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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.2773 of 2020 (O&M)
Date of decision: 15.11.2022

Oriental Insurance Company Limited ..... Appellant

versus

Nirmala Devi and others ..... Respondents

FAO No.2954 of 2021 (O&M)

Nirmala Devi and another ..... Appellants

versus

Harjinder Singh and others ..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Varun Sharma, Advocate with
Mr. Ashwani Talwar, Advocate
for the appellant in FAO No.2773 of 2020 and
for respondent No.4 in FAO No.2954 of 2021.

Ms. Bhupinder Kaur, Advocate
for the appellant in FAO No.2954 of 2021 and
for respondents No.1 and 2 in FAO No.2773 of 2020.

Mr. Digvijay Nagpal, AAG, Punjab.

MANJARI NEHRU KAUL J. (Oral)

Both the appeals are being disposed of together as they arise out of the same award.

The instant appeals have been filed by the Insurance Company and the claimants to impugn the award dated 14.10.2019 passed by the Motor Accident Claims Tribunal, Ludhiana, wherein the following compensation was awarded to the claimants, who are parents of deceased Ashish Kumar.

Sr. No.	Heads	Calculations
1	Income	Rs.8000/- per month
2	Addition of 40% for future prospects	Rs.3200/- per month
3	Total income	Rs.11,200/- per month
4	Deduction of ½ share for personal expenses	Rs.5600/-
5	Annual dependency	Rs.5600 X 12 X 18 = Rs.12,09,600/-
6	Loss of consortium	Rs.40,000/-
7	Loss of Estate	Rs.15,000/-
8	Funeral Expenses	Rs.15,000/-
	Total Compensation	**Rs.12,79,600/-**

The respondents were held jointly and severally liable to make the amount of compensation to the claimants, along with interest @ 7.5% per annum, from the date of filing of the claim petition till the realization of award amount. The claimants were held entitled to receive the award amount in equal shares.

As per the pleaded case of the claimants, on 19.07.2016, deceased Ashish Kumar, along with his brother Amit Kumar was going on a road with his Rehri to sell fruits. At about 11:30 a.m., the offending vehicle bearing registration No.PB-05-AB-5879 came in a rash and negligent manner from behind and ran over the deceased, who on account of the collision, died at the spot. The offending vehicle, besides hitting the deceased, also hit some other passers by on the road, other vehicles and an electricity pole. FIR No.103, dated 19.07.2016, under Sections 279, 427, 337, 304-A of IPC was registered on the statement of brother of the deceased.

Learned counsel for the Insurance Company has argued that the Tribunal gravely erred in holding that the accident in question had occurred on account of rash and negligent driving on the part of the driver of the offending vehicle. He has vehemently argued that in fact the claim petition did not even fall within the ambit of Section 166 of the Act as the accident in question had occurred on account of driver of the offending vehicle having suffered a sudden stroke/seizure. He submits that it was evidently beyond the control of the driver of the offending vehicle and thus he could not be held responsible for the accident in question. It has also been argued that RW-2 Medical Specialist too categorically deposed that driver of the offending vehicle suffered a seizure due to Neurocysticercosis. It has further been argued that though the deceased was treated as an unskilled worker but his income had been erroneously assessed on the higher side by the Tribunal @ Rs.8000/- per month as against the minimum wages notified by the Government for the relevant period in respect of unskilled worker which was Rs.7,220/-.

On the other hand, learned counsel for the appellants-claimants has argued that the Tribunal had failed to appreciate that the deceased was a fruit seller and his income was approximately Rs.20,000/- per month. In these circumstances, it has been urged that the Tribunal erred in assessing his income at only Rs.8000/- per month which instead, should have been assessed at least Rs.20,000/-, if not more. It has still further been argued that the Tribunal had fallen into the error in deducting half the income of the deceased by not appreciating that the deceased, though was a bachelor, but was also taking care of his aged parents, i.e., the claimants and hence, the deductions, if any, should have been to the extent of 1/3rd. It has also still further been argued that the compensation awarded to the claimants under the conventional heads is not in consonance with the settled law and thus, requires to be enhanced.

