IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC No.243-CII-2018 in/and
FAO No.1869 of 2018 (O&M)
Date of Decision: 11.07.2019

Oriental Insurance Company Limited ....appellant

Vs.

Bhagwati Parshad and others ....Respondents

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

Present:- Mr.Ram Avtar, Advocate, for
the appellant/Insurance Company.

Mr.G.C.Shahpuri, Advocate, for
X-objector/respondent Nos.1 to 6.
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DR. RAVI RANJAN, J. (Oral Judgment)

This order will dispose of the appeal preferred by the Oriental Insurance Company Limited as well as the Cross Objection No.243-CII of 2018 filed by the claimants-respondents. This appeal has been preferred by the Insurance Company assailing the Judgment and Award dated 04.12.2017 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari in MACT Case No. MACP-6577-2014. Though the father of the deceased has not been considered to be a dependent upon his deceased son, however, other claimants have been awarded compensation of a sum of Rs.12,40,000/- on account of death of one Raju @ Ramraj in a motor vehicular accident.

In a nut shell, the case of the claimants-respondents is that the said Raju @ Ramraj was driving a motorcycle on 13.01.2014 which was without station number but bearing engine and chassis number and belonging to his employer Sharwan Kumar who was owner of the TATA Brick-Kiln, Kanjanu, and he was on his way back to his work place from his house. While he was driving the motorcycle, Mahendra Pick Up bearing registration No. UP-11-T-8781 and being driven by its driver in a rash and negligent manner, came from the side of Radaur and hit the motor cycle inflicting multiple and grievous injuries upon Raju @ Ramraj. He was taken to hospital at Yamuna Nagar where he was declared brought death. It is further claimed that the driver (respondent No.1 of the claim petition) ran away from the spot after the accident leaving the offending vehicle at the spot of accident. FIR was registered under Sections 279 and 304A of the Indian Penal Code, 1860, on the statement given by Sharwan Kumar, i.e., employer of the deceased. It has been claimed that the deceased was healthy young boy of 22 years of age and was working with M/s Tata Brick-Kiln, Kanjanu and was earning Rs.15,000/-per month. All the claimants were depended upon him for their livelihood including the mother- present petitioner No.6 who was residing separate from her husband i.e. claim-petitioner No.1. It was also averred that the claimants spent considerable amount on the funeral/last rites of the deceased. Thus, they claimed compensation of about Rs.20 Lacs alongwith interest.

Upon notice, the driver and owner i.e., respondents No.7 and 8 (respondent Nos.1 and 2 in the claim petition) filed a joint written statement controverting the claim of the applicants taking a stand that the accident was result of own act and conduct of the deceased. The involvement of offending vehicle was also denied and it was also alleged that a false FIR has been registered involving the respondent No.1 and the vehicle. However, an alternative plea has also been taken that in case the claimants are found to be entitled for some compensation then, in view of the fact that offending vehicle was insured with the respondent No.3/appellant, the liability would be upon the insurance company to indemnify the owner. Respondent No.3/Insurance Company also appeared and filed its written statement taking almost similar stand but also taking a ground in addition to the aforesaid that driver of the offending vehicle was not holding the effective driving licence at the time of accident and offending vehicle was also being driven in violation of the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as "an Act") and the terms of the conditions of the insurance policy. As such, the insurance company would not be liable to indemnify the owner.

The Tribunal on consideration of rival pleadings, framed following issues:

1. Whether the respondent No.1 has caused the accident by driving the offending vehicle bearing registration No.UP-11-T-8781 in a rash and negligent manner thereby causing death of Raju @ Ram Raj?OPP

2. If issue No.1 is proved, to what amount of compensation and from whom, the claimants are entitled to?OPP.

3. Whether the respondent No.1 was not holding any valid and effective driving licence at the time of alleged accident and has violated the terms and conditions of the insurance company? OPR-3.

4. Relief.

Upon consideration of the materials available on record and after hearing the parties, the Tribunal has held that the accident was result of rash and negligent driving by the driver of the offending vehicle and further that the claimants would be entitled to receive compensation amount of Rs.12,40,000/- along with interest @ 8% per annum to be calculated from the date of filing of the claim petition till realization of the awarded amount. It has further held that all the respondents being driver, owner and insurance company would jointly and severally liable to pay the amount to the claimants but first charge always would be of Insurance Company. At the same time, the Tribunal has held that father of the deceased, being only 50 years of age cannot be considered to be dependent upon the his deceased son, therefore, he would not be entitled for any compensation.

