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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3093-2021 (O&M)
Date of decision: 25.11.2021

IFFCO TOKIAO GENERAL INSURANCE CO. LTD ..Appellant

V/S

SATWANTI DEVI AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Yogesh Gupta, Advocate,
for the appellant.

(Presence marked through video conference)

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ARUN MONGA, J. (ORAL)

Aggrieved with the award dated 13.08.2021 rendered by Motor Accidents Claims Tribunal, Karnal (for brevity, Tribunal), Insurance Company has preferred the instant appeal.

2. Brief facts as per the claim petition are that on 07.10.2017, Parveen Kumar (since deceased) and Gyan Chand alias Gyan Singh (since deceased) were going on a motorcycle bearing No. HR-059-6033 at a moderate speed by observing the traffic rules. At about 8.30 a.m., when they reached near Garbage Factory, Nagla Chowk, Meerut Road, Karnal, a Ford Fiesta car bearing No. HR-06N-7137 being driven by respondent No.1 in a rash, negligent and careless manner at a very high speed, without observing traffic rules hit against the aforesaid motorcycle and caused the present accident. Due to this impact, both the occupants of the said motorcycle fell down on the road and received multiple grievous injuries on their persons and both were shifted to KCGMCH, Karnal in an ambulance and after

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reaching the said hospital, both succumbed to the injuries. Post mortem examination of both the deceased was conducted in KCGMCH, Karnal on the same day.

3. Separate claim petitions bearing MACT case No. RBT-111/2021, CIS No.MACP/590218 and MACT case No. RBT-112/2021, CIS No.MACP/591/2018 were filed by the respective heirs of the two deceased. The respondents contested them. Both claim petitions were clubbed.

4. Learned Tribunal framed following issues:

1. *Whether accident took place due to rash and negligent driving of For Fiesta Car bearing registration No.HR-06N-7137 by respondent No.1 Sanjiv, resulting into death of Parveen Kumar (deceased in first claim petition) and death of Gyan Chand alias Gian Singh (deceased in second claim petition), as alleged? OPPs.*
2. *If issue No.1 is proved, whether Poonam etc. claimants of first claim petition, are entitled to any compensation, if so, to what amount and from whom? OPP*
3. *Whether Satwanti Devi etc., claimant of second connected claim petition, are entitled to any compensation, if so, to what amount and from whom? OPP.*
4. *Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident and the vehicle was being driven in violation of terms and conditions of insurance policy and provisions of Motor Vehicle Act, as alleged, if so to what effect? OPR3.*
5. *Relief."*

5. On appraisal of evidence, the learned Tribunal decided issues No. 1 in favour of the claimants and issue No. 4 against the Insurance company. On issues No. 3 and 4 it held that the claimants in MACT case No. RBT-112/2021, CIS No.MACP/591/2018 were entitled to total compensation of Rs.8,65,894/- and in MACT case No.111/2021, CIS No.MACP/590/2018, Rs.16,23,970/- with interest @ 7% from the date of

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filing the petition till date of realization and that respondents No. 1-3 shall be jointly and severally to pay the same.

6. The Insurance Company, who was respondent No. 3 before the Tribunal, has come up in appeal.

7. I have heard the learned counsel for the appellant and with his able assistance gone through the record.

8. It is pointed out by the learned counsel for the appellant that as per the statement of RW-1 Bhupinder Kumar ASI, investigating officer of the criminal case registered about the occurrence, he contacted Vimla Devi owner of Ford Fiesta car No. HR- 06N-7137 and that she had stated that her car was not involved in the accident; that he had checked the CCTV camera fixed outside her house and found that her car was standing there on 07.10.2017 i.e. the date of accident. RW Bhupinder Kumar ASI further stated that he had recorded the supplementary statement of Des Raj on 30.11.2017 to the effect that car No. HR- 06N-7137 was not involved in the accident, in fact the accident took place due to rashness and negligence of the driver of a truck of Rajasthan of which the number was not known to him (Des Raj) and that after recording his supplementary statement, the police had closed the investigation of the criminal case and submitted 'untraced report' in 2018.

9. It is argued by the learned counsel that the aforesaid material on record negates the claimants' story to the effect that Ford Fiesta car No. HR-06N-7137 was involved in the accident and/or that it was caused by the rash and negligent driving of its driver respondent No. 1. It is contended that the learned Tribunal wrongly ignored the said material

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while deciding issue No. 1 in favour of the claimants. Further it is contended that the only dependent of the deceased victim of accident was his widow Satwanti Devi claimant and that his married son Sanjiv Kumar aged 37 years claimant could not be treated as the dependent of the deceased. In this view of the matter, it was argued that 50% deduction from the income of the deceased for his personal expenses ought to have been made but the learned Tribunal wrongly deducted 1/3rd of the income for his personal expenses.

