206

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3748 of 2005 (O&M)
Date of decision: 20.09.2022

United India Insurance Company Limited

..... Appellant

versus

Veena Kathuria and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. Gautam Kaile, Advocate for
Mr. Rajiv Sharma, Advocate
for the respondents/cross-objectors.

TRIBHUVAN DAHIYA J.

Cross-objection No.4-CII of 2009

Notice in the cross-objection is issued to the non-applicant-appellant.

Mr. Neeraj Khanna, Advocate appears and accepts notice on behalf of the non-applicant/appellant.

The cross-objections are taken on record.

FAO No.3748 of 2005

This appeal has been filed by the Insurance Company against the Award dated 11.06.2005 passed by the Motor Accident Claims Tribunal, Hisar, on the ground that involvement of the offending vehicle in the accident could not be established on record; consequently, the award is liable to be set aside.

2. The accident in question took place on 02.11.2002, when the deceased Subhash Kathuria, who was driving LML Vespa scooter bearing registration No.HR-20-E-7934, was hit from behind by a vehicle TATA-407 bearing registration No.HR-56-0930 insured by the appellant. The claim petition seeking compensation was filed by respondents No.1 to 4-claimants, who are wife, mother and minor children of the deceased.

3. The deceased was held to be 46 years of age, and his income was assessed as Rs.4000/- per month. After deduction of $1/3^{rd}$ from his income, the dependency was assessed at Rs.32,000/- per annum. By applying multiplier of 13, an amount of Rs.4,16,000/- was awarded as compensation. Besides, an amount of Rs.2,000/- was awarded on account of cremation and transportation charges, and Rs.5000/- as loss of consortium to the deceased's wife. In all, an amount of Rs.4,23,000/- was awarded along with interest at the rate of 9% from the date of filing of the petition till its realization.

4. By referring to the testimony of eye-witness PW-5, Inderjeet Singh, it has been argued by the learned counsel for the appellant that the witness has himself stated that he did not know who was driving the offending vehicle bearing registration No.HR-56-0930 and at what speed. The witness further stated that he had not recognized the driver at the time of accident on 02.11.2002, and that his statement was recorded by the police only on 13.11.2002. The scooter said to have been driven by the deceased which met with the accident, could also not be identified by the witness as its number was not mentioned in his

statement.

5. The Tribunal heard and decided issues No.1 and 2 together. The issues read as under:

> 1. Whether the accident in question resulting in death of Subhash kathuria son of Bodh Raj Kathuria took place due to rash and negligent driving of Tata-407 No.HR-56-0930 driven by respondent No.1 as alleged? OPP
> 2. If issue no.1 is proved to what amount of compensation and from whom the petitioners are entitled to recover? OPP

6. The Tribunal relied upon statement of PW-1, Amit Sharma, Ahlmad, who proved FIR No.309, dated 03.11.2002, under Sections 279/304-A of IPC, at police station Barwala, was registered against the driver and owner of the offending vehicle Tata-407 bearing registration No.HR-56-0930. The witness also proved that charge against the accused stood framed, and the case was fixed for prosecution evidence. This witness was re-examined as PPW-8 to prove FSL report (Exhibit P-22) and crime scene visit report, as submitted by member of the scientific team after visiting the spot and examining the vehicles, which met with the accident, i.e., LML Vespa scooter bearing registration No.HR-20-E-7934 and the offending vehicle Tata-407 bearing registration No.HR-56-0930 on 04.11.2002. The relevant portion of the report (Exhibit P-22) reads as under:

> Crime scene examination was carried out deftly to unveil the mystery behind the said accident. But unfortunately, both the vehicles i.e. LML Vespa scooter no.HR-20-E-7934 were found to be parked in the premises of P.S. Barwala during the visit of scene by the crime team i.e. on 04.11.2002 on the auspicious day of Deepawali;

following observations were made:

(I) Condition of scooter no.HR-20-E-7934

- Striking mark on number plate was observed,
- Rear side of the scooter above number plate was found to be dumped and mudguard of rear side were also found to be bent especially mudguard of right side was found to be sunken more,
- Friction / rugged marks were seen on left side of the scooter even on left handle,
- Head light found to be severally damaged,
- Backlight found to be displaced,
- Right indicator also found to be displaced,
- Front mudguard found to be twisted,
- Chasis of the scooter also found to be dented,
- Handle system, clutch system and Gear system of the scooter were found to be in working condition.

