IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. XOBJC No.54 of 2022 in/and FAO No.592 of 2021 (O&M)

Shriram General Insurance Company

… Appellant

Versus

Rajni & others

… Respondents

2. FAO No.672 of 2021 (O&M)

Shriram General Insurance Company

… Appellant

Versus

Mamta Nishad & others

… Respondents

Reserved on : 11th November, 2022

Date of decision: 30th November, 2022

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

Mr. J.S. Maanipur, Advocate
for the cross-objectors/respondents No.1 to 3
in FAO-592-2021.

Mr. Krishan Daaria, Advocate for
Mr. S.K. Daaria, Advocate
for respondents No.1 to 3 in FAO-672-2021.

MANJARI NEHRU KAUL, J.

Appellant Insurance Company, in both the above mentioned appeals, has challenged the common award dated 25.01.2021 passed by the learned Motor Accident Claims Tribunal, Gurugram in two separate claim petitions preferred by the claimants on account of the death of two persons namely, Kuldeep Kumar and

Avinash Ved Bind. Since both the instant appeals have arisen from the same accident that took place on 11.08.2017, they are being taken up together for disposal by way of this common judgment.

Cross-objections have been filed by claimants in FAO No.592 of 2021 titled as 'Shriram General Insurance Company vs. Rajni & others'.

Learned Tribunal awarded the following compensation on account of the death of Kuldeep Kumar, to the claimants who are his widow and two minor children:-

Sr.No.	Heads of compensation	Amount
1.	Compensation	₹ 1,27,19,257/-
2.	Funeral expenses	₹ 15,000/-
3.	Loss of consortium	₹ 40,000/-
4.	Loss of estate	₹ 15,000/-
	Total	**₹ 1,27,89,257/-**

Following compensation was awarded to the claimants, i.e. widow, two minor children and the father of deceased Avinash Ved Bind:-

Sr.No.	Heads of compensation	Amount
1.	Compensation	₹ 36,79,860/-
2.	Funeral expenses	₹ 15,000/-
3.	Loss of consortium	₹ 40,000/-
4.	Loss of estate	₹ 15,000/-
	Total	**₹ 37,49,860/-**

The respondents in both the claim petitions were held liable to pay the amount of compensation to the claimants jointly and severally, along with interest @ 7.5% p.a., from the date of filing of the petition till realization.

As per the pleaded case of the claimants, on the fateful day i.e. 11.08.2017, both Kuldeep Kumar and Avinash Ved Bind (hereinafter referred to as, 'deceased No.1' and 'deceased No.2') along with one Mahender Kumar were traveling from Jhajjar to Gurugram in Alto car bearing registration No.HR26-AM-7976. Deceased No.1 Kuldeep Kumar was owner of the above mentioned ill-fated car and was driving it at a slow and moderate speed. While he was overtaking another vehicle, the offending truck bearing registration No.HR55K-6896 came from behind in a rash and negligent manner, overtook the car of the deceased, and suddenly applied breaks, as a result of which the ill-fated car rammed into the offending vehicle. Both deceased No.1 and 2 suffered serious injuries and were shifted to a hospital in Gurugram. However, both of them succumbed to their injuries soon thereafter. It was alleged that the accident in question had occurred on account of rash and negligent driving of respondent No.4 Sarfaraj, i.e. driver of the offending vehicle. FIR No.0227 dated 12.08.2017 was registered at Police Station Farrukh Nagar, District Gurugram against respondent No.4 Sarfaraj for commission of offences punishable under Sections 279, 337, 338, 304-A IPC.

Learned counsel representing the appellant Insurance Company has impugned the Award on the following two grounds:-

(i) That the involvement of the offending vehicle in the accident in question was highly suspect.

It was vehemently argued that it was on the face of it, a hit and run case; the alleged offending vehicle had been involved after the accident, by the claimants, in collusion with the local police. Learned counsel argued that while registering the FIR in question, the registration number of the offending vehicle as well as the driver's name was not mentioned even though the complainant had stated that he had noted the registration number of the offending vehicle, which lent credence to the false implication of the offending vehicle in the accident in question. It was further argued that the alleged eye-witness Mahender Kumar, while stepping into the witness box, also did not mention the registration number of the offending vehicle and the name of its driver. Learned counsel thus asserted that in the circumstances, the driver of the offending vehicle could not have been held liable for causing the accident in question, more so when he stood acquitted in case FIR No.0227 dated 12.08.2017 so registered against him at Police Station Farrukh Nagar, District Gurugram under Sections 279, 337, 338, 304-A IPC. Alternatively, learned counsel argued that even assuming for the sake of arguments, that the offending vehicle was indeed involved in the accident in question, at best it would be a case of contributory negligence as it was the pleaded case of the claimants themselves that the deceased was overtaking a vehicle on the highway, and it was at that point in time that his car collided with the offending vehicle, from which a safe inference could be drawn that the deceased No.1 had not been maintaining a safe distance from the vehicles going ahead of him.

