IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7336 of 2018(O&M)
Decided on: 05.03.2019.

National Insurance Company Limited .....Appellant

versus

Dhan Singh and others ....Respondents

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

Present: Mr.Sandeep Suri, Advocate,
for the appellant.

Mr.Sagar Aggarwal, Advocate,
for respondent no.1 to 3.

Mr.D.S.Nain, Advocate,
for respondent no.4 and 5.

DR.RAVI RANJAN, J. (Oral Judgment)

I have heard learned counsel for the appellant as well as respondents.

1. This appeal has been preferred by the National Insurance Company Limited assailing the Judgement and Award dated 17th July, 2018 passed in MACT No.86/2017 by the Motor Accident Claims Tribunal, Kaithal.

A petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the claimants who were the widower and the two sons whereas their two married daughters were impleaded as respondent no.4 and 5.

According to the claimants/applicants on 20.09.2017 Omi Devi (since deceased) alongwith here husband Dhan Singh was coming on foot from the factory towards their house. They were walking on the left hand side of the road on unmetalled portion, however, when they reached Street No.1, Balaji Colony, Kaithal at about 7.30 p.m a motorcycle bearing temporary registration No.HR-99-YE(T)-8071, (hereinafter referred to as 'the offending vehicle' for brevity) came from the side of village Kutubpur at a fast speed being rashly and negligently driven by respondent no.1-Joginder, and it struck Omi Devi after coming on the wrong side of the road, who fell down and sustained injuries and was shifted to hospital. Later on she succumbed to her injuries on 21.09.2012.

On the basis of the statement of her husband Dhan Singh, FIR was registered under Section 279 and 304-A of the Indian Penal Code, 1860. According to the claimants, the deceased was 57 years old who was also a house-maker and was doing the work of knitting and stitching and earning Rs.15,000/- per month.

2. The respondents no.1 and 2 appeared and filed written stating that the offending vehicle was yet to be registered in the name of respondent no.2, however the offending vehicle was insured with respondent no.3 from 21.07.2017 to 20.07.2018 and also denied the allegation of accident.

The Insurance Company-respondent no.3 (appellant herein) also filed a written statement stating that temporary registration of the offending vehicle had expired at the time of accident and as such there was no registration certificate at all. It also took a stand that the terms and conditions of the insurance policy were violated and the FIR was false.

3. Upon consideration of the rival pleadings the Tribunal framed the following issues:

> *1. Whether the accident in question which took place on 20.09.2017 at about 7.30 p.m., in front of Street No.1, Balaji Colony, Kaithal, resulting in death of Smt.Omi Devi wife of Dhan Singh, occurred due to rash and negligent driving of motorcycle make HFDLX bearing temporary*

registration No.HR-99-YE(T)-8071, engine No.20878, Chassis No.00947, driven by respondent no.1?OPP

2. If issue no.1 is proved in affirmative, what would be the amount of compensation and who would be liable to pay the same?OPP

3. Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident and the terms and conditions of insurance policy were violated?OPR-3

4. Relief.

4. The applicant no.1, who claimed to be the eye-witness, examined himself as PW1 and Head Constable Praveen Kumar was examined as PW2. Several documents were also brought on record either as Exhibit or Mark for identification.

The respondents also brought on record the copy of Registration Certificate as Ex.R1, copy of Insurance Policy of the offending vehicle as Ex.R2 and attested copy thereof as Ex.R3, copy of the driving licence of respondent no.1 and copy of sale of letter of the offending vehicle. A copy of Aadhar Card of petitioner no.1 Dhan Singh was also brought on record as additional evidence.

5. The Tribunal while dealing with the issue no.1, considering the deposition of PW1 who was the eye-witness-cum-author of FIR, the police report filed under Section 173 (2) Code of Criminal Procedure, prepared and submitted after due investigation and the charges framed by the Court in the aforesaid matter coupled with the fact that respondent no.1 did not step into the witness box to rebut the evidence of rash and negligent driving, has come to the conclusion that the claimants have been able to prove the rash and negligent driving of the offending vehicle causing death of Omi Devi wife of Dhan Singh.

