award dated 04.11.2016 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as, the 'Tribunal').

FAO No.2252 of 2017 has been filed by the Oriental Insurance Company Ltd. on the question of involvement of the offending vehicle as well as the quantum of compensation awarded to the claimants. FAO No.3212 of 2017 has been filed by the claimants seeking enhancement of the compensation awarded to them vide impugned award dated 04.11.2016.

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Nand Lal @ Naresh Kumar, who lost his life in a motor vehicle accident which took place on 18.03.2016. FIR No.32 dated 19.03.2016 (Ex.P2) under Sections 279/427/304A IPC, Police Station Kiratpur Sahib was registered against respondent No.1. Compensation was prayed for.

Learned Tribunal on consideration of the facts and evidence on record concluded that Nand Lal @ Naresh Kumar died in a motor vehicle accident which took place on 18.03.2016 due to the rash and negligent driving of the car bearing No.PB-16D-2232 by its driver – Sunil Kumar.

While assessing income of the deceased-Nand Lal @ Naresh Kumar to be ₹7,600/- per month, addition in income at the rate of 50% was afforded on account of future prospects. Deduction to the extent of 1/4th was effected towards personal expenses. Multiplier of 16 was applied. ₹1,00,000/- each was awarded towards loss of consortium and love & affection, besides, ₹50,000/- on account of transportation and funeral expenses. A total sum of ₹18,91,600/- was awarded as compensation to the claimants.

Learned counsel for the Insurance company vehemently argues that the evidence on record does not point out to the involvement of the offending vehicle bearing No.PB-16-D-2232, which was insured with the appellant-company. It is submitted that the registration number of the car in question was not mentioned in the FIR which was registered immediately after the occurrence. It is on the supplementary statement of PW3 Gurinder Singh that registration number of the car came to light. There is no reason, whatsoever, for the said witness to not have revealed the registration number of the car at the very outset. This fact itself proves that the offending vehicle has been falsely implicated in this case merely to get compensation from the appellant-Insurance company.

In the alternate, it is pleaded that excessive compensation has been afforded by the learned Tribunal. Increment on account of future prospects and compensation under the conventional heads are not as per the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others,** ***2017(16) SCC 680***. It is thus prayed that this appeal be allowed and the Insurance company be absolved of its liability to pay the compensation as the offending vehicle is not involved. In the alternate, compensation awarded to the claimants be reduced.

Per contra, learned counsel for the claimants submits that the accident in question is duly proved by the documents on record. Final report/challan was duly presented against the driver of the offending vehicle. It is further submitted that there is no ground, whatsoever, for reduction of the compensation awarded to the claimants. It is thus prayed that appeal filed by the Insurance company be dismissed and that of the claimants be allowed.

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

The accident in question took place on the intervening night of 18th and 19th March, 2016 at about 11.00 p.m. FIR No.32 dated 19.03.2016 (Ex.P2) was registered on the statement of one Neeraj Kumar. He specifically stated that he was coming behind the deceased-Nand Lal @ Naresh Kumar on a separate motorcycle. He further stated that at about 11.00 p.m. motorcycle of the deceased was hit from behind by the offending vehicle, which was being driven in a rash and negligent manner by its driver. Due to the impact, Nand Lal @ Naresh Kumar fell on the road and the offending vehicle dragged his motorcycle for quite some distance till the Dhaba. The driver alongwith the offending vehicle fled from the spot. Deceased-Nand Lal @ Naresh Kumar stated that he could not note down the number of the offending vehicle.

