IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7007 of 2019 (O&M)
Date of Decision: 29.01.2020

The New India Assurance Co. ltd. ...Appellant

Vs.

Tripta Rani & Ors. ...Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. S.S.Sidhu, Advocate, for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the Insurance Company against award dated 07.08.2019 passed by the Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal'),

The brief facts required to be noticed in the present case are that on 24.12.2016, at about 8:30 AM the deceased was crossing the road from the side of Topiary Park, Sector 35-B, Chandigarh, towards the coaching centre owned by his son in the inner market of Sector 35-C, Chandigarh. As he reached the centre of the road a car bearing registration No. CH-01-AK-1230 came speeding from the side of Flower Market, Sector 35-A, Chandigarh and hit the deceased, as a result the deceased received serious head injuries and was taken Government Medical College and Hospital, Sector – 32 Chandigarh, from where he was taken to Cheema Medical Complex, Mohali. Later he

received treatment at Cheema Medical Complex, Mohali and at Mayo Healthcare the deceased eventually passed away on 10.12.2017.

In the claim petition, the case set up was that the accident took place due to the rash and negligent driving of respondent No.1 (present respondent No.4) and on the basis of which a FIR was also registered. It was stated that the age of the deceased was 65 years at the time of the accident and he was assisting his son in a coaching centre and that he had retired from UT Treasury, Chandigarh as a Superintendent and was getting ₹25,000/- per month as pension and was earning an amount of ₹15,000/- from the coaching institute.

Respondent Nos. 1 and 2 (present respondent Nos. 4 and 5) contested the claim petition by filing a joint written statement wherein the plea raised was that the deceased was crossing the road in a negligent manner and that he was hit by a speeding motorcycle and after being hit by a motorcycle, he fell in front of the car driven by respondent No.1 (present respondent No.4).

Respondent No.3 (present appellant) raised a plea that the deceased had died on 10.12.2017 i.e. after a gap of 12 months and no post mortem report has been annexed with the claim petition.

On the basis of the pleadings and evidence led by parties, the Tribunal awarded a compensation of ₹24,81,349/- along with interest @9% per annum from the date of filing of the claim petition till payment.

Aggrieved by the said award the Insurance Company has filed the present appeal.

I have heard learned counsel for the appellant.

It has been contended by the learned counsel for the appellant that the death was not relatable to the accident inasmuch as the death occurred after a gap of almost 12 months and there was no post mortem report which was produced on record to show that the death was caused due to the injuries sustained by the deceased at the time of the accident. It is further contended that the medical bills produced by the claimants were all without prescription. Finally it is contended that family pension ought to have been deducted by the Tribunal while awarding the compensation.

In the present case, the deceased was 65 years of age and there is no evidence on the record to show that he was keeping bad health. As a result of the accident, the deceased received head injuries and during the course of his stay in the hospital in Intensive Care Unit (ICU), he was put on elective ventilation.

As per the statement of PW-4 Dr. Deepak Tyagi, Consultant Neuro Surgeon, Mayo Hospital, Mohali, the deceased at the time of discharge was in a vegetative state and there was no chance of improvement. It has also been stated by PW-4 that the deceased had no history of any serious ailment/disease prior to the accident. On 10.12.2017 i.e. the day the deceased expired, he was brought to the hospital at about 4.45 PM, when he was declared brought dead. As per PW-4 on 10.12.2017, the deceased had multiple bed sores, which according to him, were due to the vegetative state in which the deceased was. It has also been stated by PW-4 that while deceased was alive, he would have required continuous nursing care which would necessarily have required recurring expenditure in the shape of medicines, attendant, nurse etc. It has also come in the statement of PW-4 that the

deceased was fed through tubes and also had catheter for passing urine and that he had no control over his bowel and bladder movements. It has further come in the statement that the deceased also required tracheostomy for purposes of respiration.

Tracheostomy is a medical procedure, either temporary or permanent, which involves creating an opening in the neck in order to place a tube into the person's windpipe

The argument raised by learned counsel for the appellant that the death was not relatable to the accident deserves to be rejected. There is ample unrebutted evidence on the record which proves that the deceased was in a vegetative state as a result of the accident. There is no evidence which has been produced by the appellant before the Tribunal to show that the deceased had ever recovered from the said accident. Serious injuries had been received which have been enumerated by PW-4 in his statement. Further a perusal of the Ex.P-4, the discharge summary also leaves no manner of doubt that the deceased was reduced to a vegetative state. The subsequent discharge summaries Ex. P4/A and P/5 are also to the same effect. Infact the discharge summaries Ex.P4, Ex.P4/A and Ex.P/5 clearly state the condition of the deceased, which read as under:-

Ex. P-4 Relevant Extract :-

"Patient Name : Krishan Kumar C.R. No : 121250

Age : 66 years Sex : Male

D.O.A : 24.12.16 at 10.37 am

D.O.D : 18.01.17 at 10:00 am"

Consultant : *Dr. Vineet Saggar, Dr. Deepinder Kapoor*

*"**Diagnosis:***

Road traffic accident- Diffuse axonal injury brain (24.12.16)
Right Hemiplegia, Aphasia
Aspiration pneumonia
CAD
HTN
T2DM
Drug induced hepatitis (Linezolid)
SIADH
Acute infarct right TP region (10.01.17)
Post infarct seizures"

Operative Procedure

Tracheostomy done on 03.01.17.

History of Present illness:-

Patient presented in this hospital with alleged
H/O-Road traffic accident, patient hit by a car while crossing the road.
T.O.I-8.15 am
P.O.I-Sec-35 (Chandigarh)
D.O.I – 24.12.16.
Patient intially taken to GMCH Sec-32, Chandigarh. Now, patient's attendant brought the patient to this hospital for further treatment.