10. Having perused the record and heard the learned counsel, I am of the opinion that the learned Tribunal has recorded sound and valid reasons for its findings/conclusions on issues No. 1 and 3 and same do not call for any interference in appeal.

11. Paras 14-15 and 30 of the impugned award are as under:

> *14. After hearing arguments of both the parties, it is not in dispute that on the statement of PW-2 Desraj, FIR EX.P18 was lodged wherein registration number of the vehicle was given as HR-06N-3137 Marka Ford Fiesta but when the investigating Officer RW1 ASI Bhupinder Kumar started investigation and contacted owner of the alleged offending vehicle, it came to know that the said car was not involved in the accident and the said car was parked in the house of its owner Vimla Devi at Sonepat.As per statement of RW1 ASI Bhupinder Kumar, he visited the house of owner Bimla Devi and found the car parked there and this fact is further supported by a CCTV footage also. Apart from this, investigating officer has joined PW2 Desraj in the investigation again on 30.11.2017 and recorded his statement Mark-B wherein he has stated that infact, the accident in question was caused by the driver of a truck of Rajasthan State but as he could not note the registration number of the said truck being illiterate and had given registration number of car as HR-06N-7137 Marka Ford Fiesta which was passing at the time of accident from the spot. In fact, the car was not involved in the accident. So, on the basis of this statement dated 30.11.2021 Mark-B of Desraj and alleged CCTV footage near the house of Bimla Devi, owner of the car, investigating officer has submitted an untrace report in the matter but respondent No.1 and 2 have not led any cogent evidence to this effect.*

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15.I do not find force in the arguments of learned counsel for the respondents because, first of all, neither the investigating officer has recorded the statement of Bimla Devi, alleged owner of the car bearing registration No.HR-06N-7137 Marka Ford Fiesta nor he has made the alleged CCTV footage part of the untrace report, moreover untrace report Mark-A submitted by the investigating officer has not been accepted by the court of learned Illaqa Magistrate. In United India Insurance Company Ltd. Versus Surjit Kaur and Ors (supra), the cancellation report has been recommended and SSP agreed with the same but the Hon'ble High Court has held that there is no ground to disbelieve the eye-witness which is substantial place of evidence. In this case, PW2 Desraj has been cross-examined at length by learned counsel for the respondent but he failed to impeach his testimony. Therefore, I have no reason to disbelieve his testimony. In Punjab State Bus Stand MGNT Company Limited Versus Harwinder Kaur and others, first Appeal Order No.1533 of 2013/4.10.2013 of our Hon'ble Punjab and Haryana High Court, the cancellation report was submitted by the police but was not accepted by the court and the statement of brother of deceased who was an eye-witness of the occurrence remained unshaken in cross-examination and negligency for causing the accident was attributed to the Conductor who blew whistle while deceased was still in process of boarding bus. No authority contrary to the above has been referred by the respondents. Therefore, finding the statement of PW2 Desraj reliable, convincing and trust-worthy. It is held that the version of RW1 ASI Bhupinder Kumar is not substantiated with any evidence. Thus, much reliance can be placed on untrace report, whereas statement of PW2 Des Raj fully found trust-worthy and the same is relied upon.

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30.Now the question arises as to what should be the quantum of deduction on account of personal expenses of the deceased. In view of the law laid down in ***Sarla Verma and others Versus Delhi Transport Corporation, 2009 ACJ 1298****, as there are two dependents of deceased, then 1/3^rd of income of the deceased is deducted towards his personal and living expenses, while remaining 2/3 is taken as contribution to the family. Doing so, the annual loss of the income to the family comes to Rs.72,354/- (Rs.1,08,530/- minus Rs.36,176/-).*

12. RW Bhupinder Kumar does not claim to have personal knowledge of the occurrence. The learned Tribunal observed inter alia that FIR had been lodged by PW2 Des Raj who had been cross-examined at length by the learned counsel for the respondents, but he failed to impeach his testimony (obviously in support of the FIR). It is not even claimed, let

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alone shown on record, that his supplementary statement stated to have been recorded on 30.11.2017 by RW Bhupinder Kumar ASI was even put to PW Des Raj to elicit his explanation in this behalf. Respondents No. 1 and 2 were not examined as witnesses before the Tribunal to say that car No. HR- 06N-7137 was not involved in the accident. No reliance could, therefore, be placed on the so-called statement stated to have been made by Vimla Devi before RW Bhupinder Kumar to the effect that her car was not involved in the accident. Further more, the testimony of Des Raj eye-witness recorded and tested on the anvil of cross examination in the judicial proceedings cannot be displaced or discarded on the basis of his so called extra-judicial supplementary statement stated to have been made and the similar extra-judicial denial of Vimla Devi respondent before ASI Bhupinder Kumar of the involvement of her car in the accident which have no value in the eye of law and are of no consequence.

