**130 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**FAO No. 807 of 2021**
**Date of Decision: 29.11.2021**

Reliance General Insurance Company Limited
.......Appellant
Versus
Smt. Savita Mehta and others ........Respondents

**CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Sanjeev Kodan, Advocate,
for the appellant.
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**MAHABIR SINGH SINDHU. J.**

This appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (for short “the Act”) against the impugned Award dated 29.01.2021 passed by learned Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (for short “the Tribunal”) whereby compensation of Rs.33,60,794/- was awarded in favour of the claimants/respondents No. 1, 3 & 4.

2. Paper book reveals that claimants/respondents No.1 to 4 filed claim petition under Section 166 of the Act for compensation on account of death of Kamal Kishore Mehta. It transpires that on 23.07.20211 deceased was going from Railway Workshop, Jagadhri to his home as pillion rider on motor cycle bearing registration No. HR-02-X-6413 driven by his friend, namely, Darshan Singh, at a moderate speed. When they reached near Jyoti Palace, then one black color Opel Corsa car bearing registration No. HR-02-M-6325, being driven in a rash and negligent manner, came from behind and driver of the car brought the vehicle on extreme left side of the road on *katcha* portion and hit the motorcycle. Both the riders of the motor cycle fell down and suffered multiple injuries. Deceased suffered grievous

injuries including on head and consequently became unconscious. The accident was witnessed by Nitish Mehta (PW-3) and Nitin Mehta who were going from Bus Stand towards Fountain Chowk, Yamuna Nagar on another motor cycle. The injured was taken to J.P.Hospital, Yamunanagar and from where, he was referred to PGI, Chandigarh, but could not survive.

3. Learned Tribunal after considering the material available on record framed the following issues:-

> 1. Whether Kamal Kishore Mehta died due to the injuries sustained by him in a motor vehicle accident which took place on 23.07.2011 in the area of Police Station, City Yamunnagar on account of rash or/and negligent driving of car bearing No. HR02M-6325 by respondent No.1, which is owned by respondent No.2 and insured by respondent No.3, as alleged? OPP
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> 2. If issue No.1 is proved, whether the claimants are entitled to any amount as compensation? If so, to what amount and from whom? OPP
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> 3. Whether the petition has been filed without any cause of action and is not maintainable, as alleged? OPR
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> 4. Whether the insured has violated the terms and conditions of the insurance policy as well as provisions of the Motor Vehicle Act, 1988 and as such, the insurance company is absolved of its liability to pay the amount of compensation? OPR-3
>
> 5. Relief.

4. Issue No.1 was decided in favour of claimants. Learned Tribunal while deciding issue Nos.2, 3 & 4 came to the conclusion that petition was very well maintainable and found that there was no breach of terms & conditions of insurance policy. Ultimately vide award dated 21.12.2017, claim petition was partly allowed with costs and claimants 1, 3 and 4 were granted compensation to the tune of Rs.20,78,032/- along with interest @ 7% from the date of filing of the petition till its realization. Respondents No.1 to 3 were held liable jointly and severally.

5. Feeling aggrieved against the above Award, two separate appeals bearing FAO No. 908 and 2556 of 2018 were filed by both sides. The Coordinate Bench of this Court, vide order dated 22.01.2019, dismissed the appeal of the insurer; but while accepting the appeal at the instance of claimants, remitted the matter back to the Tribunal, in the following manner:-

> *"The compensation is to be calculated considering the gross salary of the deceased at the time of accident. The matter for the purpose of calculation of compensation on gross salary less income tax payable, if any, is remitted back to the Tribunal."*

In pursuance of the above remand order, learned Tribunal decided the matter afresh, vide Award dated 01.03.2019 and granted compensation of Rs.34,06,528/- to the claimants, however, rate of interest remained same.