(ii) That the learned Tribunal had grossly erred in assessing the income of deceased No.1 Kuldeep Kumar in the sum of ₹ 70,978/- per month, even though as per PW-4 Bharat Singh Bisht, Deputy Manager in the Company, where the deceased was working, his basic salary as per his letter of appointment (Ex.P-20) was just ₹17,000/- per month. It was further urged that even as per 'Form-16' of the deceased No.1, his gross salary was not more than ₹35,000/- per month. Learned counsel thus contended that the compensation awarded by the learned Tribunal was exorbitant and deserved to be reassessed and scaled down accordingly. Learned counsel also urged that no tax deduction from income of deceased No.1 was made by the Tribunal.

Learned counsel further also submitted that the compensation awarded to claimants in respect of the death of deceased No.2 Avinash Ved Bind was also on the higher side and was contrary to the evidence led qua his income, hence, it deserved to be scaled down accordingly.

Learned counsel for the claimants in FAO No.592 and FAO 672 of 2021 have vehemently controverted the submissions of the counsel opposite with respect to the non-involvement of the offending vehicle in the accident in question. While inviting the attention of this Court to the deposition of PW-5, Mahender Kumar, learned counsel have submitted that this witness was traveling in the ill-fated car at the time of the accident in question. He gave a vivid account of the manner in which the offending vehicle came from behind in a zig-zag manner and after overtaking the car of the deceased, screeched to a sudden halt due to which the car of the deceased rammed into the offending vehicle from the back. Learned counsel argued that the presence of this witness in the car of the deceased, at the time of the accident in question, went unchallenged and still further no specific suggestion was put to him qua the false implication of the offending vehicle in collusion with the police. It was also argued that the complainant PW-5 could not have possibly known the name of the driver of the offending vehicle as it was nobody's case that the said driver was known to the eye-witness i.e. PW-5. It was also urged that mere non-mentioning of the registration number of the offending vehicle while registering the FIR pertaining to the accident in question, could not be said to be fatal because firstly, the complainant, PW-5 Mahender Kumar too sustained injuries in the accident coupled with the fact that he too would have been in a state of shock. It was lastly submitted that since the driver/owner of the offending vehicle did not step into the witness box, the learned Tribunal rightly drew an adverse inference against him.

Learned counsel for the claimants in FAO No.592 of 2021 vehemently controverted the submissions of the learned counsel representing the Insurance Company qua the compensation awarded on account of death of deceased No.1 being highly exorbitant. Learned counsel submitted that the learned Tribunal had rather erred in assessing the monthly income of the deceased to be ₹ 70,978/- instead of ₹ 76,865/- per month. Learned counsel submitted that the allowances being paid to the deceased by his employers, as per settled law, could not have been deducted while assessing the monthly income of the deceased. He further submitted that the amount of compensation under the conventional heads was not in consonance with the settled ratio of law in **'National Insurance Co. vs. Pranay Sethi' 2017 SCC 270** and thus, deserved to be enhanced.

Learned counsel for the claimants in FAO No.672 of 2021 also disputed the submissions made by the learned counsel for the Insurance Company qua the compensation awarded to them being on the higher side. It was submitted that the Tribunal ought to have included the allowances and erred in deducting the same while assessing the monthly income of deceased No.2. It was also prayed that since compensation awarded under the conventional heads was contrary to the settled law, it be enhanced.