The insurance company has assailed the Judgment and Award on diverse grounds. First and the foremost is that the claimants have not been able to prove that the accident was result of rash and negligent driving by the driver of the offending vehicle. It has been urged that the presence of eye-witnesses PW-2 Manu Shankar Parsad and PW-3 Mandeep Singh at the place of occurrence is not credit worthy inasmuch as the PW-2 has made contradictory statement at different occasions. For example, he deposed before the Tribunal that he was present on the gate of brick-kiln at the time of accident whereas, in his cross-examination, he has stated about his presence at a 'dhaba' located near the place of accident. In his statement recorded under Section 161 Cr.P.C. (Ex.R1) also he has stated that he was present at the brick-kiln. Similarly, PW-3 Mandeep claims him to be a social worker and a leader of a political party, however, it is intriguing that he had left a person/victim of a road side accident unattended. It has also come in his statement that he is friend of the owner of the brick-kiln where the deceased was an employee. Thus, it is contended that aforesaid circumstance indicates that he is a projected witness. That apart, he has also given wrong registration number of the offending vehicle which would also lead to an inference that he had not witnessed the accident in question. PW-2 Manu Parshad, however, claimed that he had accompanied the injured to the hospital then he ought to have disclosed the name of the injured to the hospital authorities but in the *rukka*/intimation sent to the police by the hospital authorities, the name of the injured has been recorded as 'unknown'. It is urged that in order to maintain a petition under Section 166 of the Act, the claimants would be required to prove negligence and rash driving on the part of driver of the alleged offending vehicle but they have failed to discharge it as discussed above.

However, aforesaid contention, in my considered view, would have no force for the reason that both the vehicles involved in the accident i.e., motorcycle one of which the deceased was riding as well as offending vehicle were taken into possession by the police from the place of accident itself. Thus, the accident involving the offending vehicle stands proved. The investigating officer of the criminal case has been examined before the Tribunal as PW-4. He has testified that after investigation he found that the accident was caused due to rash and negligent driving by respondent No.1(driver of the offending vehicle) and thereafter, he has filed final report under Section 173 Cr.P.C. which is also on record as Ex.C1. The driver is facing trial for rash and negligence driving. Thus, slight contradiction and variation and even discrepancy in the statement of witnesses would not be enough to dislodge the claimants. Similarly, even if the medical *rukka*/information does not disclose the name of the deceased, that does not mean that it would also be fatal for the claimants as the same was written by the medical officers. No presumption can be attached for not writing the name of the deceased therein. That apart, no witness has been examined on behalf of respondent-Insurance Company or even the driver and the owner to disprove the case of the claimants and rebut the evidence led on their behalf. The driver and owner did not have any courage to appear before the Tribunal as witness. Apart from the above, such contradictions or variations would not be enough to non-suit the claimants in view of the unimpeachable documentary evidence available on record and further that the proceeding before the Tribunal being in nature of an enquiry and is a summary proceeding, the claimants cannot be put to strict proof which is required in a criminal trial. The cases can be decided on the basis of preponderance of probabilities. A reference in this regard is made to a decision of the Hon'ble Apex Court rendered in **Sunita and others Vs. Rajasthan State Road Transport Corporation and Anr. 2019(2) R.C.R.(Civil) 209.** In the aforesaid decision, it has been noticed that in one of its earlier decisions, even in a case in which the concerned driver has been acquitted of the charge in the criminal trial, on the basis of the fact that charge-sheet was submitted against him and other circumstances were in favour of the claimants, the Hon'ble Apex Court has held the claimants to be entitled for compensation holding that the aforesaid circumstances were sufficient to hold that the accident took place due to rash and negligent driving by the driver of the offending vehicle.

This brings this Court to another issue i.e., quantum of compensation to be allowed to the claimants.

It is contended on behalf of appellant-Insurance Company that the Tribunal has erroneously deducted 1/3rd of the income towards personal expenses whereas, it should have been deducted 50% of the income as deceased was a bachelor.

Per contra it has been urged on behalf of claimants-respondents-cross-objectors that the dependents being six (6) in numbers, even as per law laid down by the Apex Court in **Smt.Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009(3) R.C.R.(Civil) 77**, only $1/4^{th}$ of the income could have been deducted on account of personal expenses of the deceased. It is also contended that lesser amount has been allowed under the conventional heads.