Perusal of the record reveals that statement of PW3 Gurinder Singh (Ex.P5) was recorded on 19.03.2016 itself. PW3 Gurinder Singh revealed the registration number of the offending vehicle. PW3 Gurinder Singh stated that he witnessed the accident in question. Details of the accident are succinctly narrated by this witness. PW3 Gurinder Singh has clearly explained that a number of people had gathered at the spot and he presumed that the number would have been noted by the bystanders and no inquiry about the registration number was made from him and he went home. When he came to know that the man had died in the accident, which was caused by the driver of the car No.PB-16-D-2232, PW3 Gurinder Singh had his statement recorded. He further stated that he could identify the driver on seeing him. Driver was duly identified by PW3 Gurinder Singh on 29.03.2016 (Ex.P6). This is so reflected in his statement

(Ex.P5) recorded by the police authorities on 19.03.2016 itself. PW3 Gurinder Singh duly testified before the learned Tribunal and asserted the facts as stated above.

A perusal of the testimony of PW3 Gurinder Singh reveals that there is indeed no reason, whatsoever, to discard the same. Learned Tribunal in these circumstances has rightly held that the claimants proved their case on the touchstone of preponderance of probabilities. Merely because the propounder of the FIR has not been examined in this case, cannot be a ground to discard the claim.

The Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Company Ltd. and others**, ***2018(5) SCC 656*** and **Sunita v. RSTRC**, ***2019(2) RCR (civil) 209***, reiterated that the claimants in the present proceedings are required to prove their case on the touchstone of preponderance of probabilities. In Sunita's case (supra), it was held that just because one of the eye-witnesses was not examined, it cannot be a ground to reject the claimants version in the light of cogent evidence available on record. Accordingly, learned Tribunal has rightly concluded that the accident in question was caused due to the rash and negligent driving of the offending car No.PB-16-D-2232 by its driver respondent – Sunil Kumar. The above finding of the learned Tribunal is, thus, upheld.

In respect to income of the deceased, learned counsel for the claimants argues that deceased-Nand Lal @ Naresh Kumar was proved to be earning ₹300/- per day as per the deposition of PW4 Jai Chand, who had employed the deceased at his lottery stall. A perusal of the record reveals that the learned Tribunal has rightly discarded the said evidence. PW4 Jai Chand is not even proved to be a lottery vendor. There is no evidence that he was authorized to sell lottery or that the deceased-Nand Lal @ Naresh Kumar was employed with him at a salary of ₹300/- per day. However, at the same time it cannot be ignored that minimum wages of an unskilled labourer at the time of the accident in the State of Punjab were ₹7,831/- per month. Therefore, income of the deceased-Nand Lal @ Naresh Kumar is assessed as ₹7,831/- per month instead of ₹7,600/- per month.

It is not denied that deceased-Nand Lal @ Naresh Kumar was 31 years old at the time of the accident. Addition in income on account of future prospects has to be afforded at the rate of 40% instead of 50% in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Deduction to the extent of 1/4th has been rightly effected. Multiplier of 16 has been correctly applied. ₹15,000/- each is awarded on account of funeral expenses and loss of estate, instead of ₹50,000/- on account of funeral expenses and transportation. Appellant No.1 is entitled to ₹40,000/- on account of loss of consortium, instead of ₹1,00,000/-. Minor children of the deceased are entitled to ₹40,000/- on account of loss of parental consortium and mother of the deceased is also entitled to ₹40,000/- for loss of filial consortium in terms of 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*** and decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others).

Claimants are, thus, entitled to compensation which is consequently reduced and reworked as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	7,831 p.m. i.e. 93,972/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	93,972 + (93,972 **x** 40%) = 1,31,561
3.	Net income after $1/4^{th}$ deduction on account of personal expenses	1,31,561 – (1,31,561 **x** 1/4) = 98,671
4.	Total dependancy after applying a multiplier of 16	(98,671 **x** 16) = 15,78,736
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium	40,000
8.	Loss of parental consortium	40,000
9.	Loss of filial consortium	40,000
	Grand Total	₹17,28,736/-

Claimants are thus entitled to a sum of ₹17,28,736/-, instead of ₹18,91,600/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

FAO No.2252 of 2017 filed by the Insurance company is accordingly disposed of. FAO No.3212 of 2017 filed by the claimants is dismissed.

(LISA GILL)
JUDGE

March 20 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No