Sr. No.205

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3682-2017 (O&M)
Date of Decision: 09.04.2021

New India Assurance Company Ltd. …Appellant

Vs.

Uga Devi and others …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vinod Gupta, Advocate,
For the Appellant.

Mr. Ashwani Arora, Advocate,
For the respondents/claimants.

Mr. Siddharth Pandit, Advocate,
For the respondent/owner.

****

ARUN MONGA, J. (ORAL)

Aggrieved with the award dated 05.04.2017 rendered by the Motor Accident Claims Tribunal, Chandigarh (for brevity, Tribunal), Insurance Company has preferred the instant appeal.

2. Brief facts as per the claim petition are that on the intervening night of 15.08.2015, deceased Sardara Ram was sleeping along with others near ground plot No.14, Transport Area, Sector 26, Chandigarh. At the ill fated time, a truck bearing registration No. HR-37-B-3415 came at fast speed and crushed them including the deceased. Sh. Ajay Kumar conductor was also sitting in the said truck. Due to the accident all the persons who were sleeping there received serious injuries and some died on the spot including the deceased Sardara Ram. Legal representatives of the deceased

Sardara Ram filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of his death.

3. Having heard arguments of learned counsel for the appellant, I find no ground to interfere, particularly, in view of the correct finding of the Tribunal contained in para 10 of the award under challenge. The relevant extract is reproduced herein below:

> "*The contention of counsel for respondent is that as there was intention to kill the persons which becomes culpable homicide, as such there was no rash and negligent act of driving of vehicle nor there was accident but it was intentional act. By going through findings of learned Sessions Judge, Chandigarh it is very much clear that even accused Sharma Chaudhary has been acquitted for charges punishable under Section 302 and 307 of IPC rather the findings are that it is reckless manner act of respondent No.1 presumably under the influence of intoxicants and was dangerous enough and he knew that one result would like be that persons sleeping on the parking may be run over. So, nothing has been established regarding intention of culpable homicide of many persons or attempt to* murder. *Otherwise also, the findings of criminal court is not binding on this Tribunal. Even evidence Act is not strictly applicable while dealing with the motor accident claim case by this Tribunal. This is a social legislation just to fulfill the requirements that dependents of victim shall be compensated in terms of money. Moreover, there was no such fault on the part of victims in sleeping in a ground. The law has been cited by learned counsel for claimants titled Pushpa Rani Vs. Rajinder Kumar and others laid down by the Hon'ble High Court of Punjab and Haryana in FAO No.1444 of 1995 decided on 10.03.2014 where also the allegations was there that deceased were deliberately run over by the driver of the truck with criminal intention to kill him. Although Tribunal has dismissed the claim petition but the Hon'ble High Court has reversed the findings of Tribunal and granted compensation."*

4. I also do not find any substance in the other insipid argument of learned counsel for the appellant that driver of the offending vehicle was since intoxicated and, therefore, the Insurance Company is not liable to pay the compensation amounts. There is no such finding by Tribunal that driver was intoxicated.

5. The other argument of learned counsel for the appellant is that licence of the driver was fake, is also of no significance as long as it has come on record that same was validly issued and his being resident of Manipur is also completely irrelevant. These arguments have rightly been dealt by the Tribunal as per para 14 of the award.

6. In any case, such a defence qua licence is not legally sustainable in the teeth of the legal mandate contained under Section 149 clause 2 of the Motor Vehicles Act, 1988 which for ready reference, is reproduced herein below:

> "2. *No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—*
> *(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—*
> *(i) a condition excluding the use of the vehicle—*
> *(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or*
> *(b) for organised racing and speed testing, or*
> *(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or*
> *(d) without side-car being attached where the vehicle is a motor cycle; or*
> *(ii)a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or*
> *(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or*
> *(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a*

representation of fact which was false in some material particular. (Emphasis Supplied)

7. However, with regard to computations, I am of the view that same ought to have been calculated as below keeping in view the mandate of Apex Court in case titled as“***National Insurance Company Vs. Pranay Sethi, 2017 (4) PLR 693, SC***read with ***“New India Assurance Company Vs. Somwati 2020 ACJ 2321 (SC)”.***

Deceased	Sh. Sardara Ram
Date of Accident	Intervening night of 15.08.2015 and 16.08.2015
Age	58 years
Occupation	Phariwala of KasturiMethi
Monthly income as per minimum wages of unskilled labour	Rs.8220/-
Annual income	Rs. 98,640/-
Future increase @10% (NIC Vs. PraneySethi, 2017 (4) PLR 693, SC	Rs.9864/-
Total Annual income	Rs.1,08,504/-
Claimants (five)	Widow, 3 daughters (out of which one is minor) and a minor son
Deduction (one fourth)	Rs.27, 126/-
Annual dependency	Rs.81,378/-
Multiplier	9
Dependency (Rs.81,378 x 9)	Rs.7,32,402/-
Loss of consortium as per NIAC Vs. Somwati 2020 ACJ 2321 (SC)	Rs. 2,00,000/- (40,000 x 5)
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	Rs.9,62,402/- along with interest
Awarded Amount	Rs.9,20,476/- along with interest
Amount to be enhanced	Rs.41,926/-

8. Accordingly, the award is modified in terms of the above computations. The amount awarded by the Tribunal i.e. Rs.9,20,476/- is enhanced to Rs.9,62,402/-. Revised compensation of Rs.9,62,402/- shall be payable to the claimants along with interest @ 6% per annum provided the same is to be deposited before the MACT within a period of 60 days failing which, the same shall be payable @ 8% per annum. The same shall be

payable to the claimants within a period of two months of their approaching the insurance company along with web print of the instant order.

9. Disposed of in above terms.

April 9, 2021 **(ARUN MONGA)**
vandana **JUDGE**

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