The Apex Court in **Sarla Verma (supra)** has held as under on the aforesaid issue:

> *15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he*

> *has a widowed mother and large number of younger non earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.*

In the present case, the dependents are father, mother, one major sister and three minor siblings. It is categorically stated that all were depending upon the deceased. However, the father has not been accepted to be dependent by the Tribunal on account of the fact that he was merely 50 years of age, thus, it could not be accepted that he was not earning. Even if that is accepted, still there would be 5 dependents including the mother, the major sister and three minor siblings. Thus, it can safely be held that the number of dependents were much larger and thus, even in view of the aforesaid decision rendered in **Sarla Verma (Supra)**, the decision to deduction only 1/3rd towards the personal expenditure cannot be faulted with as it has been held therein that if the family of the bachelor is large and dependant on the income of the deceased, for example, in a case where the deceased had a widowed mother and large number of younger non earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. It is next contended that Tribunal has taken the income of the deceased to be Rs.6,000/- whereas, he was working as Beldar in the Brick-Kiln but, at the same time, the Tribunal has noticed there is no evidence led by the claimant in support of that. Therefore, it has considered the minimum wages fixed by the State of Haryana for that purpose. As per the minimum wages admissible from 01.01.2014, by producing a letter/decision of the

Government fixing the minimum wages, it is stated that for unskilled labourer, the monthly minimum wages Rs.5547/- only. Thus, it is contended that the said amount should have been taken into consideration in place of Rs.6000/-. Learned counsel appearing for the cross-objector has submitted that since the deceased was Beldar and was earning Rs.15,000/-, the consideration of monthly wages of Rs.6000/- was at much lesser side.

However, I find force in the submission made on behalf of appellant as it has been indicated in the impugned judgment that there is no evidence led by the claimants that he was working as Beldar in Brick-Kiln and was earning Rs.15,000/- or 18,000/-. In the absence of such evidence, the Tribunal was not left with any option than to the minimum wages fixed for labourer who can only be considered as 'unskilled labourer'. From the concerned letter/notification of State of Haryana which has been produced at the time of hearing, it appears that minimum wage admissible at the time of accident unskilled labourer on the date of accident was only Rs.5,547.10/- Thus, in my considered view, that amount can be rounded of to Rs.5,500/- but there is no justification in considering the minimum wages to be Rs.6,000/-. Accordingly, Awarded amount would have to be recalculated by considering the income of the deceased to be Rs.5500/-.

The next point which has been raised by the claimants-respondents-cross-objectors is that even if it is accepted that father was not dependent, he and the mother would be entitled for filial consortium. I find force in this submission made on behalf of cross-objectors.

In **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Others 2018(4) R.C.R.(Civil) 333,** in which

Hon'ble Supreme Court after considering the judgment of the Constitution Bench rendered in **National Insurance Company Limited Vs. Pranay Sethi and Others 2917(4) R.C.R.(Civil) 1009,** has classified the consortium which would be available to the concerned person. It has been held that in case of death of one of the spouse, the living spouse would be entitled for spousal consortium. In case of death of parents, the son or the daughter would be entitled for parental consortium and in case of death of son and/or daughter, the parents would be entitled for filial consortium.

Thus, in the case in hand, the father and mother would be entitled, in view of the aforesaid decision of the Apex Court, for filial consortium @ Rs.40,000/- each.

Accordingly, the awarded amount, in view of the aforesaid discussion, is modified as under:

Sr.No.	Heads of compensation	Amount
i.	Income	5,500/-
ii.	After adding future prospect (40% of the income)	Rs.5,500/- + Rs.2,200/-= Rs.7700/-
iii.	Deduction towards personal expenses 1/3rd	Rs.5134/- (Rs.7,700/- --- Rs.2566/-)
iv.	Multiplier	18
v.	Loss of future income	Rs.5134/- X 12 X 18= Rs.11,08,944/-
vi.	Funeral expenses	Rs.15,000/-
vii.	Loss of estate	Rs.15,000/-
viii.	Filial Consortium (Rs.40,000/- each to father and mother)	Rs.80,000/-
	Total	Rs.12,18,944/-

The interest over the aforesaid amount is fixed as 9% per annum to be calculated from the date of filing of the claim petition till the realization of the compensation amount.

However, the findings recorded by the Tribunal with respect to the other issues are kept intact.

Before parting with the matter, I must indicate that no other issue has been raised by the parties save and except those which have already been discussed above.

Accordingly, the appeal as well as cross-objection stand disposed of. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

11.07.2019
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No