6. Feeling dissatisfied against the Award dated 01.03.2019, again present appellant filed FAO No. 3332 of 2019, which was disposed off on 17.07.2019, relegating the appellant to approach the learned Tribunal, in the following manner:-

> *"Learned counsel for the appellant has contended that the tribunal has deducted Rs.343/- from the income of the deceased towards income tax liability, however, as a matter of fact, the amount should be more than that and further, the future prospects have also been granted on the higher side. Section 152 CPC provides that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.*

> *The appellant has approached this Court directly without taking recourse to that remedy. Under the circumstances, the appeal is disposed of, relegating the appellant to the remedy of approaching the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri to move appropriate application before it. However, if still aggrieved, the appellant may come to this Court again, as per law."*

7. Now, learned Tribunal has passed the impugned Award dated 29.01.2021 on third occasion and reduced the compensation to the tune of Rs.33,60,794/-, while maintaining the rate of interest as it is. Hence, the present appeal at the instance of insurer.

8. This Court on 27.08.2021 passed the following order:-

> *"Learned counsel for the appellant seeks time to apprise the Court regarding the payment of compensation in terms of impugned Award dated 29.01.2021, passed by learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri."*

9. At the outset, learned counsel for the insurer/appellant produced the copy of order dated 10.11.2021 which indicates that entire amount of compensation awarded by learned Tribunal has already been deposited before the learned Tribunal and as a result thereof, the execution proceedings stood dismissed as withdrawn being fully satisfied. Copy of order dated 10.11.2021 is taken on record and marked as 'X'.

10. It is argued by learned counsel for appellant that learned Tribunal has legally erred while granting the compensation of Rs.33,60,794/- along with interest from the date of filing of petition till its realization. Further submitted that the Tribunal has failed to appreciate that income tax ought to have been deducted after adding the future prospects.

11. Heard learned counsel for the appellant and perused paper book.

12. It is duly proved that on the fateful day, the deceased was 49 years of age. He was working as a Senior Clerk in Indian Railway and posted at Railway Workshop, Jagadhri. As per salary slip (Ex.P-1), his monthly income was Rs.28,240/-. Thus, after taking into consideration the same, the income was rightly taken as Rs.28,240/-per month and his annual income will come to Rs.3,38,880/- (28240 x 12). Tax payable for the year 2010-11 is noticeable as Rs.8704/-.

13. As the deceased was less than 50 years of age at the time of accident, therefore, in view of judgment of Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others SLP (Civil) No. 25590 of 2014,*** (2017) **16 SCC 680** an addition of 15% has rightly been granted by learned Tribunal over and above Rs.3,30,180 (3,30,180 x 15% = 3,79,707) on account of future prospects. Since there were three dependents upon the deceased, therefore, 1/3rd income of deceased was deducted towards his personal expenses and as a result thereof, annual surviving dependency in favour of the claimants would be Rs.2,53,138/- (Rs.3,79,707-1,26,569). Learned Tribunal, after following the law laid down by Hon'ble Supreme Court in **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another (**2009) 6 SCC 121, applied the multiplier of 13 and correctly worked out the compensation as Rs.32,90,794/- (2,53,138 x 13).

In addition to above, a sum of Rs.40,000/- was awarded on account of loss of consortium plus Rs.15,000 were awarded towards loss of estate and Rs.15,000/- were granted for funeral expenses. Thus, the total compensation has been assessed as Rs.33,60,794/-. After deducting

Rs.40,000/- towards loss of consortium, the remaining amount of compensation was ordered to be shared by claimants/respondents No.1, 3 & 4 in the ratio of 40:40:20 respectively; whereas the consortium amount was ordered to be paid to wife of deceased.

14. Interest @ 7% per annum was also awarded from the date of filing of petition till its realization. Driver, owner and insurer were held liable to pay compensation jointly and severally. As Nitish Mehta son of deceased was appointed on compassionate ground, therefore, no compensation was awarded in his favour.

15. Learned counsel for the appellant fairly acknowledged that above compensation has been assessed as per law laid down by the Hon'ble Supreme Court in ***Pranay Sethi's case (supra)***. Therefore, the plea of deduction of income tax from the income of deceased being is wholly untenable, and as such, the same is rejected.

16. In view of the above, this Court does not find any ground to interfere with the impugned Award passed by the learned Tribunal. As a result thereof, the appeal is lacking merit and as such the same is dismissed.

29.11.2021 **(MAHABIR SINGH SINDHU)**
SN **JUDGE**

**Whether speaking/reasoned : Yes/No**
**Whether Reportable: Yes/No**