**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO 4005 of 2013 (O&M) and
XOBJC-40-CII-2014
Date of Decision: January 29, 2020**

United India Insurance Co. Ltd. ...Appellant

Versus

Mamta Rani and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Vinod Chaudhri, Advocate
for the appellant.

Mr. Aminder Singh, Advocate
for respondents No. 5 to 6.

Mr. Ankush Singla, Advocate for
Mr. Ashok Singla, Advocate
for respondents No. 1 to 4/cross-objectors.

FATEH DEEP SINGH, J. (Oral)

The above detailed two matters have come about, the appeal is by the insurer of the offending vehicle M/s United India Insurance Company, whereas the cross-objections have been filed by the claimants and, thus, having arisen out of the same very award dated 02.05.2013 passed by the Court of learned Motor Accident Claims Tribunal, Sangrur are being taken up together for disposal.

The mode of the accident that has come about from the side of the claimants, who happened to be widow and two minor sons alongwith a widowed mother of the deceased alleging that on 04.07.2011, while the deceased Lachman Dass was going on his motorcycle bearing registration No. PB 13Y-8476 (in short **'the motorcycle'**) and when he reached near Gurdwara Sahib Jiwan Singh, Dirba, offending vehicle a truck trolla bearing registration No.PB11-AP4314 (for short **'the offending vehicle'**), which was being driven by respondent Bhagel Singh came at a very high speed driven rashly and negligently and struck against electric pole and, thereafter, rammed into the passers by and ultimately, mowed down the deceased while going on his motorcycle resulted in his instantaneous death.

FIR No. 102 dated 04.07.2011 under Sections 279, 427 and 304-A IPC was registered pertaining to this accident at Police Station Dirba.

The claimants claim that the deceased was aged around 35 years and fully employed as he was running a provisional store earning about Rs.15,000/- per month, upon which, all the claimants were totally dependant and after the death, the family was left in a lurch.

The unison stand of the respondents in their response is of denial claiming that the offending vehicle has been rashly driven and no such act has ever taken place. Besides this, the insurer took plea that the driver of the offending vehicle was not having legal, valid, effective driving licence and, thus, tried to shirk from the obligation from paying the compensation, though the ownership of the offending vehicle in the name of Gurjant Singh is duly accepted.

The Tribunal framed the following issues:-

1. Whether Lachhman Dass died in a motor vehicle accident which took place on 04.07.2011 on account of rash and negligent driving of Truck Tralla bearing registration No. PB-11AP-4314 by respondent No.1?OPP.
2. Whether petitioners are entitled to be compensated for the death of Lachhman Dass, if so to what extent and by whom? OPP.
3. Whether offending vehicle was being driven in violation of terms and conditions of Insurance Policy, if so its effect? OPR
4. Relief.

The claimant examined one of the claimant Mamta Ran as CW1 and tendered her affidavit Ex.AW1/A and, thereafter, one Shish Pal testified as CW2 followed by AW3 Jarnail Singh and after tendering copy of FIR Ex.P3 and copy of postmortem Ex.P4 closed their evidence.

Respondents did not examine any oral witness and after tendering copy of insurance policy Ex.R1 closed the evidence.

It is consequent thereupon the Tribunal had returned the findings on all the issues in favour of the claimants and against the respondents and, thereafter, consequently, awarded a sum of Rs. 24,93,000/- as compensation to all the claimants to be paid to them equally, out of which, except an amount of Rs. 5,000/- has to be given to the widowed wife on account of loss of consortium along with interest @ 9% per month w.e.f. 03.08.2011 with a rider if the amount is paid within 02 months from the date of the award then claimants are entitled @ 6%. The same are the subject matter of these challenges.

Heard Mr. Vinod Chaudhri, Advocate for the appellant, Mr. Aminder Singh, Advocate for respondents No. 5 to 6 and Mr. Ankush Singla, Advocate for Mr. Ashok Singla, Advocate for respondents No. 1 to 4/cross-objectors.

Mr. Vinod Chaudhri learned counsel for the insurance company at the very onset of his submissions has made statement adjudging only quantum aspect of the award under challenge and had renounced rest of the claims of the insurance company.