13. In my opinion, the learned Tribunal gave cogent and sound reasons and rightly held that the accident was caused by rash and negligent driving of car No. HR- 06N-7137 by its driver respondent No. 3 Sanjiv resulting into the death of Parveen Kumar and Gyan Chand @ Gian Singh. I am inclined to agree with the reasoned finding and conclusion drawn by the learned Tribunal.

14. There is no material on record to show that Gyan Chand @ Gian Singh deceased was not supporting his son Sanjiv Kumar. Merely because the latter was married and aged 37 years did not necessarily mean that the father would/could not support to his son. Being part of his father's family, he would be a beneficiary of the family kitty. In any case, he is an heir of his father whose income would come to the family kitty. To

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my mind, the learned Tribunal rightly deducted 1/3rd of the income of the deceased for his personal expenses.

15. It may be noted here that in fact a sum of Rs. 40,000/- was also payable to Sanjiv Kumar on account of loss of paternal consortium for the death of his father Gyan Chand @ Gian Singh but has not been awarded by the learned Tribunal.

The learned Tribunal in the same award held as below:-

> *"24. To my mind, this argument has substance. No doubt that the Hon'ble Supreme Court has used the term 'established income' but, the same has not been used in contra distinction to notional income. The gist of the judgment of the Hon'ble Supreme Court is that an addition towards future prospects in case of self employed or a person on fixed salary should be made. Once this is taken as principle, the amount on which addition has to be made becomes a matter of calculation and, it is the amount which is accepted by the Tribunal as the income of the deceased. Therefore, the notional income of the deceased is taken as the income to which an addition towards future prospects has to be made. Since the income of the deceased was* ***Rs.98,664/- (Rs.8222/- x 12)*** *per annum and the exemption stipulated for income tax during the relevant year was Rs.2,50,000/-, no tax was payable. The deceased was below the age of 40 years. Therefore, by addition of 40% to Rs.98664/-, his income is taken as* ***Rs.1,38,130/- (Rs.98,664/- + Rs. 39,466/-)*** *per annum.*
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> *XXX*
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> *26. Since the deceased was 37 years old as per post mortem report Ex.P13, the suitable multiplier will be '15'. On computation, the compensation on account of dependency comes to* ***Rs.1,03,598/- X15 =Rs.15,53,970/-,*** *to which an amount of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium should be added in view of* ***National Insurance Company Limited Versus Pranay Sethi and others (supra).***
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> *27. The total amount of compensation of petitioners* ***Poonam and others of claim petition No.1*** *comes to* ***Rs.16,23,970/- (Rs. 15,53,970/- +Rs.15,000/- + Rs.15,000/- + Rs.40,000/-)."***

Perusal of the above shows that age of deceased Parveen Kumar was 37 years; his established monthly income was Rs.8,222/- and he left behind six dependant/claimants. On these facts, it allowed 40% increase of

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income for future prospects, deducted $1/4^{th}$ for his personal expenses; applied the multiplier of 15; Rs. 15,000/- for loss of estate; Rs.15,000/- for funeral expenses; in all Rs.40,000/- for loss of consortium and awarded total compensation of Rs.16,23,970/-. In this case also, in fact sums of Rs.40,000/- were payable to each of the six claimants for loss of consortium, but the Tribunal has awarded Rs.40,000/- in all. Under other heads, the findings recorded and compensation awarded seem fair and reasonable. This aspect of compensation for loss of consortium is not being gone into as the instant appeal is by the Insurer and not by the claimants.

16. Nothing has been urged in the appeal against the finding of the learned Tribunal on issue No.4 against the appellant.

17. Assuming, there was contributory negligence as is contended, the same would not in any manner adversely affect the rights of the claimants to seek compensation from the owner and insurer of the offending vehicle. Whether or not there was contributory negligence is an *inter se* dispute between the owners of more than one offending vehicles and the claimants cannot be non-suited on that ground.

18. In the premise, no grounds are made out to interfere.

19. Dismissed.

25.11.2021 **(ARUN MONGA)**
vandana **JUDGE**

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

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