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

Coming to the first challenge qua the offending vehicle having been planted for extracting compensation, the same is clearly devoid of any merit and deserves to be rejected outright. Mahender Kumar, who stepped into the witness box as PW-5, is the star witness of the accident in question. He not only witnessed the accident but also lodged the FIR soon thereafter. While stepping into the witness box, he gave a vivid account of the manner in which the offending vehicle was being rashly and negligently driven by respondent No.4 and how it overtook the ill-fated vehicle of the deceased and applied sudden breaks. The deposition of PW-5 inspires confidence. Even though the registration number of the offending vehicle had not been given by the author of the FIR, it would not in any manner create any doubt qua the involvement of the offending vehicle because it was categorically stated in the FIR that soon after the accident, the driver along with the vehicle fled away from the spot. Needless to observe that soon after the accident, the passers-by would have rushed to the rescue of the injured. As PW-5 Mahender Kumar too had sustained injuries, he would have been naturally in a trauma. Still further, the involvement of the offending vehicle finds due corroboration from the Mechanical Inspection Report (Ex.PW1/A), as per which the rear side of the vehicle had a fresh coat of paint. Moreover, it would not be out of context to observe that proceedings before the Motor Accident Claims Tribunal are summary in nature and charges are not required to be proved beyond shadow of doubt like they are done in criminal cases. A perusal of the evidence led also reveals that no suggestion, much less by way of a whisper, was given to eye-witness PW-5 that respondent No.4 was not driving the offending vehicle on the date of the accident. Rather the suggestion given to PW-5 was that the accident in question had occurred on account of rash and negligent driving of the deceased Kuldeep Kumar himself. In the circumstances, particularly when no challenge has been laid to respondent No.4 not driving the offending vehicle on the fateful day, it is deemed to be an admitted fact that the driver of the offending vehicle was indeed responsible for the accident in question which resulted in two deaths of Kuldeep Kumar and Avinash Ved Bind.

Coming to the next contention of learned counsel for the appellant/Insurance Company, qua the income of deceased No.1 having been assessed on the higher side and contrary to the evidence on record, this Court finds no merit in the same. During the course of arguments, learned counsel for the appellant Insurance Company placed a great deal of reliance on 'Form No.16' to urge that the income of the deceased was much less than the one reflected in his salary certificate Ex.P21. It was argued that while assessing the amount of compensation, the income of the deceased No.1 should have been taken as per 'Form No.16'. This Court, however, finds no force in the aforesaid argument raised by the learned counsel for the appellant Insurance Company. It would be relevant to note that Form No.16 just gives the break-up of gross salary and further reflects allowances, and exemptions to be made from the gross salary for the purpose of computation of the income tax deductions to be made at source. Even otherwise, as per Part-B of Form No.16 (Ex.P26), which pertains to the period from 01.04.2017 to 12.08.2017, the gross salary of the deceased comes to approximately ₹ 76,865/- per month i.e. as detailed in his salary certificate Ex.P21.

It is settled principle of law that while assessing the income of a deceased for the purpose of awarding compensation, only income tax is to be deducted by the Tribunal and not the allowances which were being paid to the deceased.

In the circumstances, this Court concurs with the submissions made by learned counsel for the claimants that the Tribunal had fallen into error in taking the monthly income of the deceased No.1 to be ₹ 70,978/- instead of ₹76,865/- and that of deceased No.2 as ₹ 19,327/- instead of ₹ 20,503/-. Further, the Tribunal also erred in not making any deduction qua the income of deceased No.1, as his income was beyond the exempted slab. It would also be relevant to point out here that since the deceased Kuldeep Kumar was a permanent salaried employee, an addition of 50% towards future prospects ought to have been made while computing the amount of compensation. Furthermore, this Court also concurs with the submissions of the learned counsel for the claimants that the amount of compensation under the conventional heads was not in consonance with the settled ratio of law laid down in **'National Insurance Co. vs. Pranay Sethi' (supra).**

Since the claimants in FAO No.672 of 2021 have not filed any cross-objections for enhancement, this Court cannot reassess and modify the amount of compensation so as to enhance the same.

The amount of compensation in the case of deceased No.1 (Kuldeep Kumar) in FAO No.592 of 2021 is thus reassessed and modified as follows:-

Sr. No.	Head	Amount
1.	Monthly income	₹ 76,865/-
2.	Annual income (76,865 x 12)	₹ 9,22,380/-

3.	Income tax deductions	₹ 99,885/-
4.	Net income	₹ 8,22,495/-
5.	Future prospects @ 50 %	₹ 4,11,248/-
6.	Total income including future prospects	₹ 12,33,743/-
7.	Deduction towards personal expenses @ 1/3	₹ 4,11,248/-
8.	Dependency (12,33,743 – 4,11,248)	₹ 8,22,495/-
9.	Multiplier	16
10.	Total loss of dependency	₹ 1,31,59,920/-
11.	Loss of estate	₹ 16,500/-
12.	Funeral expenses	₹ 16,500/-
13.	Loss of spousal & parental consortium (44,000 x 3)	₹ 1,32,000/-
	Total compensation	₹ 1,33,24,920/-

The claimants in XOBJC No.54 of 2022 in FAO No.592 of 2021 are therefore entitled to a total compensation of ₹ 1,33,24,920/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount which would be apportioned in the same ratio as directed by the learned Tribunal.

With these modifications, FAO No.592 of 2021, along with the cross-objections filed by the claimants, is disposed off, whereas, FAO No.672 of 2021 stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

November 30, 2022
rps

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