In the light of these submissions of the two sides by no means displaced that the deceased at the time of death was aged around 35 years and running a Kiryana store. The *inter se* relationship of the claimants with the deceased are not ever put to question. Both the children are minor aged between 11 to 12 years. Deceased left behind a widow and a widowed mother and there is nothing to suggest or argued on behalf of the insurance company that they had any other source of income. The counsel for the appellant though has sought to raise murmur over the earnings reflected in the income tax returns but to the specific query what evidence has come about and otherwise to put a question mark on their credibility was clearly at loss of words.

It is a matter of common knowledge that when the sole bread winner of the family is no more, fathomless miseries are faced by the dependents. The children would be suffering not only in respect of their education physically as well as psychologically. There is an indelible mark of loss of father, who is a consistent source of guidance, love and protection, who would have otherwise had been alive would have nurtured them to adulthood. All these factors cannot escape judicial mind. The Apex Court had detailed at length on the mode of calculations of compensation in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77** and **National Insurance Company Limited Vs. Pranay Sethi and others, 2017 SCC 1270** but in a recent view in **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others 2018(4) R.C.R. (Civil) 333** as besides all the factors that need to be taken into account in all awarding compensation has propagated consideration of loss of consortium to the widow and the children as one of the relevant factors for consideration. The same has certainly escaped the notice of the Tribunal though the Tribunal has kept in view the age of the deceased and relevant ages of the claimants, had applied the multiplier of 16, which needs to be upheld in view of the various ratios but to the mind of this Court it is a plain and hard truth that the maximum earning capacity and working of a person at the age of 35 is at the peak but all the same this Court does not feel to change the multiplier so applied by the learned Tribunal.

Mr. Vinod Chaudhri counsel for the appellant could not account for that how the monthly income of the deceased which is calculated to be Rs.13,236/- is on the higher side. The allowing of future prospects @ of 30% is on the lower side and keeping in view this being a case of extreme hardship for the family, needs an element of compassion from the Court and, therefore, the future prospects needs to be allowed at the 40% and after adding the same, the monthly income would come out to be Rs.18,531/- (13,236+5295=18,531). Besides this, though the Tribunal had awarded Rs. 5,000/- on account of loss of consortium, however, keeping in view that there is every situation in such an family as a loss of consortium not only to the widow of the deceased but the minor children left behind by him and, therefore, it would be appropriate if the same calculated as Rs. 1,00,000/-.

Keeping in view the age, it is rightly depicted as to the amount of personal expenses if the deceased had been alive, he would have spent of his own ¼ which amount come to Rs.13,898/-(18,531-4633). In this way annual income of the deceased would come out to be Rs.1,66,776/. Keeping in view the age of the deceased and in view of ratio laid down in **Smt. Sarla Verma's case (supra),** multiplier of 16 has to be applied and after applying the same, the amount of compensation would come out to be Rs.26,68,416/-. After adding the amount of consortium, the total amount of compensation would come out to be Rs.27,68,416/-. The Tribunal had awarded 9% initially and subsequently 6% after two months. It would be in the interest of justice, if the aggregate interest @ 9% be awarded on this amount from the date of filing of the claim petition till the relization of the amount. Any compensation if paid would be adjusted against this amount.

The claimants at this juncture are being made to stand at cross-roads and are more in dire need of money for their upkeep and maintenance and education of the children and it would be too preposterous, if this amount is allowed to be deposited by way of FDR in respect of the minors as it is at this stage of life they need for their education and upkeep as well.

Since the Tribunal has already awarded an amount of Rs.24,93,000/-, therefore, the aforesaid amount has to be deducted and after deducting the same, the enhanced amount of compensation would come out to be Rs.2,75,416/- (27,68,416-24,93,000).

The enhanced amount of compensation i.e. Rs.2,75,416/- shall carry interest @ 9% per annum from the date of filing of the claim petition till final realisation of the amount.

Since Mamta Rani, Happy Ram, Honey Singla are young and have a long life to go whereas Bhagwanti is aged, it would be appropriate to make apportionment of the amount in the ratio of 30% each to claimants No.1 to 3 and 10% to claimant No.4.

In the light of what has been detailed and discussed above, amount awarded by the Tribunal, i.e. 24,93,000/- is modified and appeal as well as the cross-objections are accordingly, disposed off.

January 29, 2020 **(FATEH DEEP SINGH)**
amit rana **JUDGE**

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