(II) Condition of the Tata vehicle 407 No.HR-56-0930:

- Faint friction marks on left side below the door were seen,
- Metallic bumper on conductor side (left side) of the vehicle was found to be little bit twisted,
- Left indicator found to be shattered from the lower side,
- The vehicle was having a broad strip of milky paint in the middle of bumper and the same was found to be eroded on left side prior to end mark.

The opinion recorded in the report (exhibit P-22) as under:

Collusion with the scooter had taken place with the vehicle coming from behind the scooter.

7. It is, therefore, apparent that there is statement of the eye-witness regarding the factum of accident and identification of the offending vehicle. It is also established on record that FIR No.309 under section 279/304-A of IPC was registered against the driver and owner of the offending vehicle and they faced criminal prosecution.

Besides, crime scene visit report Exhibit P-22, also clearly established that the two vehicles, LML Vespa scooter (HR-20E-7934) and Tata 407 (HR-56-0930), were involved in the accident. Therefore, there is no escape from the conclusion that the accident in question occurred due to rash and negligent driving of the offending vehicle Tata 407. The findings to that effect recorded by the Tribunal do not call for any interference.

8. Learned counsel for the respondents/cross-objectors has argued that the compensation awarded to the claimants is on a lower side. No amount has been awarded for loss of consortium. Besides, an amount of 1/3rd has been deducted out of the deceased's income on account of his personal and living expenses, which is on a higher side.

9. As the deceased had four dependants/claimants, who have filed the appeal, as per law laid down by ***Sarla Verma and others vs. Delhi Transport Corporation and another***; **AIR 2009 SC 3104**, in such cases only 1/4th deduction out of deceased's income needs to be effected towards his personal and living expenses.

10. Further, the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others***; **2017 (4) RCR (Civil) 1009** has held that reasonable figures under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% every three years. Accordingly, the respondent/claimants would be entitled to 10% enhancement with respect to compensation under the conventional heads; with 10% increase the amount under the conventional heads

comes to Rs.16,500/-, Rs.44,000/- and Rs.16,500/- respectively.

11. Besides, the respondents/claimants are also entitled to enhancement of compensation on account of future prospects as laid down by the Supreme Court in ***Pranay Sethi*** case *(supra)*. It has been held by the Tribunal that the deceased was 46 years of age at the time of accident and was self-employed. In terms of the law laid down, he is entitled to an addition of 40% of the established income on account of future prospects, and multiplier of 13 should be applied while computing the amount of compensation.

12. On the aforesaid analysis, respondents No.1 to 4/claimants are held entitled to the following revised amount of compensation:

Sr. No.	Head	Amount (Rs.)
1.	Monthly Income	4,000
2.	Annual Income	4,000 x 12 = 48,000
3.	Future Prospects @ 40%	19,200
4.	Total income including future prospects	67,200
5.	Deduction towards personal expenses @ 1/4th	16,800 (67,200-22,400 = 50,400)
6.	Multiplier '13'	(50,400 x 13) 6,55,200
7.	Loss of consortium with 10% increase after 3 years	44,000
8.	Loss of Funeral Expenses with 10% increase after 3 years	16,500
9.	Loss of Estate with 10% increase after 3 years	16,500
10	**Total compensation**	**7,32,200**

13. The award passed by the Tribunal dated 11.06.2005, therefore, stands modified and respondents no.1 to 4/claimants are held entitled to an enhanced amount of **Rs.3,09,200/-** with interest at the rate of 9% from the date of filing the claim petition till its actual realization,

which shall be jointly and severally paid in the same ratio as directed by the Tribunal.

14. Resultantly, appeal filed by the appellant/Insurance company is hereby dismissed, and the cross objections are allowed in the terms aforesaid.

(TRIBHUVAN DAHIYA)
JUDGE

20.09.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No