XXX *XXX* *XXX*

Diet

"Diabetic RT feed 200 ml/2hrly

Review after 7 days in Dr. Kapoor and Vineet's OPD."

Ex-P4/A Relevant Extract :-

"Diagnosis:-

Recurrent seizures
Follow up case of past traumatic Diffuse Axonal Injury Brain (24.12.16)
Acute infarct right temporo parietal region (10.01.17)
Drug induced hepatitis ------Phenytoin
\----- Linezolid.

Operative Procedure: *Conservative management*

History of Present illness:
Patient presented in this hospital with H/O – Seizure, 2 episodes, Fever] since 2 hours.

Past/Personal/Family History:
H/O-Admitted in this hospital from 24.12.16 to 18.01.17 and diagnosed as RTA- Diffuse Axonal Injury Brain 24.12.16, Aspiration pneumonia, CAD, HTN, T2DM, SIADH, Acute infarct right TP region (10.01.17), Post infarct seizures.

XXX *XXX* *XXX*

Ex. P5 Relevant Extract :-

CHIEF COMPLAINTS & REASON FOR ADMISSION
Recurrent episodes of Febrile spiks
With GCS-E2VTTM4
Bed sores +nt
Shifted from Cheema hospital mohali for further management.

XXX *XXX* *XXX*

HOSPITAL COURSE & TREATMENT GIVEN:-

Patient admitted in hospital with C/o Fever and bed sores on sacral area with GCS-E2VttM4, Patient admitted in ICU, Catheterization done and RT feed started.

All relevant investigations done.

Patient started on I/V antibiotics and other supportive treatment.

Blood investigations s/o Coagulopathy (INR-6.1) 4 units of FFP transfused and Inj Vit K given.

Chest physiotherapy done regularly.

On 19/02/2017, ET culture s/o Pseudomonas aeruginosa growth, antibiotics updated accordingly.

Surgery consult was done by Dr. Alok Ahuja regarding bed sores. Debridement done and dressing done twice daily.

VAC therapy given.
Now patient is stable and discharged on following advice with T.Tube, RT and Foley's cath in situ.
XXX XXX XXX"

In view of the evidence there can be no manner of doubt that the death of the deceased was caused due to the injuries sustained by him at the time of the accident.

The second argument raised by learned counsel for the appellant that the medical bills are without prescription, is also totally baseless inasmuch as perusal of the bills reveals that all the bills are in the name of the deceased and for the medicines which were used/administered to the deceased during the period that he was alive. I, therefore, find no merit in the argument raised by learned counsel for the appellant.

The third argument raised by the learned counsel for the appellant that the family pension needs to be deducted also deserves to be dismissed. In the case of ***ICICI Lombard General Insurance Vs. Neelam Kumari & Ors.*** FAO No. 795 of 2018, decided on 17.12.2019, it has been held as under:-

"*7. Their Lordships of the Apex Court in the case of* ***Sebastiani Lakra & Ors. vs. National Insurance Company Ltd. & Anr.,*** *reported as* ***2018 AIR (SC) 5034****, while deciding a matter concerning adjustment of pecuniary advantages, received by heirs, in compensation, have held as under:-*

"12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or

> *grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to `just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.*

8. The judgment relied upon by learned counsel for the appellant is not applicable to the facts of the present case, inasmuch as, their Lordships of the Apex Court in the said case were dealing with a case under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006. In the ***Sebastiani Lakra's*** *case (supra), the Apex Court also considered the ratio of the decision rendered in the case of* ***Shashi Sharma*** *(supra), and held as under:-*

> *"10. In Shashi Sharma case (supra) this Court was dealing with the payments made to the legal heirs of the deceased in terms of Rule 5 (1) of the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (for short `the said Rules'). Under Rule 5 of the said Rules on the death of a Government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods set out in the Rules and after the said period the family was entitled to receive family pension. The family was also entitled to retain the Government accommodation for a period of one year in*

addition to payment of L 25,000/- as ex gratia. In this case, the three-Judge Bench adverted to the principles laid down in Helen C. Rebello case (supra), followed in Patricia Jean Mahajan case (supra), and came to the conclusion that the decision in Vimal Kanwar case (supra) did not take a view contrary to Helen C. Rebello or Patricia Jean Mahajan case (supra). The following observations are relevant:

> *"15. The principle expounded in this decision in Helen C. Rebello case that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the "pecuniary advantage" from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act of 1939, and must apply proprio vigore to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been restated in the subsequent decision of the two-Judge Bench in Patricia Jean Mahajan case, to reject the argument of the Insurance Company to deduct the amount receivable by the dependants of the deceased by way of "social security compensation" and "life insurance policy."*

However, while dealing with the scheme the Court held that applying a harmonious approach and to determine a just compensation payable under the Motor Vehicles Act it would be appropriate to exclude the amount received under the said Rules under the Head of `Pay and Other Allowances' last drawn by the employee. We may note that on principle this Court has not disagreed with the proposition laid down in Helen C. Rebello or in Patricia Jean Mahajan case (supra), but while arriving at a just compensation, it had ordered the deduction of the salary, received under the statutory rules."

In view of the law laid down by the Apex Court, the argument raised by the appellant that the amount receivable under the family pension is to be deducted from the amount of dependency payable to the claimants deserves to be rejected.

In view of the above, I do not find any merit in the present appeal and the same is accordingly, dismissed.

January 29, 2020 **(ALKA SARIN)**
tripti **JUDGE**