6. While dealing with issue no.3 the Tribunal has held that respondent no.1 was holding a valid and effective driving licence and the

offending vehicle did not violate any terms and conditions of the insurance policy. The Tribunal has gone to the extent to record that the reliance of the judgment by the Insurance Company rendered by the Hon'ble Supreme Court in "**National Insurance Company Limited vs. Daya Chand and another," 2015(2)PLR 448 (P&H)** was unfortunate and an attempt to mislead the Tribunal, thereafter under issue no.2 the quantum of compensation has been considered and decided.

The challenge, at the time of hearing of this appeal, has been made by the Insurance Company to the monthly income assessed by the Tribunal of the deceased Omi Devi, who was a house-maker or a house-wife, at Rs.11,000/- to be excessive and secondly that 10% of the aforesaid income has been added against the head of future prospects. On the consent of the parties, since it was not required, lower Court records have not been requisitioned and the appeal is being disposed of at this stage on the consent given by the parties.

It is contended on behalf of the appellant-Insurance Company that there was no justification in fixing or assessing the monthly income of the deceased at Rs.11,000/- as, at best she could have been given the minimum wages allowed at the relevant point of time when the Tribunal has itself recorded that as per the notification of the Haryana Government dated 15.05.2018 monthly income is Rs.9,994.42/-.

An objection is being made that at the time of accident the monthly minimum wages revised in Haryana on 1st January, 2017 would be applicable and that would be for a Skilled-A labour Rs.9,585.35/-, however, the Tribunal has considered the notification dated 15.05.2018, according to which also the income would be Rs.9,994.42 only.

In my opinion, the aforesaid limb of argument is flawed.

7. It is now well settled that the quantum of compensation amount applicable as on the date of Award of the Tribunal would be the just and lawful amount and not of any earlier date. This issue came up for consideration before the Apex Court in "**Union of India vs. Rina Devi," 2018 (3) RCR(Civil) 40**. Though it was a case for grant of compensation as per the statutes/provisions under the Railways Act, however, the Apex Court considering the several earlier Judgments holding that in the case of railway accident also compensation will be payable as per the provisions applicable on the date of accident with interest as may be considered reasonable from time to time on the same pattern as in motor vehicular accident claim cases. The Hon'ble Supreme Court has referred to the decisions rendered in **"Union of India vs. Raman Iron Foundry,"** **(1974) 2 SCC 231, "Kesoram Industries & Cotton Mills Ltd. Vs. CWT Central Calcutta," 1966(2) SCR 688** and several others. Therefore the contention that the Tribunal should have considered the minimum wages available at the time of accident is noted only to be rejected and it is held that just and fair compensation would be that available with interest on the date of passing of the Award if it would higher than one available on the date of accident if added with reasonable rate of interest.

8. Having held as above, now it is to be further held that the notification of Haryana Government dated 15.05.2018 relied upon by the Tribunal was correct and according to which the monthly minimum wages available to a Skilled labour would be Rs.9,994.42 /-. However, by way of second limb of argument it has been urged that even in such a circumstance, the aforesaid amount should have been considered as the

monthly income of the deceased as there was no justification in fixing or assessing Rs.11,000/- as monthly income.

Prima facie this limb of argument appears to be attractive, however, on deeper scrutiny it is found that the Tribunal has referred and placed reliance upon several Judgments including one rendered by the Hon'ble Supreme Court in "**Arun Kumar Aggarwal and another vs. National Insurance Company and others," 2010 (3) PLR (SC) 418**, in which it has been held that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. It would be highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her with the services of a housekeeper or a servant or an employee, who works for fixed period. The wife or the mother works for almost 24 hours in taking care of her household and her family members. Once she is removed from the scene, the family members would be entitled to adequate compensation in lieu of the gratuitous services rendered by the deceased. In **"Jitendra Khimshankar Trivedi and others vs. Kasam Daud Kumbhar and others**,"**2015 ACJ 708 (SC)**, it has been held by the Apex Court that it would be very difficult to bring the domestic work done by a house-mother and the services of the mother/wife which is available 24 hours as her duties are never fixed, within a monetary framework. The Courts have recognised the contribution made by the wife to the house as invaluable and that it cannot be computed in terms of money. A housewife/homemaker does not work by the clock as she is in constant attendance of the family throughout and such services rendered by her should have to be necessarily kept in mind while calculating the loss of dependency.