I have heard learned counsel for the parties and perused the relevant material on record.

It was vehemently argued by the learned counsel for the Insurance Company that the accident in question had not taken place on account of rash and negligent driving of the driver of the offending vehicle but it was on account of the driver suffering a sudden epileptic seizure. The Medical Expert, who stepped into the witness box as RW-2 also deposed that no past history of epilepsy had been given by the family of the driver of the offending vehicle. However, the burden of proving the fact that he had no past history of epileptic seizure etc. was on the driver himself. When the driver of the offending vehicle stepped into the witness box, he deposed that he had undergone medical examination thrice, in the year preceding the accident in question, on the directions of the department, and also admitted that all the relevant medical records were at his disposal, however, no such record was placed by him before the Tribunal to show that he had no previous history of epileptic seizure etc. Thus, an adverse inference would have to be drawn against the driver of the offending vehicle along with a presumption that he had been suffering from a previous ailment which led to the sudden epileptic seizure. Therefore, in the circumstances, the driver by driving the offending vehicle had put the life of not only the passengers traveling in his vehicle but also the public at large, at risk which is indeed an act of negligence.

This Court thus finds no force in the submissions made by the learned counsel for the Insurance Company *qua* the driver of the offending vehicle not being responsible for the accident in question.

Further, this Court also finds no merit in the submissions made by learned counsel appearing for the appellants-claimants that the deceased was earning approximately Rs.20,000/- per month as admittedly, no evidence in support thereof was led before the Tribunal. The Tribunal assessed the income of the deceased at Rs.8000/- by treating him as an unskilled worker, however, since it is just slightly more than the minimum wages notified by the State Government for the relevant period, this Court is not inclined to interfere with the same. Still further, this Court also does not find any merit in the submissions made by learned counsel for the claimants that the deductions should have been to the extent of 1/3rd as the claimants were dependent on their deceased son. Admittedly, the deceased was a bachelor and, no evidence was led by the claimants to the effect that the claimant's father was dependent on the deceased son. In the absence of any such evidence, the deductions were rightly made to the extent of 50%, as per the ratio of law laid down by Hon'ble the Supreme Court in "***Sarla Verma and others vs. Delhi Transport Corporation and another***", ***(2009) 6 SCC 121***.

This Court however, finds merit in the submissions of the learned counsel for the claimants that compensation awarded under the conventional heads with respect to loss of filial consortium has erroneously not been granted to the claimants. As per ratio of law laid down in ***National Insurance Company Limited v. Pranay Sethi and others***; **2017 (4) RCR (Civil) 1009** and ***Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others***, **(2018) 18 SCC 130**, the claimants, who are parents of the deceased are entitled for compensation in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- each for loss of filial consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amount of compensation would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads as per the ratio laid down in ***Pranay Sethi's case*** *(supra)*. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants, are entitled to Rs.44,000/- each, for loss of filial consortium.

The compensation thus payable to the claimants is reassessed as follows:-

Sr. No.	**Head**	**Amount**
1	Monthly Income	Rs.8000/- per month
2	Addition of 40% for future prospects	Rs.3200/- per month
3	Total Income	Rs.11,200/- per month
4	Deduction of ½ share for personal expenses	Rs.56,000/-
5	Annual dependency	Rs.5600 X 12 X 18 = Rs.12,09,600/-

6	Loss of consortium	Rs.44,000/- each (44,000 X 2) = Rs.88,000/-
7	Loss of Estate	Rs.16,500/-
8	Funeral expenses	Rs.16,500/
	Total compensation	**Rs.13,30,600/-**

The claimants are, therefore, held entitled to a total sum of Rs.13,30,600/- as compensation along with interest @ 7.5% per annum from the date of filing of claim petition till its actual realization, which shall be paid by the respondents jointly and severally and would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

With these modifications, both the appeals stand disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

15.11.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No