Thus, in my considered opinion, the monthly income fixed at Rs.11,000/- cannot be altered with on the ground that it is excessive or without basis.

9. However, another limb of argument that 10% towards future prospects could not have been given by the Tribunal, would find favour of this Court as the same stands admitted by learned counsel for the claimants also that it would not be permissible as per the existing law. Accordingly, the compensation amount would have to be recalculated after deduction of the added 10% towards future prospects.

10. It is further urged on behalf of the respondents/claimants that only Rs.40,000/- has been given towards loss of consortium. Compensation under this head should have been calculated under adequate head and adequately in terms of law laid by the Hon'ble Supreme Court in **"Magma General Insurance Co.Ltd. vs. Nanu Ram alias Chuhru Ram and others," 2018 (4) RCR (Civil) 333**. For better appreciation, the relevant passages from the aforesaid decision are extracted as under:

> "8.7. X X X X X...
>
> In legal parlance, "consortium" is a compendious term which encompasses `spousal consortium', `parental consortium', and `filial consortium'.
>
> The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. ***Rajesh and Ors. v. Rajbir Singh and Ors. (2013) 9 SCC 54***]
>
> Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."[20]
>
> [20] BLACK'S LAW DICTIONARY (5th ed. 1979)]

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count[21]. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

[21 Rajasthan High Court in ***Jagmala Ram @ Jagmal Singh & Ors. v. Sohi Ram & Ors 2017 (4) RLW 3368 (Raj)***;
Uttarakhand High Court in ***Smt. Rita Rana & Anr. v. Pradeep Kumar & 6 Ors. 2014 (3) UC 1687***;
Karnataka High Court in ***Lakshman and Ors. v. Susheela Chand Choudhary & Ors (1996) 3 Kant LJ 570 (DB)***]

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under `Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."

From perusal of the aforesaid, it is apparent that in the present case, the husband of the deceased would be entitled for spousal consortium whereas his sons and daughters would be entitled for parental consortium.

11. Though no cross-objection or cross-appeal has been filed by the claimants but it is agreed at the bar that in terms of Order 41 Rule 33 of the CPC, the Appellate Court would have power to enhance or make available the amount of compensation which ought to have been passed by the Court or the Tribunal. In my considered opinion, such compensation should have been awarded to all the claimants under the different heads of consortium as

defined and held in **Magma General Insurance Company Limited (supra).**

No other issue has been raised either by the appellant or the respondents in the present appeal at the time of hearing other than the issues which have already been discussed and considered as above.

Accordingly, in terms of the aforesaid discussion the compensation amount is recalculated as under:

Heads		**Compensation awarded**
1. Income	-	Rs.11,000/-
2. Multiplier of 9	-	11000 X 9 X 12 = **Rs.11,88,000/-**
3. Loss of Consortium	-	Rs.40,000 (spousal) Rs.1,60,000/- (parental) (Rs.40,000/- each for the sons and daughters of the deceased).
4. Last rites	-	Rs.15,000/-
5. Loss of Estate	-	Rs.15,000/-
Total	**-**	**Rs.14,18,000/-**

Hence, the total compensation awarded by this Court, to the respondents no.1 to 3/claimants is 14,18,000/-, which is only Rs.41,200/- more than what has been awarded by the Tribunal.

This amount will also carry interest at the rate of 9% per annum to be calculated from the date of filing of the claim case till the payment of the compensation amount.

This appeal stands disposed of with the aforesaid modification in the impugned Judgment and Award of the Tribunal, however, the parties will bear their own costs.

(DR. RAVI RANJAN)
JUDGE

March 05, 2019
dharamvir

Whether speaking/reasoned	Yes
Whether Reportable	Yes